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SUBCHAPTER A—GENERAL REGULATIONS

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

AUTHORITY: 44 U.S.C. 3501 *et seq.*

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays the control numbers assigned to information collection requirements of the National Oceanic and Atmospheric Administration (NOAA) by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA). NOAA intends that this part comply with the requirements of section 3507(c)(B)(i) of the PRA, which requires that agencies inventory and display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
15 CFR	
Part 908	–0025
Part 911	–0157
917.11	–0008, –0019, and –0034
917.22	–0008, –0019, and –0034
917.30(b)	–0008, –0019, and –0034
917.41	–0008, –0019, and –0034
917.43(c)	–0119
918.7	–0147
Part 921, subpart B	–0121
Part 923	–0119
924.6	–0141
928.3	–0119
929.10	–0141
935.9	–0141
936.8	–0141
937.8	–0141
938.8	–0141
941.11	–0141
942.8	–0141
943.10	–0141
944.9	–0141
Part 960, subpart B	–0174
Part 970	–0145
Part 971	–0170
Part 981	–0144
50 CFR	
216.22	–0178
216.23	–0179
216.24(c)	–0083
216.24(d)	–0099 and –0217
216.24(e)	–0040
216.27	–0084
216.33	–0084
216.37	–0084
216.38	–0084
216.39	–0084
216.41	–0084
216.45	–0084
216.104	–0151
216.106	–0151
216.108	–0151
216.114	–0151
216.145	–0151
216.155	–0151
222.11–2	–0078
222.11–8	–0079
222.12–7	–0078
222.12–8	–0078
222.22	–0230
227.72	–0230 and –0267
229.5	–0293
229.6	–0292
229.7	–0292
230.8	–0311
253.15	–0012
259.30	–0090
259.35	–0041
260.103	–0266
285.7	–0202
285.8	–0202
285.21	–0202
285.27	–0247
285.28	–0202
285.29	–0239
285.33	–0305
285.52	–0202
285.53	–0168
285.54	–0239
285.55	–0239
285.201	–0040
296.5	–0082
300.13	–0304
300.22	–0148
300.24	–0202
300.25	–0239
300.26(c)	–0239
300.26(d)	–0239
300.32	–0218
300.34	–0306
300.35	–0306
300.103(a)	–0194
300.104(d)	–0194
300.104(e)	–0194
300.105(c)	–0194
300.106(e)	–0194
300.108(a)	–0306
300.108(c)	–0305
300.112	–0194
300.113	–0194
300.123	–0205
300.124(b)	–0016
300.125	–0306
300.152	–0228
300.153(b)	–0228
300.154(b)	–0228
300.154(c)	–0228
300.154(d)	–0228
600.205	–0314

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
600.215	–0314
600.235	–0192
600.501	–0089
600.502	–0075
600.503	–0305 and –0306
600.504	–0075
600.506	–0075
600.507	–0075
600.510	–0075
600.512	–0309
600.520	–0075
600.630	–0314
622.4	–0205
622.5	–0013, and –0016
622.6	–0305, and –0306
622.10	–0205
622.15	–0013 and –0262
622.17	–0205
622.41(a)	–0016, and –0305
622.45(a)	–0013
628.4	–0202
630.4	–0205
630.5	–0013 and –0016
630.6	–0306
630.10	–0016
630.31	–0277
640.4	–0205
640.6	–0305 and –0306
641.4	–0205
644.24	–0216
648.4	–0202, –0212
648.5	–0202
648.6	–0202
648.7	–0018, –0212, and –0229
648.8	–0306, –0229
648.9	–0202 and –0307
648.10	–0202
648.11	–0202
648.15	–0202
648.53	–0202
648.70	–0238
648.74	–0240
648.80	–0202
648.81	–0202
648.82	–0202
648.84	–0305
648.100	–0202
648.106	–0202
648.123	–0305
648.144	–0305
649.4	–0202
649.5	–0202
649.6	–0202
649.7	–0306
649.21	–0305
654.6	–0305, –0306 and –0307
655.5	–0202
655.7	–0018
655.8	–0306
660.13	–0204
660.14	–0214
660.16	–0306
660.17	–0204
660.21(k)	–0204
660.23	–0214
660.24	–0305
660.25	–0307
660.27	–0214
660.28	–0214
660.43	–0214
660.48	[1]–0214
660.303	–0271
660.305	–0306
660.322	–0305
660.323	–0243
660.333	–0203
661.4	–0222
661.20	–0222
662.5	–0306
663.4	–0271
663.6	–0306
663.10	–0203
663.11	–0203
663.22	–0305
663.33	–0203
678.4	–0205
678.5	–0013, –0016 and –0229
678.6	–0306
678.10	–0016
679.4	–0206, –0272, –0280, and –0282
679.5	–0213, –0272
679.6	–0206
679.24	–0305, –0307
679.26	–0316
679.30	–0269
679.32	–0269
679.33	–0269
679.34	–0269
679.40	–0213, –0272
679.41	–0272
679.42	–0272
679.43	–0272, –0282
679.50	–0307, –0318

[1] And –0305.

[60 FR 39248, Aug. 2, 1995]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 902.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PART 903—PUBLIC INFORMATION

AUTHORITY: 5 U.S.C. 552 as amended by Pub. L. 93–502; 5 U.S.C. 553; Reorg. Plan No. 2 of 1965, 15 U.S.C. 311 note; 32 FR 9734, 31 FR 10752.

§ 903.1 Access to information.

The rules and procedures regarding public access to the records of the National Oceanic and Atmospheric Administration are found at 15 CFR part 4.

[57 FR 35749, Aug. 11, 1992]

PART 904—CIVIL PROCEDURES

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AUTHORITY: 16 U.S.C. 1801–1882; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1407; 16 U.S.C. 3371–3378; 16 U.S.C. 1431–1439; 16 U.S.C. 773–773k; 16 U.S.C. 951–961; 16 U.S.C. 1021–1032; 16 U.S.C. 3631–3644; 42 U.S.C. 9101 *et seq.*; 30 U.S.C. 1401 *et seq.*; 16 U.S.C. 971–971i; 16 U.S.C. 781 *et seq.*; 16 U.S.C. 2401–2412; 16 U.S.C. 2431–2444; 16 U.S.C. 972–972h; 16 U.S.C. 916–916l; 16 U.S.C. 1151–1175; 16 U.S.C. 3601–3608; 16 U.S.C. 1851 note; 15 U.S.C. 4201 *et seq.*; Pub. L. 102–587, 106 Stat. 5039.

SOURCE: 52 FR 10325, Mar. 31, 1987, unless otherwise noted.

Subpart A—General

§904.1 Purpose and scope.

(a) This part sets forth the procedures governing NOAA's administrative proceedings for assessment of civil

penalties, suspension, revocation, modification, or denial of permits, issuance and use of written warnings, and release or forfeiture of seized property.

(b) This subpart defines terms appearing in the part and sets forth rules for the filing and service of documents in administrative proceedings covered by this part.

(c) The following statutes authorize NOAA to assess civil penalties, impose permit sanctions, issue written warnings, and/or seize and forfeit property in response to violations of those statutes:

(1) Antarctic Conservation Act of 1978, 16 U.S.C. 2401–2412;

(2) Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431–2444;

(3) Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601–3608;

(4) Atlantic Striped Bass Conservation Act, 16 U.S.C. 1851 note;

(5) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971i;

(6) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.;*

(7) Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972–972h;

(8) Endangered Species Act of 1973, 16 U.S.C. 1531–1543;

(9) Fur Seal Act Amendments of 1983, 16 U.S.C. 1151–1175;

(10) Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378;

(11) Land Remote-Sensing Commercialization Act of 1981, 15 U.S.C. 4201 *et seq.;*

(12) Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801–1882;

(13) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361–1407;

(14) Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. 1431–1439;

(15) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773–773k;

(16) North Pacific Fisheries Act of 1954, 16 U.S.C. 1021–1032;

(17) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.;*

(18) Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631–3644;

(19) Sponge Act, 16 U.S.C. 781 *et seq.;*

(20) Tuna Conventions Act of 1950, 16 U.S.C. 951–961; and

(21) Whaling Convention Act of 1949, 16 U.S.C. 916–916*l*.

The procedures set forth in this part are intended to apply to administrative proceedings under these and later-enacted statutes administered by NOAA.

§ 904.2 Definitions.

Unless the context otherwise requires, or as otherwise noted, terms in this part have the meanings prescribed in the applicable statute or regulation. In addition, the following definitions apply:

Administrator means the Administrator of NOAA or a designee.

Agency means the National Oceanic and Atmospheric Administration (NOAA).

Applicable statute means a statute cited in § 904.1(c), and any regulations issued by NOAA to implement it.

Applicant means any person who applies or is expected to apply for a permit.

Citation means a written warning (see section 311(c) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1861(c), and section 11(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773i(c)).

Decision means an initial or final decision of the Judge.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include inquiries regarding procedures, scheduling, and status.

Final administrative decision means an order or decision of NOAA assessing a civil penalty or permit sanction which is not subject to further Agency review under this part, and which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

Forfeiture includes, but is not limited to, surrender or relinquishment of any claim to an item by written agreement, or otherwise; or extinguishment of any claim to, and transfer of title to an item to the Government by court order or by order of the Administrator under a statute.

Initial decision means a decision of the Judge which, under applicable statute and regulation, is subject to review

by the Administrator, but which becomes the final administrative decision in the absence of such review.

Judge means Administrative Law Judge.

NOAA (see *Agency*) means either the Administrator or a designee acting on behalf of the Administrator.

Party means the respondent and the Agency as represented by counsel; if they enter an appearance, a joint and several respondent, vessel owner, or permit holder; and any other person allowed to participate under §904.204(a).

Payment agreement means any promissory note, security agreement, settlement agreement, or other contract specifying the terms according to which a permit holder agrees to pay a civil penalty.

Permit means any license, permit, certificate, or other approval issued by NOAA under an applicable statute.

Permit holder means the holder of a permit or any agent or employee of the holder, and includes the owner and operator of a vessel for which the permit was issued.

Sanction means suspension, revocation, or modification of a permit (see §904.320).

Vessel owner means the owner of any vessel that is liable *in rem* for any civil penalty under this part, or whose permit may be subject to sanction as a result of civil penalty proceedings under this part.

Written warning means a notice in writing to a person that a violation of a minor or technical nature has been documented against the person or against the vessel which is owned or operated by the person.

§904.3 Filing and service of documents.

(a) Whenever this part requires service of a document or other paper, such service may effectively be made on the agent for service of process or on the attorney for the person to be served or other representative. Refusal by the person to be served, or his or her agent or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal. Service will be considered effective when the document is mailed to an addressee's last known address.

(b) Any documents or pleadings filed or served must be signed:

(1) By the person or persons filing the same,

(2) By an officer thereof if a corporation,

(3) By an officer or authorized employee if a government instrumentality, or

(4) By an attorney or other person having authority to sign.

(c) A pleading or document will be considered served and/or filed as of the date of the postmark (or as otherwise shown for government-franked mail); or (if not mailed) as of the date actually delivered in person; or as shown by electronic mail transmission.

(d) Time periods begin to run on the day following the date of the document, paper, or event that begins the time period. Saturdays, Sundays, and Federal holidays will be included in computing such time, except that when such time expires on a Saturday, Sunday, or Federal holiday, such period will be extended to include the next business day. This method of computing time periods also applies to any act, such as paying a civil penalty, required by this part to take place within a specified period of time. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays will be excluded in the computation.

(e) If an oral or written application is made to NOAA within 10 days after the expiration of a time period established in this part for the required filing of documents or other papers, NOAA may permit a late filing if NOAA finds reasonable grounds for an inability or failure to file within the time period. All extensions will be in writing. Except as specifically provided in this part, or by order of an Administrative Law Judge (Judge) under this part, no requests for an extension of time may be granted.

Subpart B—Civil Penalties

§904.100 General.

This subpart sets forth the procedures governing NOAA administrative proceedings for the assessment of civil

penalties under the statutes cited in § 904.1(c).

§ 904.101 Notice of Violation and Assessment (NOVA).

(a) A NOVA will be issued by NOAA and served personally or by registered or certified mail, return receipt requested, upon the person alleged to be subject to a civil penalty (the respondent). A copy of the NOVA will similarly be served upon the permit holder or the vessel owner, if the holder or owner is not the respondent. The NOVA will contain:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act, regulation, license, permit, agreement, or order allegedly violated;

(3) The findings and conclusions upon which NOAA bases the assessment; and

(4) The amount of the civil penalty assessed. The NOVA will also advise of the respondent's rights upon receipt of the NOVA, and will be accompanied by a copy of the regulations in this part governing the proceedings.

(b) In assessing a civil penalty, NOAA will take into account information available to the Agency concerning any factor to be considered under the applicable statute, and any other information that justice or the purposes of the statute require.

(c) The NOVA may also contain a proposal for compromise or settlement of the case. NOAA may also attach documents that illuminate the facts believed to show a violation.

§ 904.102 Procedures upon receipt of a NOVA.

(a) The respondent has 30 days from receipt of the NOVA in which to respond. During this time the respondent may:

(1) Accept the penalty or compromise penalty, if any, by taking the actions specified in the NOVA;

(2) Seek to have the NOVA amended, modified, or rescinded under paragraph (b) of this section;

(3) Request a hearing under paragraph (e) of this section;

(4) Request an extension of time to respond under paragraph (c) of this section; or

(5) Take no action, in which case the NOVA becomes final in accordance with § 904.104. The procedures set forth in paragraphs (a)(2), (3), (4), and (5) of this section may also be exercised by the permit holder or vessel owner.

(b) The respondent, the permit holder, or the vessel owner may seek amendment or modification of the NOVA to conform to the facts or law as that person sees them by notifying Agency counsel at the telephone number or address specified in the NOVA. If amendment or modification is sought, Agency counsel will either amend the NOVA or decline to amend it, and so notify the respondent, permit holder, or vessel owner, as appropriate.

(c) The respondent, permit holder, or vessel owner may, within the 30-day period specified in paragraph (a) of this section, request an extension of time to respond. Agency counsel may grant an extension of up to 30 days unless he or she determines that the requester could, exercising reasonable diligence, respond within the 30-day period. If Agency counsel does not respond to the request within 48 hours of its receipt, the request is granted automatically for the extension requested, up to a maximum of 30 days. A telephonic response to the request within the 48-hour period is considered an effective response, and will be followed by written confirmation.

(d) Agency counsel may, for good cause, grant an additional extension beyond the 30-day period specified in paragraph (c) of this section.

(e) If the respondent, the permit holder, or the vessel owner wishes a hearing, the request must be dated and in writing, and must be served either in person or mailed to the address specified in the NOVA. The requester must either attach a copy of the NOVA or refer to the relevant NOAA case number. Agency counsel will promptly forward the request for hearing to the Office of Administrative Law Judges.

(f) Any denial, in whole or in part, of any request under this section that is based upon untimeliness will be in writing.

(g) Agency counsel may, in his or her discretion, treat any communication from a respondent, a permit holder, or

vessel owner as a request for a hearing under paragraph (e) of this section.

§904.103 Hearing and administrative review.

(a) Any hearing request under §904.102(e) is governed by the hearing and review procedures set forth in subpart C.

(b) In any hearing held in response to a request under §904.102(e), the Administrative Law Judge (Judge) will render an initial decision. Any party to the hearing may seek the Administrator's review of the Judge's initial decision, subject to the provisions of subpart C.

§904.104 Final administrative decision.

(a) If no request for hearing is timely filed as provided in §904.102(e), the NOVA becomes effective as the final administrative decision and order of NOAA on the 30th day after service of the NOVA or on the last day of any delay period granted.

(b) If a request for hearing is timely filed in accordance with §904.102(e), the date of the final administrative decision is as provided in subpart C.

§904.105 Payment of final assessment.

(a) Respondent must make full payment of the civil penalty assessed within 30 days of the date upon which the assessment becomes effective as the final administrative decision and order of NOAA under §904.104 or subpart C. Payment must be made by mailing or delivering to NOAA at the address specified in the NOVA a check or money order made payable in United States currency in the amount of the assessment to the ''Treasurer of the United States,'' or as otherwise directed.

(b) Upon any failure to pay the civil penalty assessed, NOAA may request the Justice Department to recover the amount assessed in any appropriate district court of the United States, or may act under §904.106.

§904.106 Compromise of civil penalty.

(a) NOAA, in its sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty imposed, or which is subject to imposition, except as stated in paragraph (d) of this section.

(b) The compromise authority of NOAA under this section is in addition to any similar authority provided in any applicable statute or regulation, and may be exercised either upon the initiative of NOAA or in response to a request by the alleged violator or other interested person. Any such request should be sent to Agency counsel at the address specified in the NOVA.

(c) Neither the existence of the compromise authority of NOAA under this section nor NOAA's exercise thereof at any time changes the date upon which an assessment is final or payable.

(d) *Exception*. NOAA will not compromise, modify, or remit a civil penalty imposed, or subject to imposition, under the Deep Seabed Hard Mineral Resources Act while an action to review or recover the penalty is pending in a court of the United States.

§904.107 Joint and several respondents.

(a) A NOVA may assess a civil penalty against two or more respondents jointly and severally. Each respondent is liable for the entire penalty, but no more than the amount finally assessed may be collected from the respondents.

(b) A hearing request by one respondent is considered a request by the other respondents. Agency counsel, having received a hearing request from one respondent, will send a copy of it to the other joint and several respondents in the case.

(c) A decision by the Judge or the Administrator after a hearing requested by one joint and several respondent is binding on all parties and on all other joint and several respondents, whether or not they entered an appearance.

§904.108 Factors considered in assessing penalties.

(a) Factors to be taken into account in assessing a penalty, depending upon the statute in question, may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, any history of prior offenses, and ability to pay; and such other matters as justice may require. NOAA will take into account a respondent's ability to pay

when assessing a civil penalty for a violation of any of the statutes NOAA administers.

(b) NOAA may, in consideration of a respondent's ability to pay, increase or decrease a penalty from an amount that would otherwise be warranted by the other relevant factors. A penalty may be increased if a respondent's ability to pay is such that a higher penalty is necessary to deter future violations, or for commercial violators, to make a penalty more than a cost of doing business. A penalty may be decreased if the respondent establishes that he or she is unable to pay an otherwise appropriate penalty amount.

(c) Except as provided in paragraph (g) of this section, if a respondent asserts that a penalty should be reduced because of an inability to pay, the respondent has the burden of proving such inability by providing verifiable, complete, and accurate financial information to NOAA. NOAA will not consider a respondent's inability to pay unless the respondent, upon request, submits such financial information as Agency counsel determines is adequate to evaluate the respondent's financial condition. Depending on the circumstances of the case, Agency counsel may require the respondent to complete a financial information request form, answer written interrogatories, or submit independent verification of his or her financial information. If the respondent does not submit the requested financial information, he or she will be presumed to have the ability to pay the penalty.

(d) Financial information relevant to a respondent's ability to pay includes, but is not limited to, the value of respondent's cash and liquid assets, ability to borrow, net worth, liabilities, income, prior and anticipated profits, expected cash flow, and the respondent's ability to pay in installments over time. A respondent will be considered able to pay a penalty even if he or she must take such actions as pay in installments over time, borrow money, liquidate assets, or reorganize his or her business. NOAA's consideration of a respondent's ability to pay does not preclude an assessment of a penalty in an amount that would cause or contribute to the bankruptcy or other discontinuation of the respondent's business.

(e) Financial information regarding respondent's ability to pay should be submitted to Agency counsel as soon after receipt of the NOVA as possible. If a respondent has requested a hearing on the offense alleged in the NOVA and wants his or her inability to pay considered in the initial decision of the Judge, verifiable financial information must be submitted to Agency counsel at least 15 days in advance of the hearing. In deciding whether to submit such information, the respondent should keep in mind that the Judge may assess *de novo* a civil penalty either greater or smaller than that assessed in the NOVA.

(f) Issues regarding ability to pay will not be considered in an administrative review of an initial decision if the financial information was not previously presented by the respondent to the Judge at the hearing.

(g) Whenever a statute requires NOAA to take into consideration a respondent's ability to pay when assessing a penalty, NOAA will take into consideration information available to it concerning a respondent's ability to pay. In such case, the NOVA will advise, in accordance with section 904.102 of this part, that respondent may seek to have the penalty amount modified by Agency counsel on the basis that he or she does not have the ability to pay the penalty assessed. A request to have the penalty amount modified on this basis must be made in accordance with § 904.102 of this part and should be accompanied by supporting financial information. Agency counsel may request the respondent to submit such additional verifiable financial information as Agency counsel determines is necessary to evaluate the respondent's financial condition (such as by responding to a financial request form or written interrogatories, or by authorizing independent verification of respondent's financial condition). A respondent's failure to provide the requested information may serve as the basis for inferring that such information would not have supported the respondent's assertion of inability to pay the penalty assessed in the NOVA If the respondent has requested a hearing

on the offense alleged in the NOVA, the Agency must submit information on the respondent's financial condition so that the Judge may consider that information, along with any other factors required to be considered, in the Judge's de novo assessment of a penalty. Agency counsel may obtain such financial information through discovery procedures under §904.240 of this part, or otherwise. A respondent's refusal or failure to respond to such discovery requests may serve as the basis for inferring that such information would have been adverse to any claim by respondent of inability to pay the assessed penalty, or result in respondent being barred from asserting financial hardship.

[52 FR 10325, Mar. 31, 1987, as amended at 58 FR 58485, Nov. 2, 1993]

Subpart C—Hearing and Appeal Procedures

GENERAL

§904.200 Scope and applicability.

(a) This subpart sets forth the procedures governing the conduct of hearings and the issuance of initial and final decisions of NOAA in administrative proceedings involving alleged violations of the laws cited in §904.1(c) and regulations implementing these laws, including civil penalty assessments and permit sanctions and denials. By separate regulation, these rules may be applied to other proceedings.

(b) Subject to the administrative direction of the Chief Administrative Law Judge, each Administrative Law Judge (Judge) assigned by the Chief Administrative Law Judge is delegated authority to make the initial or final decision of the Agency (whichever is made appropriate by regulation outside this subpart) in proceedings subject to the provisions of this subpart, and to take actions to promote the efficient and fair conduct of hearings as set out in this subpart. The Judge has no authority to rule on challenges to the validity of regulations promulgated by the Agency.

(c) This subpart is not an independent basis for claiming the right to a hearing, but instead prescribes procedures for the conduct of hearings, the right to which is provided by other authority.

§904.201 Case docketing.

Each request for hearing promptly upon its receipt for filing in the Office of Administrative Law Judges will be assigned a docket number and thereafter the proceeding will be referred to by such number. Written notice of the assignment of hearing to a Judge will promptly be given to the parties.

§904.202 Filing of documents.

(a) Pleadings, papers, and other documents in the proceeding must be filed in conformance with §904.3 directly with the Judge, with copies served on all other parties. Pleadings, papers, and other documents pertaining to administrative review under §904.273 must be filed with the Administrator, with copies served on all other parties.

(b) Unless otherwise ordered by the Judge, discovery requests and answers will be served on the opposing party and need not be filed with the Judge.

§904.203 Appearances.

A party may appear in person or by or with counsel or other representative.

§904.204 Duties and powers of judge.

The Judge has all powers and responsibilities necessary to preside over the parties and the proceeding, to hold prehearing conferences, to conduct the hearing, and to make the decision in accordance with these regulations and 5 U.S.C. 554 through 557, including, but not limited to, the authority and duty to do the following:

(a) Rule on a request to participate as a party in the proceeding by allowing, denying, or limiting such participation (such ruling will consider views of the parties and be based on whether the requester could be directly and adversely affected by the decision and whether the requester can be expected to contribute materially to the disposition of the proceedings);

(b) Schedule the time, place, and manner of conducting the pre-hearing conference or hearing, continue the hearing from day to day, adjourn the hearing to a later date or a different place, and reopen the hearing at any

time before issuance of the decision, all in the Judge's discretion, having due regard for the convenience and necessity of the parties and witnesses;

(c) Schedule and regulate the course of the hearing and the conduct of the participants and the media, including the power to close the hearings in the interests of justice; seal the record from public scrutiny to protect privileged information, trade secrets, and confidential commercial or financial information; and strike testimony of a witness who refuses to answer a question ruled to be proper;

(d) Administer oaths and affirmations to witnesses;

(e) Rule on discovery requests, establish discovery schedules, and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken and issue protective orders under § 904.240(d);

(f) Rule on motions, procedural requests, and similar matters;

(g) Receive, exclude, limit, and otherwise rule on offers of proof and evidence;

(h) Examine and cross-examine witnesses and introduce into the record on the Judge's own initiative documentary or other evidence;

(i) Rule on requests for appearance of witnesses or production of documents and take appropriate action upon failure of a party to effect the appearance or production of a witness or document ruled relevant and necessary to the proceeding; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents;

(j) Require a party or witness at any time during the proceeding to state his or her position concerning any issue or his or her theory in support of such position;

(k) Take official notice of any matter not appearing in evidence that is among traditional matters of judicial notice; or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a nonprivileged document required by law or regulation to be filed with or published by a duly constituted government body; or of any reasonably available public document; *Provided*, That the parties will be advised of the matter noticed and given reasonable opportunity to show the contrary;

(l) For stated good reason(s), assess a penalty *de novo* without being bound by the amount assessed in the NOVA;

(m) Prepare and submit a decision or other appropriate disposition document and certify the record;

(n) Award attorney fees and expenses as provided by applicable statute or regulation; and

(o) Grant preliminary or interim relief.

§ 904.205 Disqualification of Judge.

(a) The Judge may withdraw voluntarily from a particular case when the Judge deems himself/herself disqualified.

(b) A party may in good faith request the Judge to withdraw on the grounds of personal bias or other disqualification. The party seeking the disqualification must file with the Judge a timely affidavit or statement setting forth in detail the facts alleged to constitute the grounds for disqualification, and the Judge will rule on the matter. If the Judge rules against disqualification, the Judge will place all matters relating to such claims of disqualification in the record.

§ 904.206 Pleadings, motions, and service.

(a) The original of all pleadings and documents must be filed with the Office of Administrative Law Judges and a copy served upon each party. All pleadings or documents when submitted for filing must show that service has been made upon all parties. Such service must be made in accordance with § 904.3(a).

(b) Pleadings and documents to be filed may be reproduced by printing or any other process, provided the copies are clear and legible; must be dated, the original signed in ink or as otherwise verified for electronic mail; and must show the docket description and title of the proceeding, and the title, if any, address, and telephone number of the signatory. If typewritten, the impression may be on only one side of the paper and must be double spaced, pica type, if possible, except that quotations may be single spaced and indented.

(c) Motions must normally be made in writing and must state clearly and concisely the purpose of and relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested.

(d) Unless otherwise provided, the answer to any written motion, pleading, or petition must be served within 20 days after date of service thereof. If a motion states that opposing counsel has no objection, it may be acted upon as soon as practicable, without awaiting the expiration of the 20-day period. Answers must be in writing, unless made in response to an oral motion made at a hearing; must fully and completely advise the parties and the Judge concerning the nature of the opposition; must admit or deny specifically and in detail each material allegation of the pleading answered; and must state clearly and concisely the facts and matters of law relied upon. Any new matter raised in an answer will be deemed controverted.

(e) A response to an answer will be called a reply. A short reply restricted to new matters may be served within 15 days of service of an answer. The Judge has discretion to dispense with the reply. No further responses are permitted.

§904.207 Amendment of pleadings or record.

The Judge, upon his or her own initiative or upon application by a party, may order a party to make a more definite statement of any pleading. The Judge has discretion to permit either party to amend its pleadings upon conditions fair to both parties. Harmless errors may be corrected (by deletion or substitution of words or figures), and broad discretion will be exercised by the Judge in permitting such corrections.

§904.208 Extensions of time.

If appropriate and justified, and as provided in §904.3(e), the Judge may grant any request for an extension of time. Requests for extensions of time must, except in extraordinary circumstances, be made in writing.

§904.209 Expedited proceedings.

In the interests of justice and administrative efficiency, the Judge, on his or her own initiative or upon the application of any party, may expedite the proceeding. A motion of a party to expedite the proceeding may, in the discretion of the Judge, be made orally or in writing with concurrent actual notice to all parties. If a motion for an expedited hearing is granted, the hearing on the merits may not be scheduled with less than three days' notice, unless all parties consent to an earlier hearing.

§904.210 Summary decision.

The Judge may render a summary decision disposing of all or part of the proceeding if:

(a) Jointly requested by every party to the proceeding; and

(b) There is no genuine issue as to any material fact and a party is entitled to summary decision as a matter of law.

[61 FR 54731, Oct. 22, 1996]

§904.211 Failure to appear.

(a) If a party fails to appear after proper service of notice, the hearing may proceed. A notation of failure to appear will be made in the record, and the hearing may be conducted with the parties then present, or may be terminated if the Judge determines that proceeding with the hearing will not aid the decisional process.

(b) The Judge will place in the record all the facts concerning the issuance and service of the notice of time and place of hearing.

(c) The Judge may deem a failure of a party to appear after proper notice a waiver of any right to a hearing and consent to the making of a decision on the record.

§904.212 Failure to prosecute or defend.

Whenever the record discloses the failure of either party to file documents, respond to orders or notices from the Judge, or otherwise indicates an intention on the part of either party not to participate further in the proceeding, the Judge may issue any

order, except dismissal, that is necessary for the just and expeditious resolution of the case.

[61 FR 54731, Oct. 22, 1996]

§ 904.213 Settlements.

If settlement is reached before the Judge has certified the record, the Judge may require the submission of a copy of the settlement agreement to assure that the Judge's consideration of the case is completed and to order the matter dismissed on the basis of the agreement.

§ 904.214 Stipulations.

The parties may, by stipulation, agree upon any matters involved in the proceeding and include such stipulations in the record with the consent of the Judge. Written stipulations must be signed and served upon all parties.

§ 904.215 Consolidation.

The Judge may order two or more proceedings that involve substantially the same parties or the same issues consolidated and/or heard together.

§ 904.216 Prehearing conferences.

(a) Prior to any hearing or at other time deemed appropriate, the Judge may, upon his or her own initiative, or upon the application of any party, arrange a telephone conference and, where appropriate, record such telephone conference, or direct the parties to appear for a conference to consider:

(1) Simplification or clarification of the issues or settlement of the case by consent;

(2) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate the discovery process;

(4) Limitation of the number of expert witnesses or other avoidance of cumulative evidence;

(5) The procedure, course, and conduct of the hearing;

(6) The distribution to the parties and the Judge prior to the hearing of written testimony and exhibits in order to expedite the hearing;

(7) Such other matters as may aid in the disposition of the proceeding.

(b) The Judge in his or her discretion may issue an order showing the matters disposed of in such conference.

DISCOVERY

§ 904.240 Discovery generally.

(a) *Preliminary position on issues and procedures.* Prior to hearing the Judge will ordinarily require from the parties a written submission stating their preliminary positions on legal and factual issues and procedures, listing potential witnesses and summarizing their testimony, and listing exhibits. Except for information regarding a respondent's ability to pay an assessed penalty, this document, which must be served on all other parties, will normally obviate the need for further discovery. Failure to provide the requested information may result in the exclusion of witnesses and/or exhibits at the hearing. See also § 904.212. A party has the affirmative obligation to supplement the submission as new information becomes known to the party.

(b) *Additional discovery.* Upon written motion by a party, the Judge may allow additional discovery only upon a showing of relevance, need, and reasonable scope of the evidence sought, by one or more of the following methods: deposition upon oral examination or written questions, written interrogatories, production of documents or things for inspection and other purposes, and requests for admission. With respect to information regarding a respondent's ability to pay an assessed penalty, the Agency may serve any discovery request (i.e., deposition, interrogatories, admissions, production of documents) directly upon the respondent without first seeking an order from the Judge.

(c) *Time limits.* Motions for depositions, interrogatories, admissions, or production of documents or things may not be filed within 20 days of hearing except on order of the Judge for good cause shown. Oppositions to a discovery motion must be filed within 10 days of service unless otherwise provided in these rules or by the Judge.

(d) *Oppositions.* Oppositions to any discovery motion or portion thereof

must state with particularity the grounds relied upon. Failure to object in a timely fashion constitutes waiver of the objection.

(e) *Scope of discovery*. The Judge may limit the scope, subject matter, method, time, or place of discovery. Unless otherwise limited by order of the Judge, the scope of discovery is as follows:

(1) *In general.* As allowed under paragraph (b) of this section, parties may obtain discovery of any matter, not privileged, that is relevant to the allegations of the charging document, to the proposed relief, or to the defenses of any respondent, or that appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Hearing preparation: Materials.* A party may not obtain discovery of materials prepared in anticipation of litigation except upon a showing that the party seeking discovery has a substantial need for the materials in preparation of his or her case, and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party are not discoverable under this section.

(3) *Hearing preparation: Experts.* A party may discover the substance of the facts and opinions to which an expert witness is expected to testify and a summary of the grounds for each opinion. A party may also discover facts known or opinions held by an expert consulted by another party in anticipation of litigation but not expected to be called as a witness upon a showing of exceptional circumstances making it impracticable for the party seeking discovery to obtain such facts or opinions by other means.

(f) *Failure to comply*. If a party fails to comply with any subpoena or order concerning discovery, the Judge may, in the interest of justice:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that the matter or matters covered by the order or subpoena are established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon, in support of any claim or defense, testimony by such party, officer, or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Strike part or all of a pleading (except a request for hearing), a motion or other submission by the party, concerning the matter or matters covered by the order or subpoena.

[52 FR 10325, Mar. 31, 1987, as amended at 58 FR 58486, Nov. 2, 1993; 61 FR 54731, Oct. 22, 1996]

§904.241 Depositions.

(a) *Notice.* If a motion for deposition is granted, and unless otherwise ordered by the Judge, the party taking the deposition of any person must serve on that person, and each other party, written notice at least 15 days before the deposition would be taken (or 25 days if the deposition is to be taken outside the United States). The notice must state the name and address of each person to be examined, the time and place where the examination would be held, the name and mailing address of the person before whom the deposition would be taken, and the subject matter about which each person would be examined.

(b) *Taking the deposition*. Depositions may be taken before any officer authorized to administer oaths by the law of the United States or of the place where the examination is to be held, or before a person appointed by the Judge. Each deponent will be sworn, and any party has the right to cross-examine. Objections are not waived by failure to make them during the deposition unless the ground of the objection is one that might have been removed if presented at that time. The deposition will be recorded, transcribed, signed by the deponent, unless waived, and certified by the officer before whom the deposition was taken. All transcription costs associated with the testimony of a deponent will be borne by the party seeking the deposition. Each party will bear its own expense for any copies of the transcript. See also §904.252(c).

(c) *Alternative deposition methods.* By order of the Judge, the parties may use other methods of deposing parties or witnesses, such as telephonic depositions or depositions upon written questions. Objections to the form of written questions are waived unless made within five days of service of the questions.

(d) *Use of depositions at hearing.* (1) At hearing any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then testifying, may be used against any party who was present or represented at the taking of the deposition, or had reasonable notice.

(2) The deposition of a witness may be used by any party for any purpose if the Judge finds:

(i) That the witness is unable to attend due to death, age, health, imprisonment, disappearance or distance from the hearing site; or

(ii) That exceptional circumstances make it desirable, in the interest of justice, to allow the deposition to be used.

(3) If only part of a deposition is offered in evidence by a party, any party may introduce any other part.

§ 904.242 Interrogatories to parties.

(a) *Use at hearing.* If ordered by the Judge, any party may serve upon any other party written interrogatories. Answers may be used at hearing in the same manner as depositions under § 904.241(d).

(b) *Answers and objections.* Answers and objections must be made in writing under oath, and reasons for the objections must be stated. Answers must be signed by the person making them and objections by the attorney making them. Unless otherwise ordered, answers and objections must be served on all parties within 20 days after service of the interrogatories.

(c) *Option to produce records.* Where the answer to an interrogatory may be ascertained from the records of the party upon whom the interrogatory is served, it is sufficent to specify such records and afford the party serving the interrogatories an opportunity to examine them.

§ 904.243 Admissions.

(a) *Request.* If ordered by the Judge, any party may serve on any other party a written request for admission of the truth of any relevant matter of fact set forth in the request, including the genuineness of any relevant document described in the request. Copies of documents must be served with the request. Each matter of which an admission is requested must be separately stated.

(b) *Response.* Each matter is admitted unless a written answer or objection is served within 20 days of service of the request, or within such other time as the Judge may allow. The answering party must specifically admit or deny each matter, or state the reasons why he or she cannot truthfully admit or deny it.

(c) *Effect of admission.* Any matter admitted is conclusively established unless the Judge on motion permits withdrawal or amendment of it for good cause shown.

§ 904.244 Production of documents and inspection.

(a) *Scope.* If ordered by the Judge, any party may serve on any other party a request to produce a copy of any document or specifically designated category of documents, or to inspect, copy, photograph, or test any such document or tangible thing in the possession, custody, or control of the party upon whom the request is served.

(b) *Procedure.* The request must set forth:

(1) The items to be produced or inspected by item or by category, described with reasonable particularity, and

(2) A reasonable time, place, and manner for inspection. The party upon whom the request is served must serve within 20 days a response or objections, which must address each item or category and include copies of the requested documents.

§ 904.245 Subpoenas.

(a) *In general.* Subpoenas for the attendance and testimony of witnesses and the production of documentary evidence for the purpose of discovery or hearing may be issued as authorized by

the statute under which the proceeding is conducted.

(b) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition.

(c) *Motions to quash.* Any person to whom a subpoena is directed or any party may move to quash or limit the subpoena within 10 days of its service or on or before the time specified for compliance, whichever is shorter. The Judge may quash or modify the subpoena.

(d) *Enforcement.* In case of disobedience to a subpoena, NOAA may request the Justice Department to invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

HEARINGS

§904.250 Notice of time and place of hearing.

(a) The Judge will promptly serve on the parties notice of the time and place of hearing. The hearing will not, except in extraordinary circumstances, be held less than 20 days after service of the notice of hearing.

(b) In setting a place for hearing, the Judge will consider the convenience and costs of the parties, including but not limited to transportation costs and living expenses of witnesses, attorneys, and the Judge; place of residence of the respondent(s); scheduling of other hearings within the same region; and availability of facilities and court reporters.

(c) Upon the consent of each party to the proceeding, the Judge may order that all or part of a proceeding be heard on submissions or affidavits if it appears that substantially all important issues may be resolved by means of written materials and that efficient disposition of the proceeding can be made without an in-person hearing. For good cause, the Judge may, in his sole discretion, order that the testimony of witnesses be taken by telephone.

[52 FR 10325, Mar. 31, 1987, as amended at 61 FR 54731, Oct. 22, 1996]

§904.251 Evidence.

(a) At the hearing, every party has the right to present oral or documentary evidence in support of its case or defense, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. This paragraph may not be interpreted to diminish the powers and duties of the Judge under this subpart.

(b) All evidence that is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, is admissible at the hearing. Formal rules of evidence do not necessarily apply to the proceedings, and hearsay evidence is not inadmissible as such.

(c) Formal exceptions to the rulings of the Judge are unnecessary. It is sufficient that a party, at the time of the ruling, makes known the action that it desires the Judge to take or its objection to an action taken, and the grounds therefor. Rulings on each objection must appear in the record.

(d) In any case involving a charged violation of law in which the party charged has admitted an allegation, evidence may be taken to establish matters of aggravation or mitigation.

(e) Exhibits in a foreign language must be translated into English before such exhibits are offered into evidence. Copies of both the untranslated and translated versions of the proposed exhibits, along with the name of the translator, must be served on the opposing party at least 10 days prior to the hearing unless the parties otherwise agree.

(f) A party who intends to raise an issue concerning the law of a foreign country must give reasonable notice. The Judge, in determining foreign law, may consider any relevant material or source, whether or not submitted by a party.

§904.252 Witnesses.

(a) Any witness not a party may have personal counsel to advise him or her as to his or her rights, but such counsel may not otherwise participate in the hearing.

(b) Witnesses who are not parties may be excluded from the hearing room prior to the taking of their testimony.

(c) Witnesses other than NOAA employees subpoenaed under these rules, including § 904.245, will be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken are entitled to the same fees as are paid for like services in the courts of the United States. Fees and any other related expenses for NOAA emoloyees as authorized by the NOAA travel handbook will be paid by the party at whose instance the witness appears or the deposition is taken.

(d) If a witness is expected to testify in a language other than the English language, the party sponsoring the witness must provide for the services of an interpreter and advise opposing counsel 10 days prior to the hearing concerning the extent to which interpreters are to be used. When available, the interpreter must be court certified under 28 U.S.C. 1827.

§ 904.253 Interlocutory appeals.

(a) At the request of a party or on the Judge's own initiative, the Judge may certify to the Administrator for review a ruling that does not finally dispose of the proceeding, if the Judge determines that an immediate appeal therefrom may materially advance the ultimate disposition of the matter.

(b) Upon certification by the Judge of the interlocutory ruling for review, the parties have 10 days to serve any briefs associated with the certification. The Administrator will promptly decide the matter.

(c) No interlocutory appeal lies as to any ruling not certified by the Judge.

§ 904.254 Ex parte communications.

(a) Except to the extent required for disposition of ex parte matters as authorized by law, after issuance of a NOVA, NOPS, or NIDP and until the final decision of the Agency is effective under these regulations, no ex parte communication relevant to the merits of the proceeding may be made, or knowingly caused to be made:

(1) By the Judge or by an Agency employee involved in the decisional process of the proceeding to any interested person outside the Department of Commerce or to any Agency employee involved in the investigation or prosecution of the case;

(2) By any Agency employee involved in the investigation or prosecution of the case to the Judge or to any Agency employee involved in the decisional process of the proceeding; or

(3) By an interested person outside the Department of Commerce to the Judge or to any Agency employee involved in the decisional process of the proceeding.

(b) An Agency employee or Judge who makes or receives a prohibited communication must place in the hearing record the communication and any response thereto, and the Judge or Administrator, as appropriate, may take action consistent with these rules, the applicable statute, and 5 U.S.C. 556(d) and 557(d).

(c) Agency counsel may not participate or advise in the decision of the Judge or the Administrator's review thereof except as witness or counsel in the proceeding in accordance with this subpart. In addition, the Judge may not consult any person or party on a fact in issue unless notice and opportunity for all parties to participate is provided.

(d)(1) Paragraphs (a) and (b) of this section do not apply to communications concerning national defense or foreign policy matters. Such ex parte communications to or from an Agency employee on national defense or foreign policy matters, or from employees of the United States Government involving intergovernmental negotiations, are allowed if the communicator's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.

(2) Ex parte communications subject to this paragraph will be made a part of the record to the extent that they do not include information classified under an Executive Order. Classified information will be included in a classified portion of the record that will be available for review only in accordance with applicable law.

POST-HEARING

§904.260 Official transcript.

(a) The official transcript of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, will be filed with the Office of Administrative Law Judges. Transcripts of testimony will be available in any proceeding and will be supplied to the parties upon the payment of fees at the rate provided in the agreement with the reporter.

(b) The Judge may determine whether ''ordinary copy,'' ''daily copy,'' or other copy (as those terms are defined by contract) will be necessary and required for the proper conduct of the proceeding.

§904.261 Post-hearing briefs.

(a) Unless a different schedule is established in the discretion of the Judge, including the procedure in paragraph (b) of this section, the parties may file proposed findings of fact and conclusions of law, together with supporting briefs, within 30 calendar days from service of the hearing transcript. Reply briefs may be submitted within 15 days after service of the proposed findings and conclusions to which they respond, unless the Judge sets a different schedule.

(b) In cases involving few parties, limited issues, and short hearings, the Judge may require that any proposed findings and conclusions and reasons in support be presented orally at the close of the hearing. In such case, the Judge will advise the parties in advance of hearing.

§904.262 Documents, copies and exhibits.

(a) If original documents have been received in evidence, a true copy thereof, or of such part as may be material or relevant, may be substituted in lieu of the original during the hearing or at its conclusion. The Judge may, in his or her discretion, and after notice to the other parties, allow the withdrawal of original exhibits or any part thereof by the party entitled thereto for the purpose of substituting copies. The substitution of true copies of exhibits, or any part thereof, may be required by the Judge in his or her discretion as a condition of granting permission for withdrawal of the original.

(b) Photographs may be substituted for physical evidence in the discretion of the Judge.

(c) Except upon the Judge's order, or upon request by a party, physical evidence will be retained after the hearing by the authorized enforcement officer responsible for the case.

DECISION

§904.270 Record of decision.

(a) The exclusive record of decision consists of the official transcript of testimony and proceedings; exhibits admitted into evidence; briefs, pleadings, and other documents filed in the proceeding; and descriptions or copies of matters, facts, or documents officially noticed in the proceeding. Any other exhibits and records of any ex parte communications will accompany the record of decision.

(b) The Judge will arrange for appropriate storage of the records of any proceeding, which place of storage need not necessarily be located physically within the Office of Administrative Law Judges.

(c) Exhibits offered after the close of a hearing will not be admitted, unless the Judge specifically keeps open or reopens the record to admit them.

§904.271 Decision.

(a) After expiration of the period provided in §904.261 for the filing of reply briefs (unless the parties have waived briefs or presented proposed findings orally at the hearing), the Judge will render a written decision upon the record in the case, setting forth:

(1) Findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record, and the ruling on any proposed findings or conclusions presented by the parties;

(2) A statement of any facts noticed or relied upon in the decision; and

(3) Such other matters as the Judge considers appropriate.

(b) If the parties have presented oral proposed findings at the hearing or have waived presentation of proposed

findings, the Judge may at the termination of the hearing announce the decision, subject to later issuance of a written decision under paragraph (a) of this section. The Judge may in such case direct the prevailing party to prepare proposed findings, conclusions, and an order.

(c) The Judge will serve the written decision on each of the parties by registered or certified mail, return receipt requested, and will promptly certify to the Administrator the record, including the original copy of the decision, as complete and accurate.

(d) Unless the Judge orders a stay under § 904.272, or unless a petition for discretionary review is filed or the Administrator issues an order to review upon his/her own initiative, an initial decision becomes effective as the final administrative decision of NOAA 30 days after service, unless otherwise provided by statute or regulations.

§ 904.272 Petition for reconsideration.

Unless an order of the Judge specifically provides otherwise, any party may file a petition for reconsideration of an order or decision issued by the Judge. Such petitions must state the matter claimed to have been erroneously decided and the alleged errors or relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of such order or decision. Neither the filing nor the granting of a petition for reconsideration may operate as a stay of an order or decision or its effectiveness date (including for purposes of § 904.273) unless specifically so ordered by the Judge. Within 15 days after the petition is filed, any party to the proceeding may file an answer in support or in opposition. In the Judge's discretion, the hearing may be reopened to consider matters raised in a petition that could not reasonably have been foreseen prior to issuance of the order or decision.

§ 904.273 Administrative review of decision.

(a) Subject to the requirements of this section, any party may petition for review of an initial decision of the Judge within 30 days after the date the decision is served. The petition shall be addressed to the Administrator and filed at the following address: Administrator, National Oceanic and Atmospheric Administration, Department of Commerce, Room 5128, 14th Street and Constitution Avenue NW., Washington, DC 20230.

(b) Review by the Administrator of an initial decision is discretionary and is not a matter of right. A petition for review nust be served upon all parties. If a party files a timely petition for discretionary review, or action to review is taken by the Administrator upon his or her own initiative, the effectiveness of the initial decision is stayed until further order of the Administrator.

(c) Petitions for discretionary review may be filed only upon one or more of the following grounds:

(1) A finding of a material fact is clearly erroneous based upon the evidence in the record;

(2) A necessary legal conclusion is contrary to law or precedent:

(3) A substantial and important question of law, policy, or discretion is involved (including the amount of the civil penalty); or

(4) A prejudicial procedural error has occurred.

(d) Each issue must be separately numbered, concisely stated, and supported by detailed citations to the record, statutes, regulations, and principal authorities. Issues of fact or law not argued before the Judge may not be raised on review unless they were raised for the first time in the initial decision, or could not reasonably have been foreseen and raised by the parties during the hearing. The Administrator will not consider new or additional evidence that is not a part of the record before the Judge.

(e) No oral argument on petitions for discretionary review will be allowed.

(f) Within 30 days after service of a petition for discretionary review, any party may file and serve an answer in support or in opposition. No further replies are allowed.

(g) If the Administrator declines to exercise discretionary review, such order will be served on all parties personally or by registered or certified mail, return receipt requested, and will specify the date upon which the

Judge's decision will become effective as the final decision of NOAA. The Administrator need not give reasons for declining review.

(h) If the Administrator grants a petition for discretionary review, he or she will issue an order specifying issues to be briefed and a briefing schedule. Such issues may constitute one or more of the issues raised in the petition for discretionary review and/or matters the Administrator wishes to review on his or her own initiative. Only those issues specified in the order may be argued in the briefs and considered by the Administrator. No oral argument will be permitted.

(i) After expiration of the period for filing briefs under paragraph (h) of this section, the Administrator will render a written decision on the issues under review. The Administrator will transmit the decision to each of the parties by registered or certified mail, return receipt requested. The Administrator's decision becomes the final administrative decision on the date it is served, unless otherwise provided in the decision.

Subpart D—Permit Sanctions and Denials

GENERAL

§904.300 Scope and applicability.

(a) This subpart sets forth policies and procedures governing the suspension, revocation, modification, and denial of permits for reasons relating to enforcement of the statutes cited in §904.1(c), except for the statutes listed in paragraph (b) of this section. These reasons include nonpayment of civil penalties or criminal fines, and violations of statutes, regulations, or permit conditions. Nothing in this subpart precludes sanction or denial of a permit for reasons not relating to enforcement. As appropriate, and unless otherwise specified in this subpart, the provisions of Subparts A, B, and C apply to this subpart.

(b) Regulations governing sanctions and denials of permits issued under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*) appear at 15 CFR part 970; under the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 *et seq.*), at 15 CFR part 981.

§904.301 Bases for sanctions or denials.

(a) Unless otherwise specified in a settlement agreement, or otherwise provided in this subpart, NOAA may take action under this subpart with respect to any permit issued under the statutes cited in §904.1(c). The bases for an action to sanction or deny a permit are as follows:

(1) The commission of any offense prohibited by any statute administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder or with the use of a permitted vessel;

(2) The failure to pay a civil penalty assessed under subparts B and C of this part; or

(3) The failure to pay a criminal fine imposed or to satisfy any other liability incurred in a judicial proceeding under any of the statutes administered by NOAA.

(b) A sanction may be imposed or a permit denied under this subpart with respect to the particular permit pertaining to the offense or nonpayment, and may also be applied to any NOAA permit held or sought by the permit holder, including permits for other activities or for other vessels. Examples of the application of this policy are the following:

(1) NOAA suspends Vessel A's fishing permit for nonpayment of a civil penalty pertaining to Vessel A. The owner of Vessel A buys Vessel B and applies for a permit for Vessel B to participate in the same or a different fishery. NOAA may withhold that permit until the sanction against vessel A is lifted.

(2) NOAA revokes a Marine Mammal Protection Act permit for violation of its conditions. The permit holder subsequently applies for a permit under the Endangered Species Act. NOAA may deny the ESA application.

(3) Captain X, an officer in Country Y's fishing fleet, is found guilty of assaulting an enforcement officer. NOAA may impose a condition on the permits of Country Y's vessels that they may not fish in the fishery conservation

zone with Captain X aboard. (See § 904.320(c).)

(c) Sanction not extinguished by sale. [Reserved]

§ 904.302 Notice of permit sanction (NOPS).

(a) A NOPS will be served personally or by registered or certified mail, return receipt requested, on the permit holder. When a foreign fishing vessel is involved, service will be made on the agent authorized to receive and respond to any legal process for vessels of that country.

(b) The NOPS will set forth the sanction to be imposed, the bases for the sanction, and any opportunity for a hearing. It will state the effective date of the sanction, which will ordinarily not be earlier than 30 calendar days after the date of receipt of the NOPS (see § 904.322).

(c) Upon demand by an authorized enforcement officer, a permit holder must surrender a permit against which a sanction has taken effect. The effectiveness of the sanction, however, does not depend on surrender of the permit.

§ 904.303 Notice of intent to deny permit (NIDP).

(a) NOAA may issue an NIDP if the applicant has been charged with a violation of a statute, regulation, or permit administered by NOAA.

(b) The NIDP will set forth the basis for its issuance and any opportunity for a hearing, and will be served in accordance with § 904.302(a).

(c) NOAA will not refund any fee(s) submitted with a permit application if an NIDP is issued.

(d) An NIDP may be issued in conjunction with or independent of a NOPS. Nothing in this section should be interpreted to preclude NOAA from initiating a permit sanction action following issuance of the permit, or from withholding a permit under § 904.310(c) or § 904.320.

§ 904.304 Opportunity for hearing.

(a) Except as provided in paragraph (b) of this section, the recipient of a NOPS or NIDP will be provided an opportunity for a hearing. The hearing may be combined with any other hearing under this part.

(b) There will be no opportunity for a hearing if, with respect to the violation that forms the basis for the NOPS or NIDP, the permit holder had a previous opportunity to participate as a party in a judicial or administrative hearing, whether or not the permit holder did participate, and whether or not such a hearing was held.

(c) If entitled to a hearing under this section, the recipient of a NOPS or NIDP will have 30 calendar days from receipt of the notice to request a hearing. A request for hearing must be dated and in writing. Failure to request a hearing within 30 days constitutes a waiver of the opportunity for a hearing.

(d) Even if no hearing is requested, NOAA may order a hearing if it will serve the interests of justice. This paragraph does not create any right to a hearing in addition to the right provided in paragraph (a) of this section.

SANCTIONS FOR NONPAYMENT OF PENALTIES

§ 904.310 Nature of sanctions.

(a) NOAA may suspend a permit if:

(1) A civil penalty has been assessed against the permit holder under subparts B and C of this part, but the permit holder has failed to pay the penalty, or has defaulted on a payment agreement; or

(2) A criminal fine or other liability for violation of any of the statutes administered by NOAA has been imposed against the permit holder in a judicial proceeding, but payment has not been made.

(b) NOAA will suspend any permit issued to a foreign fishing vessel under section 204(b) of the Magnuson Fishery Conservation and Management Act under the circumstances set forth in paragraph (a) of this section.

(c) NOAA will withhold any other permit for which the permit holder applies if either condition in § 904.310(a) is applicable.

§ 904.311 Compliance.

If the permit holder pays the fine or penalty in full or agrees to terms satisfactory to NOAA for payment:

(a) The suspension will not take effect;

(b) Any permit suspended under §904.310 will be reinstated by affirmative order of NOAA; or

(c) Any application by the permit holder may be granted if the permit holder is otherwise qualified to receive the permit.

SANCTIONS FOR VIOLATIONS

§904.320 Nature of sanctions.

Subject to the requirements of this subpart, NOAA may take any of the following actions or combination of actions if a permit holder or permitted vessel violates a statute administered by NOAA, or any regulation promulgated or permit condition prescribed thereunder:

(a) *Revocation.* A permit may be cancelled, with or without prejudice to issuance of the permit in the future. Additional requirements for issuance of any future permit may be imposed.

(b) *Suspension.* A permit may be suspended either for a specified period of time or until stated requirements are met, or both. If contingent on stated requirements being met, the suspension is with prejudice to issuance of any permit until the requirements are met.

(c) *Modification.* A permit may be modified, as by imposing additional conditions and restrictions. If the permit was issued for a foreign fishing vessel under section 204(b) of the Magnuson Fishery Conservation and Management Act, additional conditions and restrictions may be imposed on the application of the foreign nation involved and on any permits issued under such application.

§904.321 Reinstatement of permit.

(a) A permit suspended for a specified period of time will be reinstated automatically at the end of the period.

(b) A permit suspended until stated requirements are met will be reinstated only by affirmative order of NOAA.

§904.322 Interim action.

(a) To protect marine resources during the pendency of an action under this subpart, in cases of willfulness, or as otherwise required in the interest of public health, welfare, or safety, an Administrative Law Judge may order immediate suspension, modification, or withholding of a permit until a decision is made on the action proposed in a NOPS or NIDP.

(b) The Judge will order interim action under paragraph (a) of this section, only after finding that there exists probable cause to believe that the violation charged in the NOPS or NIDP was committed. The Judge's finding of probable cause, which will be summarized in the order, may be made:

(1) After review of the factual basis of the alleged violation, following an opportunity for the parties to submit their views (orally or in writing, in the Judge's discretion); or

(2) By adoption of an equivalent finding of probable cause or an admission in any administrative or judicial proceeding to which the recipient of the NOPS or NIDP was a party, including, but not limited to, a hearing to arrest or set bond for a vessel in a civil forfeiture action or an arraignment or other hearing in a criminal action. Adoption of a finding or admission under this paragraph may be made only after the Judge reviews pertinent portions of the transcript or other records, documents, or pleadings from the other proceeding.

(c) An order for interim action under paragraph (a) of this section is unappealable and will remain in effect until a decision is made on the NOPS or NIDP. Where such interim action has been taken, the Judge will expedite any hearing requested under §904.304.

Subpart E—Written Warnings

§904.400 Purpose and scope.

This subpart sets forth the policy and procedures governing the issuance and use of written warnings by persons authorized to enforce the statutes administered by NOAA, and the review of such warnings. A written warning may be issued in lieu of assessing a civil penalty or initiating criminal prosecution for violation of any of the laws cited in §904.1(c).

§904.401 Written warning as a prior offense.

A written warning may be used as a basis for dealing more severely with a

subsequent offense, including, but not limited to, a violation of the same statute or an offense involving an activity that is related to the prior offense.

§ 904.402 Procedures.

(a) Any person authorized to enforce the laws listed in § 904.1(c) who finds a violation of one of the laws may issue a written warning to a violator in lieu of other law enforcement action that could be taken under the applicable statute.

(b) The written warning will:

(1) State that it is a ''written warning'';

(2) State the factual and statutory or regulatory basis for its issuance;

(3) Advise the violator of its effect in the event of a future violation; and

(4) Inform the violator of the right of review and appeal under § 904.403.

(c) NOAA will maintain a record of written warnings that are issued.

(d) If, within 120 days of the date of the written warning, further investigation indicates that the violation is more serious than realized at the time the written warning was issued, or that the violator previously committed a similar offense for which a written warning was issued or other enforcement action was taken, NOAA may withdraw the warning and commence other civil or criminal proceedings.

(e) For written warnings under the Magnuson Fishery Conservation and Management Act or the Northern Pacific Halibut Act of 1982, the enforcement officer will note the warning, its date, and reason for its issuance on the permit, if any, of the vessel used in the violation. If noting the warning on the permit of the vessel is impracticable, notice of the written warning will be served personally, or by registered or certified mail, return receipt requested, on the vessel's owner, operator, or designated agent for service of process, and such service will be deemed notation on the permit.

§ 904.403 Review and appeal of a written warning.

(a) If a person receives a written warning from an enforcement agent, the person may, within 90 days of receipt of the written warning, seek review by the appropriate NOAA Regional Attorney. The request must be in writing and must present the facts and circumstances that explain or deny the violation described in the warning. The Regional Attorney will review the information and notify the person of his or her decision.

(b) If a person receives a written warning from a Regional Attorney or staff attorney, or receives a decision from a Regional Attorney affirming a written warning, the person may appeal the warning or decision to the NOAA Assistant General Counsel for Enforcement and Litigation. The appeal must be brought within 30 days of receipt of the warning or decision from the Regional Attorney. The Assistant General Counsel for Enforcement and Litigation may, in his or her discretion, affirm, expunge, or modify the written warning and will notify the person of the decision. The decision constitutes the final agency action.

(c) The addresses of the NOAA Regional Attorneys are:

Regional Counsel, Office of General Counsel, NOAA, 14 Elm Street, Federal Building, Gloucester, MA 01930

Regional Counsel, Office of General Counsel, NOAA, 9450 Koger Blvd., Suite 102, St. Petersburg, FL 33702

Regional Counsel, Office of General Counsel, NOAA, Bin C15700, 7600 Sandpoint Way, NE., Seattle, WA 98115

Regional Counsel, Office of General Counsel, NOAA, 300 South Ferry Street, Room 2013, Terminal Island, CA 90731

Regional Counsel, Office of General Counsel, NOAA, P.O. Box 1668, Juneau, AK 99802

The address of the Assistant General Counsel for Enforcement and Litigation is 1825 Connecticut Avenue NW., Suite 607, Washington, DC 20235.

Subpart F—Seizure and Forfeiture Procedures

§ 904.500 Purpose and scope.

(a) This subpart sets forth procedures governing the release or forfeiture of seized property (except property seized and held solely as evidence) that is subject to forfeiture under the various statutes administered by NOAA.

(b) Except as provided in this subpart, these regulations apply to all seized property subject to forfeiture under the statutes listed in Subpart A.

This subpart is in addition to, and not in contradiction of, any special rules regarding seizure, holding or disposition of property seized under these statutes.

§904.501 Notice of seizure.

Except where the owner, consignee, or other party that the facts of record indicate has an interest in the seized property is personally notified, or where seizure is made under a search warrant, NOAA will, as soon as practicable following the seizure or other receipt of seized property, mail notice of the seizure by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or other party that the facts of record indicate has an interest in the seized property. The notice will describe the seized property and state the time, place and reason for the seizure. The notice will inform each interested party of his or her right to apply for remission or mitigation of the forfeiture (including any agreement that may be required under §904.506(b)(2)(vii)). The notice may be combined with a notice of the sale of perishable fish issued under §904.505.

§904.502 Bonded release.

NOAA may, in its sole discretion, release any seized property upon deposit with NOAA of the full value of the property or such lesser amount as NOAA deems sufficient to protect the interests served by the applicable statute. The deposit will be held in a NOAA suspense account, or deposited with the appropriate court, pending the outcome of forfeiture proceedings. In addition, NOAA may, in its sole discretion, accept a bond or other security in place of fish, wildlife, or other property seized. The bond will contain such conditions as NOAA deems appropriate. The provisions of §904.506(f) apply to NOAA's determination whether to release the property. The deposit or bond will for all purposes be considered to represent the property seized and subject to forfeiture.

§904.503 Appraisement.

NOAA will appraise seized property to determine its domestic value. Domestic value means the price at which such or similar property is offered for sale at the time and place of appraisement in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, the value in the principal market nearest the place of appraisement will be used. If the seized property may not lawfully be sold in the United States, its domestic value will be determined by other reasonable means.

§904.504 Administrative forfeiture proceedings.

(a) *When authorized.* This section applies to property that is determined under §904.503 to have a value of $100,000 or less, and that is subject to administrative forfeiture under the applicable statute. This section does not apply to conveyances seized in connection with criminal proceedings.

(b) *Procedure.* (1) NOAA will publish a notice of proposed forfeiture once a week for at least three successive weeks in a newspaper of general circulation in the Federal judicial district in which the property was seized. However, if the value of the seized property does not exceed $1,000, the notice may be published by posting for at least three successive weeks in a conspicuous place accessible to the public at the National Marine Fisheries Service Enforcement Office, United States District Court, or the United States Customs House nearest the place of seizure, with the date of posting indicated on the notice. In addition, a reasonable effort will be made to serve the notice personally, or by registered or certified mail, return receipt requested, on each person whose whereabouts and interest in the property are known or easily ascertainable.

(2) The notice of proposed forfeiture will:

(i) Describe the seized property, including any applicable registration or serial numbers;

(ii) State the time, place and reason for the seizure; and

(iii) Describe the rights of an interested person to file a claim to the property (including the right to file a motion to stay administrative forfeiture proceedings and to petition to remit or mitigate the forfeiture).

(3)(i) Except as provided in paragraph (b)(4) of this section, any person claiming the seized property may file a claim with NOAA, at the address indicated in the notice, within 20 days of the date the notice was first published or posted. The claim must state the claimant's interest in the property.

(ii) Except as provided in paragraph (b)(3)(v) or (b)(4) of this section, a bond for costs in the penal sum of $5,000 or 10 per cent of the appraised value of the property, whichever is lower, but not less than $250, with sureties satisfactory to the Administrator, must be filed with the claim for seized property. The bond may be posted on Customs form 4615 or a similar form provided by NOAA. There must be endorsed on the bond a list or schedule in substantially the following form, signed by the claimant in the presence of witnesses, and attested by the witnesses:

List or schedule containing a particular description of seized article, claim for which is covered by the within bond; to wit:

_____

_____

The foregoing list is correct.

_____

Claimant

Attest:

_____

_____

A certified check may be substituted for a bond.

(iii) Filing a claim and posting a bond does not entitle the claimant to possession of the property. However, it does stop administrative forfeiture proceedings.

(iv) If the claim and bond are filed timely in accordance with this section, NOAA will refer the matter to the Attorney General to institute forfeiture proceedings in the appropriate United States District Court.

(v) Upon satisfactory proof of financial inability to post the bond, NOAA may waive the bond requirement for any person claiming an interest in the seized property.

(4) Instead of, or in addition to, filing a claim and bond under paragraph (b)(3) of this section, any person claiming the seized property may file with NOAA within 20 days after the date of first publication or posting of the notice of proposed forfeiture, a motion to stay administrative forfeiture proceedings. The motion must contain:

(i) The claimant's verified statement showing the claimant's absolute title to the seized property, free of all liens or other third party interests; and

(ii) The claimant's offer to pay in advance all reasonable costs anticipated for storage and maintenance of the property. NOAA, in its discretion, may grant the stay and impose any conditions deemed reasonable, including but not limited to length of the stay, factors that would automatically terminate the stay, and any requirement for a bond to secure payment of storage or maintenance costs. If NOAA denies or terminates the stay, the claimant, if he or she has not already done so, has 20 days from receipt of the denial or termination order to file a claim and bond in accordance with paragraph (b)(3) of this section. Failure to file the claim and bond within that 20 days will result in summary forfeiture under paragraph (b)(5) of this section.

(5) If a claim and bond are not filed within 20 days of notice in accordance with this section, or if a motion for a stay under paragraph (b)(4) is pending, NOAA will declare the property forfeited. The declaration of forfeiture will be in writing and will be served on each person whose whereabouts and prior interest in the seized property are known or easily ascertainable. The forfeited property will be subject to disposition as authorized by law and regulations of NOAA.

(6) If the appraised value of the property is more than $100,000, or a timely and satisfactory claim and bond for property appraised at $100,000 or less are submitted to NOAA, the matter will be referred to the Attorney General to institute *in rem* proceedings in the appropriate United States District Court.

§ 904.505 Summary sale.

(a) In view of the perishable nature of fish, any person authorized to enforce a statute administered by NOAA may, as authorized by law, sell or cause to be sold, and any person may purchase, for

not less than its domestic fair market value, fish seized under such statute.

(b) Any person purchasing fish subject to this section must deliver the proceeds of the sale to a person authorized to enforce a statute administered by NOAA immediately upon request of such authorized person. Anyone who does not so deliver the proceeds may be subject to penalties under the applicable statute or statutes.

(c) NOAA will give notice of the sale by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or to any other party that the facts of record indicate has an interest in the seized fish, unless the owner or consignee or other interested party has otherwise been personally notified. Notice will be sent either prior to the sale, or as soon thereafter as practicable.

(d) The proceeds of the sale, after deducting any reasonable costs of the sale, will be subject to any administrative or judicial proceedings in the safe manner as the seized fish would have been, including an action *in rem* for the forfeiture of the proceeds. Pending disposition of such proceedings, the proceeds will, as appropriate, either be deposited in a NOAA suspense account or submitted to the appropriate court. The proceeds will not be subject to release under §904.502 or §904.506(f).

(e) Seizure and sale of fish is without prejudice to any other remedy or sanction authorized by law.

§904.506 Remission and mitigation of forfeiture.

(a) *Application of this section.* (1) This section establishes procedures for filing with NOAA a petition for relief from forfeitures incurred, or alleged to have been incurred, under any statute administered by NOAA that authorizes the remission or mitigation of forfeitures.

(2) Although NOAA may properly consider a petition for relief from forfeiture along with other consequences of a violation, the remission or mitigation of a forfeiture is not dispositive of any criminal charge filed, civil penalty assessed, or permit sanction proposed, unless NOAA expressly so states. Remission or mitigation of a forfeiture is in the nature of executive clemency and is granted in the sole discretion of NOAA only when consistent with the purposes of the particular statute involved and this section.

(3) NOAA will not consider a petition for remission or mitigation while a forfeiture proceeding is pending in federal court. Once such a case is referred to the Attorney General for institution of judicial proceedings, and until the proceedings are completed, any petition received by NOAA will be forwarded to the Attorney General for consideration.

(b) *Petition for relief from forfeiture.* (1) Any person having an interest in property seized and subject to forfeiture may file a petition for relief from forfeiture. Unless otherwise directed in a notice concerning the seized property, the petition shall be addressed to NOAA and filed with the Regional Attorney nearest to the place where the property is held (addresses in §904.403(c)). NOAA will consider a petition filed after a declaration or decree of forfeiture only if the petitioner demonstrates that he or she did not previously know of the seizure and was in such circumstances as prevented him or her from knowing of it, except that NOAA will not consider a petition filed more than three months from the date of such declaration or decree. (See §904.507 regarding the right of certain claimants to petition for restoration of proceeds from the sale of forfeited property.)

(2) The petition need not be in any particular form, but must set forth the following:

(i) A description of the property seized;

(ii) The date and place of the seizure;

(iii) The petitioner's interest in the property, supported as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;

(iv) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation;

(v) Any request for release under paragraph (f) of this section pending final decision on the petition, together with any offer of payment to protect the United States' interest that petitioner makes in return for the release,

and the facts and circumstances relied upon by petitioner in the request;

(vi) The signature of the petitioner, his or her attorney, or other authorized agent; and

(vii) An express agreement to defer administrative or judicial forfeiture proceedings until completion of all other related judicial or administrative proceedings (including any associated civil penalty or permit sanction proceedings).

A false statement in a petition will subject petitioner to prosecution under 18 U.S.C. 1001.

(c) *Investigation*. NOAA will investigate the facts and circumstances shown by the petition and seizure, and may in this respect appoint an investigator to examine the facts and prepare a report of investigation.

(d) *Decision on petition*. (1) After investigation under paragraph (c) of this section, NOAA will decide the matter and notify the petitioner. NOAA may remit or mitigate the forfeiture, on such terms and conditions as under the applicable statute and the circumstances are deemed reasonable and just, upon a finding:

(i) That the forfeiture was incurred without willful negligence and without any intention on the part of petitioner to violate the applicable statute; or

(ii) That other circumstances exist that justify remission or mitigation of the forfeiture.

(2) Unless NOAA determines no valid purpose would be served, NOAA will condition a decision to remit or mitigate a forfeiture upon the petitioner's submitting an agreement, in a form satisfactory to NOAA, to hold the United States and its officers or agents harmless from any and all claims based on loss of or damage to the seized property or that might result from grant of remission or mitigation. If the petitioner is not the beneficial owner of the property, or if there are others with a proprietary interest in the property, NOAA may require the petitioner to submit such an agreement executed by the beneficial owner or other interested party. NOAA may also require that the property be promptly exported from the United States.

(e) *Compliance with the decision*. A decision by NOAA to remit or mitigate the forfeiture upon stated conditions, as upon payment of a specified amount, will be effective for 60 days after the date of the decision. If the petitioner does not comply with the conditions within that period in the manner prescribed by the decision, or make arrangements satisfactory to NOAA for later compliance, the remission or mitigation will be void, and judicial or administrative forfeiture proceedings will be instituted or resumed.

(f) *Release of seized property pending decision*. (1) Upon request in the petition for relief from forfeiture, NOAA may in its discretion order the release, pending final decision on the petition, of all or part of the seized property upon payment by the petitioner of the full value of the property to be released or such lesser amount as NOAA deems sufficient to protect the interests served by the applicable statute. The following, however, will not be released:

(i) Property in which NOAA is not satisfied that the petitioner has a substantial interest;

(ii) Property whose entry into the commerce of the United States is prohibited;

(iii) Live animals, except in the interest of the animals' welfare;

(iv) Proceeds from the sale of seized property sold under § 904.505 (see § 904.507 regarding petitions for restoration of proceeds from the sale of property declared forfeited); or

(v) Property whose release appears to NOAA not to be in the best interest of the United States or serve the purposes of the applicable statute.

(2) If NOAA grants the request, the amount paid by the petitioner will be deposited in a NOAA suspense account. The amount so deposited will for all purposes be considered to represent the property seized and subject to forfeiture, and payment of the amount by petitioner constitutes a waiver by the petitioner of any claim arising from the seizure and custody of the property. NOAA will maintain the money so deposited pending further order of NOAA, order of a court, or disposition by applicable administrative proceedings.

§904.507 Petition for restoration of proceeds.

(a) The general provisions of §904.506 on petitions for remission or mitigation of forfeitures apply to petitions for restoration of proceeds from the sale of forfeited property, except as modified by this section.

(b) In addition to any evidence required under §904.506, the petition for restoration of proceeds must be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him or her from knowing of it.

(c) If forfeited property that is the subject of a claim for restoration of proceeds has been appropriated for official use, retention by the government will be regarded as sale for the purposes of this section.

(d) No petition for restoration of proceeds will be considered unless it is submitted within three months of the declaration or decree of forfeiture.

(e) If no petition is timely filed, or if the petition is denied, prior to depositing the proceeds NOAA may use the proceeds of sale to reimburse the government for any costs that by law may be recovered or to pay any reward that by law may be paid from such sums.

§904.508 Recovery of certain storage costs.

If any fish, wildlife, or evidentiary item is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531 through 1543, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling or storage of such property. If any fish or wildlife is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371 through 3378, or any property is seized in connection with a violation of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 through 1882, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, NOAA will send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill will contain an itemized statement of the applicable costs, and instructions on the time and manner of payment. Payment must be made in accordance with the bill. If the recipient of the bill objects to the reasonableness of the costs assessed he or she may, within 30 days of receipt, file written objections with NOAA at the address stated in the bill. NOAA will promptly review the written objections and within 30 days mail the final decision to the party who filed them. NOAA's decision will constitute final agency action on the matter.

§904.509 Abandonment.

(a) The owner of a seized item may abandon it to NOAA by various means, including, but not limited to, expressly waiving any claim to the item, refusing or otherwise avoiding delivery of mail concerning the seizure (as by giving a false name or address), or failing for more than 180 days to make or maintain a claim to the item.

(b) The owner of a seized item waives a claim to it by failing to respond within 120 days of issuance of a Government notice concerning the seizure, or by voluntarily relinquishing any interest in an item by written agreement, or otherwise.

(c) An item will be declared finally abandoned, without recourse, upon a finding of abandonment.

§904.510 Disposal of forfeited or abandoned items.

(a) *Delivery to Administrator.* Upon forfeiture of any fish, wildlife, parts or products thereof, or other property to the United States, or the abandonment or waiver of any claim to any such property, it will be delivered to NOAA for storage or disposal according to the provisions of this section.

(b) *Purposes of disposal.* Disposal procedures may be used to alleviate overcrowding of evidence storage facilities, and to avoid the accumulation of seized items where disposal is not otherwise accomplished by court order, as well as to address the needs of governmental

agencies and other institutions and organizations for such items for scientific, educational, and public display purposes. In no case will items be used for personal purposes, either by loan recipients or government personnel.

(c) *Disposal of evidence.* Items that are evidence may be disposed of only after authorization by the NOAA Office of General Counsel. Disposal approval usually will not be given until the case involving the evidence is closed, except that perishable items may be authorized for disposal sooner.

(d) *Loans*—(1) *To institutions.* Items approved for disposal may be loaned to institutions or organizations requesting such items for scientific, educational, or public display purposes. Items will be loaned only after execution of a loan agreement which provides, among other things, that the loaned items will be used only for noncommercial scientific, educational, or public display purposes, and that they will remain the property of the United States government, which may demand their return at any time. Parties requesting the loan of an item must demonstrate the ability to provide adequate care and security for the item. Loans may be made to responsible agencies of foreign governments in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(2) *To individuals.* Items generally will not be loaned to individuals not affiliated with an institution or organization unless it is clear that the items will be used in a noncommercial manner, and for scientific, educational, or public display purposes which are in the public interest.

(3) *Selection of loan recipients.* Recipients of items will be chosen so as to assure a wide distribution of the items throughout the scientific, educational, public display and museum communities. Other branches of NMFS, NOAA, the Department of Commerce, and other governmental agencies will have the right of first refusal of any item offered for disposal. The Administrator may solicit applications, by publication of a notice in the FEDERAL REGISTER, from qualified persons, institutions, and organizations who are interested in obtaining the property being offered. Such notice will contain a statement as to the availability of specific items for which transferees are being sought, and instructions on how and where to make application. Applications will be granted in the following order: Other offices of NMFS, NOAA, and the Department of Commerce; U.S. Fish and Wildlife Service; other Federal agencies; other governmental agencies; scientific, educational, or other public or private institutions; and private individuals.

(4) *Loan agreement.* Items will be transferred under a loan agreement executed by the Administrator and the borrower. Any attempt on the part of the borrower to retransfer an item, even to another institution for related purposes, will violate and invalidate the loan agreement, and entitle the United States to immediate repossession of the item, unless the prior approval of the Administrator has been obtained under § 904.510(d)(5). Violation of the loan agreement may also subject the violator to the penalties provided by the laws governing possession and transfer of the item.

(5) *Temporary reloans; documents to accompany items.* Temporary reloans by the borrower to another qualified borrower (as for temporary exhibition) may be made if the Administrator is advised in advance by the borrowers. Temporary loans for more than thirty days must be approved in advance in writing by the Administrator. A copy of the original loan agreement, and a copy of the written approval for reloan, if any, must accompany the item whenever it is temporarily reloaned or is shipped or transported across state or international boundaries.

(e) *Destruction of items.* This paragraph and other provisions relating to the destruction of property apply to items:

(1) Which have not been handicrafted, or

(2) Which have been handicrafted and are of less than one hundred dollars ($100) value, and

(3) For which no acceptable applications have been received, or for which publication in the FEDERAL REGISTER of the availability of similar items in the past has resulted in the receipt of

no applications. Such items may be destroyed if they have been in government ownership for more than one year. Perishable items which are not fit for human consumption may be destroyed sooner, if the authorization required by §904.510(c) has been obtained. Destruction of items will be witnessed by two persons, one of whom may be the disposing officer.

(f) *Food items.* Food items will, if possible, be disposed of by gift to nonprofit groups providing public welfare food services.

(g) *Record-keeping.* A ''fish and wildlife disposal'' form will be completed each time an item is disposed of pursuant to the policy and procedure established herein, and will be retained in the case file for the item. These forms will be available to the public.

PART 905—USE IN ENFORCEMENT PROCEEDINGS OF INFORMATION COLLECTED BY VOLUNTARY FISHERY DATA COLLECTORS

Sec.
905.1 Scope.
905.2 Definitions.
905.3 Access to information.
905.4 Use of information.
905.5 Exceptions.

AUTHORITY: 16 U.S.C. 1853(f).

SOURCE: 60 FR 39251, Aug. 2, 1995, unless otherwise noted.

§905.1 Scope.

This part applies to the use, in enforcement proceedings conducted pursuant to the Magnuson Act, the MMPA, and the ESA, of information collected by voluntary fishery data collectors.

§905.2 Definitions.

When used in this part:

Consenting owner means the owner, operator, or crewmember of a vessel carrying a voluntary fishery data collector.

Enforcement proceeding means any judicial or administrative trial or hearing, initiated for the purpose of imposing any civil or criminal penalty authorized under the Magnuson Act, MMPA, or ESA, including but not limited to, any proceeding initiated to: Impose a monetary penalty; modify, sanction, suspend or revoke a lease, license or permit; secure forfeiture of seized property; or incarcerate an individual.

ESA means the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations.

Information means all observations, data, statistics, photographs, film, or recordings collected by a voluntary fishery data collector for conservation and management purposes, as defined by the Magnuson Act, MMPA, or ESA, while onboard the vessel of a consenting owner.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.*, and implementing regulations.

MMPA means the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 *et seq.*, and implementing regulations.

Secretary means the Secretary of Commerce, the Secretary of the Interior, their chosen designees, or any other Federal agency authorized to enforce the provisions of the Magnuson Act, MMPA, or ESA.

Vessel means any vessel as defined at 16 U.S.C. 1802(31).

Voluntary fishery data collector means:

(1) Any person, including an observer or a sea sampler;

(2) Placed aboard a vessel by the Secretary;

(3) For the purpose of collecting information; and

(4) Whose presence aboard that vessel is not required by the Secretary pursuant to provisions of the Magnuson Act, MMPA, or ESA, or their implementing regulations.

§905.3 Access to information.

Information collected by a voluntary fishery data collector:

(a) Is subject to disclosure to both the Secretary and the public, to the extent required or authorized by law; and

(b) Is subject to discovery by any party to an enforcement proceeding, to the extent required or authorized by law.

§905.4 Use of information.

(a) Except as provided for in paragraph (b) of this section, information

collected by a voluntary fishery data collector may not be introduced by the Secretary as evidence against any consenting owner that is a party to an enforcement proceeding.

(b) Provided that all applicable evidentiary requirements are satisfied:

(1) Information collected by a voluntary fishery data collector may be introduced in an enforcement proceeding by any party except the Secretary;

(2) If information is introduced pursuant to paragraph (b)(1) of this section, all information collected by a voluntary fishery data collector may be introduced by any other party, including the Secretary.

(c) Independent evidence derived from information collected by a voluntary fishery data collector may be introduced by any party, including the Secretary, in an enforcement proceeding.

§ 905.5 Exceptions.

The provisions of this part shall not apply in any enforcement proceeding against a consenting owner that alleges the actual or attempted:

(a) Assault, intimidation, or harassment (including sexual harassment) of any person; or

(b) Impairment or interference with the duties of a voluntary fishery data collector.

PART 908—MAINTAINING RECORDS AND SUBMITTING REPORTS ON WEATHER MODIFICATION ACTIVITIES

Sec.

908.1 Definitions.
908.2 Persons subject to reporting.
908.3 Activities subject to reporting.
908.4 Initial report.
908.5 Interim reports.
908.6 Final report.
908.7 Supplemental reports.
908.8 Maintenance of records.
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908.11 Maintenance of records of related activities.
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908.13 Address of letters.
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908.15 Times for taking action; expiration on Saturday, Sunday, or holiday.
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908.18 Matters not specifically provided for in rules.
908.19 Publication of notice of proposed amendments.
908.20 Effective date.
908.21 Report form.

AUTHORITY: Pub. L. 92–305, 85 Stat. 735, December 18, 1971.

SOURCE: 41 FR 23394, June 10, 1976, unless otherwise noted.

§ 908.1 Definitions.

As used in this part, terms shall have the meaning ascribed in this section.

(a) *Administrator.* The Administrator of the National Oceanic and Atmospheric Administration.

(b) *Person.* Any individual, corporation, company, association, firm, partnership, society, joint stock company, any State or local government or any agency thereof, or any other organization, whether commercial or nonprofit, except where acting solely as an employee, agent, or independent contractor of the Federal government.

(c) *Weather modification activity.* Any activity performed with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere.

(d) *United States.* The several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or insular possession of the United States.

(e) *Persons whose activities relate to weather modification.* Persons engaged in weather modification activities or engaged in the distribution or sale of weather modification apparatus or materials known by them to be destined for use in weather modification activities.

(f) *Project.* A related series of weather modification activities having a common objective.

(g) *Target area.* The ground area within which the effects of the weather modification activity are expected to be found.

(h) *Control area.* A preselected, untreated ground area used for comparison with a target area.

(i) *Weather modification apparatus.* Any apparatus used with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere. For example: Seeding generators, propane devices, flares,

rockets, artillery projectiles, jet engines, etc.

(j) *Sponsor.* The primary person for whom the weather modification activity is performed.

(k) *Operator.* The person who is primarily responsible for carrying out the weather modification activity.

[41 FR 23394, June 10, 1976, as amended at 46 FR 32233, June 22, 1981]

§908.2 Persons subject to reporting.

Any person engaged or intending to engage in any weather modification activity in the United States shall be subject to the reporting provisions of this part.

§908.3 Activities subject to reporting.

(a) The following, when conducted as weather modification activities, shall be subject to reporting:

(1) Seeding or dispersing of any substance into clouds or fog, to alter drop size distribution, produce ice crystals or coagulation of droplets, alter the development of hail or lightning, or influence in any way the natural development cycle of clouds or their environment;

(2) Using fires or heat sources to influence convective circulation or to evaporate fog;

(3) Modifying the solar radiation exchange of the earth or clouds, through the release of gases, dusts, liquids, or aerosols into the atmosphere;

(4) Modifying the characteristics of land or water surfaces by dusting or treating with powders, liquid sprays, dyes, or other materials;

(5) Releasing electrically charged or radioactive particles, or ions, into the atmosphere;

(6) Applying shock waves, sonic energy sources, or other explosive or acoustic sources to the atmosphere;

(7) Using aircraft propeller downwash, jet wash, or other sources of artificial wind generation; or

(8) Using lasers or other sources of electromagnetic radiation.

(b) In addition to the activities listed above, other similar activities falling within the definition of weather modification as set forth in §908.1 are also subject to reporting.

(c) The requirement for reporting shall not apply to activities of a purely local nature that can reasonably be expected not to modify the weather outside of the area of operation. This exception is presently restricted to the use of lightning deflection or static discharge devices in aircraft, boats, or buildings, and to the use of small heat sources, fans, fogging devices, aircraft downwash, or sprays to prevent the occurrence of frost in tracts or fields planted with crops susceptible to frost or freeze damage. Also expected from the requirement for reporting are religious activities or other ceremonies, rites and rituals intended to modify the weather.

(d) All activities noted in paragraphs (a) and (b) of this section are subject to initial reporting. However, after the Administrator has received initial notification of a planned activity, he may waive some of the subsequent reporting requirements. This decision to waive certain reporting requirements will be based on the general acceptability, from a technical or scientific viewpoint, of the apparatus and techniques to be used.

(e) Other reporting exceptions may be made in the future by rule of the Administrator.

§908.4 Initial report.

(a) Any person intending to engage in any weather modification project or activity in the United States shall provide a report of his intention, to be received by the Administrator at least 10 days before the commencement of such project or activity. This report shall contain at least the following:

(1) The designation, if any, used by the operator for the project or activity;

(2) The following dates for weather modification activities:

(i) The date the first actual weather modification activity is to be undertaken;

(ii) The date on which the final modification activity is expected to occur;

(3) The following information on persons involved with the project or activity:

(i) The name, affiliation, and address of the sponsor;

(ii) The name, affiliation, and address of the operator;

(4) The purpose of the project or activity;

(5) A map showing the approximate size and location of the target and control areas, and the location of each item of ground-based weather modification apparatus, precipitation measuring device, and, for airborne operations, the airport;

(6) A description of the weather modification apparatus, modification agents, and the techniques to be employed;

(7) The name and address of the responsible individual from whom log books or other records of the project or activity may be obtained;

(8) Answers to the following questions on project safeguards:

(i) Has an Environmental Impact Statement, Federal or State, been filed: Yes—— No ——. If Yes, please furnish a copy as applicable.

(ii) Have provisions been made to acquire the latest forecasts, advisories, warnings, etc. of the National Weather Service, Forest Service, or others when issued prior to and during operations? Yes —— No ——. If Yes, please specify on a separate sheet.

(iii) Have any safety procedures (operational contraints, provisions for suspension of operations, monitoring methods, etc.) and any environmental guidelines (related to the possible effects of the operations) been included in the operational plans? Yes —— No ——. If Yes, please furnish copies or a description of the specific procedures and guidelines; and

(9) Optional remarks, to include any additional items which the person deems significant or of interest and such other information as the Administrator may request the person to submit.

(b) If circumstances prevent the signing of a contract or agreement to perform, or receipt of an authorization to proceed with, a weather modification activity at a date early enough to comply with paragraph (a) of this section, the initial report shall be provided so as to be received by the Administrator within 10 days of the date of signing of the contract or agreement, or receipt of authorization to proceed. In such cases, the report shall be accompanied by an explanation as to why it was not submitted at least 10 days prior to the commencement of the activity.

(c) In the event that circumstances beyond the control of the person liable to report under these regulations prevent the submission of the initial report in a timely manner as described above, the report shall be forwarded as early as possible, accompanied by an explanation as to why a timely report has not been provided. If such explanation is deemed adequate, the Administrator will consider the report as timely filed.

§ 908.5 Interim reports.

(a) Any person engaged in a weather modification project or activity in the United States on January 1 in any year shall submit to the Administrator, not later than 45 days thereafter, an interim report setting forth as of such date the information required below with respect to any such continuing project or activity not previously furnished to the Administrator in a prior interim report; provided that the January 1 date shall not apply if other arrangements have previously been made with the written approval of the Administrator.

(b) The interim report shall include the file number assigned by the Administrator and shall provide a summary of the project or activity containing at least the following information for each month:

(1) Number of days on which actual modification activities took place;

(2) Number of days on which weather modification activities were conducted, segregated by each of the major purposes of the activities;

(3) Total number of hours of operation of each type of weather modification apparatus (i.e., net hours of agent release);

(4) Total amount of agent used. If more than one agent was used, each should be totaled separately (e.g., carbon dioxide, sodium chloride, urea, silver iodide).

(c) The totals for the items in paragraph (b) of this section shall be provided for the period covered by the interim report.

[41 FR 23394, June 10, 1976, as amended at 46 FR 32233, June 22, 1981]

§908.6 Final report.

Upon completion of a weather modification project or activity the person who performed the same shall submit a report to the Administrator not later than 45 days after completion of the project or activity. The report shall include the file number assigned by the Administrator and the following items:

(a) Information required for the interim reports (to the extent not previously reported).

(b) The total number of days on which actual modification activities took place during the project or activity.

(c) The total number of days during the project or activity on which weather modification activities were conducted, segregated by each of the major purposes of the activities.

(d) The total number of hours of operation of each type of weather modification apparatus during the project or activity (i.e., net hours of agent release).

(e) The total amount of modification agent(s) dispensed during the project or activity. If more than one agent was used, each should be totaled separately (e.g., carbon dioxide, sodium chloride, urea, silver iodide).

(f) The date on which the final weather modification activity occurred.

[41 FR 23394, June 10, 1976, as amended at 46 FR 32233, June 22, 1981]

§908.7 Supplemental reports.

Notwithstanding other regulations, a supplemental report in letter form referring to the appropriate NOAA file number, if assigned, must be made to the Administrator immediately if any report of weather modification activities submitted under §908.4, §908.5, or §908.6 is found to contain any material inaccuracies, misstatements, and omissions. A supplemental report must also be made if there are changes in plans for the project or activity.

§908.8 Maintenance of records.

(a) Any person engaging in a weather modification activity in the United States shall maintain a record of such activity. This record shall contain at least the following, when applicable:

(1) A chronological record of activities carried on, preferably in the form of a daily log, which shall include the NOAA file number assigned to the project, the designation of each unit of weather modification apparatus, and at least the following information for each unit:

(i) Date of the weather modification activity.

(ii) Position of each aircraft or location of each item of weather modification apparatus during each modification mission. Maps may be used.

(iii) Time when weather modification activity began and ended.

(iv) Total duration of operation of each unit of weather modification apparatus (i.e., net hours of agent release).

(v) Type of each modification agent used.

(vi) Rate of dispersal of each agent during the period of actual operation of weather modification apparatus.

(vii) Total amount of agent used. If more than one agent was used, report total for each type separately.

(viii) Number of days on which weather modification activities were conducted, segregated by each of the major purposes of the activities.

(2) The monthly totals of hours of modification activity, the amount of modification agent used, and the number of days on which weather modification activities were conducted, segregated by each of the major purposes of the activities, shall be shown on the daily log sheet for the last day of each month.

(b) When the activity involves ground-based weather modification apparatus, records of the following shall also be maintained, when applicable, but need not be made part of the daily log:

(1) The location of each item of weather modification apparatus in use and its identification such as type and manufacturer's model number. If the apparatus is not commercially available, a brief description of the apparatus and the method of operation should be recorded.

(2) The name and address of the person responsible for operating each weather modification apparatus.

(3) The altitude and type of weather phenomenon subjected to weather modification activity during each operational period (e.g., cumulus clouds between 10,000 and 30,000 feet m.s.l.; ground fog).

(c) When the activity involves airborne weather modification apparatus, records of the following shall also be maintained, when applicable, but need not be made a part of the daily log: For each airborne weather modification apparatus run: Altitude, air speed; release points of modification agents, method of modification and characteristics of flares, rockets, or other delivery systems employed; temperature at release altitude; and, for aircraft: The type of aircraft, its identification number, the airport or airports used, and the names and addresses of crew members and the person responsible for operating the weather modification apparatus; and the altitude and type of weather phenomenon subjected to weather modification activity during each operational period (e.g., cumulus clouds between 10,000 and 30,000 feet m.s.l.; ground fog).

(d) The following records shall also be maintained, whenever applicable, but need not be made a part of the daily log. Only data specifically collected for the reported activity need be retained; data available from other sources need not be included.

(1) Any descriptions that were recorded of meteorological condiitons in target and control areas during the periods of operation; for example: Percent of cloud cover, temperature, humidity, the presence of lightning, hail, funnel clouds, heavy rain or snow, and unusual radar patterns.

(2) All measurements made of precipitation in target and control areas.

(3) Any unusual results.

§ 908.9 Retention of records.

Records required under § 908.8 shall be retained and available for inspection by the Administrator or his designated representatives for 3 years after completion of the activity to which they relate. Such records shall be required to be produced for inspection only at the place where normally kept. The Administrator shall have the right to make copies of such records, if he or she deems necessary.

[52 FR 4896, Feb. 18, 1987]

§ 908.10 Penalties.

Knowing and willful violation of any rule adopted under the authority of section 2 of Public Law 92–205 shall subject the person violating such rule to a fine of not more than $10,000, upon conviction thereof.

§ 908.11 Maintenance of records of related activities.

(a) Persons whose activities relate to weather modification activities, other than persons engaged in weather modification activities, shall maintain records concerning the identities of purchasers or users of weather modification apparatus or materials, the quantities or numbers of items purchased, and the times of such purchases. Such information shall be retained for at least 3 years.

(b) In addition, persons whose activities relate to weather modification shall be required, under the authority of section 4 of Public Law 92–205, to provide the Administrator, on his request, with information he deems necessary to carry out the purposes of this act.

[41 FR 23394, June 10, 1976, as amended at 52 FR 4896, Feb. 18, 1987]

§ 908.12 Public disclosure of information.

(a) Any records or other information obtained by the Administrator under these rules or otherwise under the authority of Public Law 92–205 shall be made publicly available to the fullest practicable extent. Such records or information may be inspected on written request to the Administrator. However, the Administrator will not disclose any information referred to in section 1905 of title 18, United States Code, and that is otherwise unavailable to the public, except that such information shall be disclosed:

(1) To other Federal government departments, agencies, and officials for official use upon request;

(2) In any judicial proceeding under a court order formulated to preserve the

confidentiality of such information without impairing the proceeding; and

(3) To the public, if necessary to protect their health and safety.

(b) Certified copies of such reports and information, to the extent publicly disclosable, may be obtained from the Administrator at cost in accordance with the Department of Commerce implementation of the Freedom of Information Act.

(c) Persons reporting on weather modification projects or related activities shall specifically identify all information that they consider not to be subject to public disclosure under the terms of Public Law 92–205 and provide reasons in support thereof. A determination as to whether or not reported information is subject to public dissemination shall be made by the Administrator.

(d) When consideration of a weather modification activity report and related information indicates that a proposed project may significantly depart from the practices or procedures generally employed in similar circumstances to avoid danger to persons, property, or the environment, or indicates that success of Federal research projects may be adversely affected if the proposed project is carried out as described, the Administrator will notify the operator(s) and State officials of such possibility and make recommendations where appropriate. The purpose of such notification shall be to inform those notified of existing practices and procedures or Federal research projects known to NOAA. Notification or recommendation, or failure to notify or recommend, shall not be construed as approval or disapproval of a proposed project or as an indication that, if carried out as proposed or recommended it may, in any way, protect or endanger persons, property, or the environment or affect the success of any Federal research project. Any advisory notification issued by the Administrator shall be available to the public and be included in the pertinent activity report file.

§908.13 Address of letters.

Letters and other communications intended for the Administrator, in connection with weather modification reporting or activities, shall be addressed to: The Administrator, National Oceanic and Atmospheric Administration, Environmental Modification Office, Rockville, Md. 20852.

§908.14 Business to be transacted in writing.

All business transacted with the National Oceanic and Atmospheric Administration with regard to reports of weather modification activities should be transacted in writing. Actions of the National Oceanic and Atmospheric Administration will be based exclusively on the written record.

§908.15 Times for taking action; expiration on Saturday, Sunday, or holiday.

Whenever periods of time are specified in these rules in days, calendar days are intended. When the day, or the last day, fixed under these rules for taking any action falls on a Saturday, Sunday, or on a Federal holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or Federal holiday.

§908.16 Signature.

All reports filed with the National Oceanic and Atmospheric Administration must be dated and signed by or on behalf of the person conducting or intending to conduct the weather modification activities referred to therein by such person, individually or, in the case of a person other than an individual, by a partner, officer, or other person having corresponding functions and authority. For this purpose ''officer'' means a president, vice president, treasurer, secretary, or comptroller. Notwithstanding the foregoing, such reports may also be signed by the duly authorized agent or attorney of the person whose activities are being reported. Proof of such authorization shall be furnished to the Administrator when filing a report, unless previously furnished.

§908.17 Suspension or waiver of rules.

In an extraordinary situation, any requirement of these rules may be suspended or waived by the Administrator on request of the interested party, to the extent such waiver is consistent

with the provisions of Public Law 92–205 and subject to such other requirements as may be imposed.

§ 908.18 Matters not specifically provided for in rules.

All matters not specifically provided for or situations not specifically addressed in these rules will be decided in accordance with the merits of each case by or under the authority of the Administrator, and such decision will be communicated in writing to all parties involved in the case.

§ 908.19 Publication of notice of proposed amendments.

Whenever required by law, and in other cases whenever practicable, notice of proposed amendments to these rules will be published in the FEDERAL REGISTER. If not published with the notice, copies of the text of proposed amendments will be furnished to any person requesting the same. All comments, suggestions, and briefs received within the time specified in the notice will be considered before adoption of the proposed amendments, which may be modified in the light thereof. Informal hearings may be held at the discretion of the Administrator.

§ 908.20 Effective date.

These rules are effective on June 10, 1976.

§ 908.21 Report form.

Public Law 92–205 and these rules should be studied carefully prior to reporting. Reports required by these rules shall be submitted on forms obtainable on request from the Administrator, or on an equivalent format.[1] In special situations, such alterations to the forms as the circumstances thereto may render necessary may be made, provided they do not depart from the requirements of these rules or of Public Law 92–205.

PART 909—POLICIES AND PROCEDURES REGARDING DISCLOSURE OF INFORMATION AND NOAA EMPLOYEE TESTIMONY IN LITIGATION NOT INVOLVING THE UNITED STATES

Sec.
909.1 Purpose and policy.
909.2 Disclosure and certification of information and records.
909.3 Response to subpena duces tecum.
909.4 Testimony by NOAA employees in litigation not involving the United States.
909.5 Conditions for authorizing testimony.

AUTHORITY: 15 U.S.C. 315, 1512, 1518; 33 U.S.C. 884; 43 U.S.C. 1458, 1460, 1461.

Source: 43 FR 36240, Aug. 16, 1978, unless otherwise noted.

§ 909.1 Purpose and policy.

(a) The regulations in this part describe NOAA policies and procedures for the disclosure of information, records, and data to parties and testimony by NOAA employees in litigation not involving the United States.

(b) It is the policy of NOAA to provide information, data, and records to non-Federal litigants to the same extent that they are available to the general public. The availability of NOAA employees to testify in non-Federal litigation is governed by the NOAA policy of maintaining strict impartiality among non-Federal litigants. To this end NOAA witnesses generally may provide only factual testimony except as provided for in § 909.5(c) and shall not appear as expert witnesses in litigation not involving the United States.

§ 909.2 Disclosure and certification of information and records.

(a) Requests for identifiable information, records, and data in NOAA's possession will be complied with consistent with the NOAA freedom of information regulation (15 CFR part 903), the Department of Commerce privacy regulations (15 CFR part 4b), and 15 U.S.C. 1525. Requests for records, information, and data should be addressed as specified in 15 CFR Part 903.

[1] Filed as part of the original document.

(b) Certified copies of NOAA records will be provided upon request. Requests for certified copies of these types of information should be referred to the following offices: Weather and Climatological Records; Director, National Climatic Data Center, National Environmental Satellite, Data, and Information Service, NOAA, Federal Building, Asheville, NC 28801. Weather Forecasts and Warnings; Aviation Services Branch (W/OM13), National Weather Service, NOAA, Silver Spring, MD 20910. Aeronautical Charts; Aeronautical Charting Division (N/CG3), National Ocean Service, NOAA, Rockville, MD 20852. Nautical Charts; Chart Information Section (N/GC222), National Ocean Service, NOAA, Rockville, MD 20852. Other; Office of the General Counsel, National Oceanic and Atmospheric Administration, Washington, DC 20230.

(c) Requests for the appearance of NOAA employees to give testimony in litigation not involving the United States should be addressed to the Office of General Counsel at the address shown in paragraph (b) of this section.

[43 FR 36240, Aug. 16, 1978, as amended at 48 FR 17064, Apr. 21, 1983]

§909.3 Response to subpena duces tecum.

(a) Any officer or employee served with a subpena duces tecum or the equivalent for the production of any NOAA record shall promptly notify the Office of General Counsel. The subpena duces tecum shall be treated as a request for records, information, or data under 15 CFR part 903.

(b) The officer or employee served shall decline to produce the record that is the subject of a subpena duces tecum until its release has been authorized pursuant to 15 CFR part 903. If, as a result of having complied with the preceding sentence of this subsection, the officer or employee is ordered to show cause why he or she should not be held in contempt of the court issuing the subpena, the General Counsel shall request the Department of Justice to represent the officer or employee.

§909.4 Testimony by NOAA employees in litigation not involving the United States.

(a) No NOAA officer or employee shall give testimony in any tribunal concerning any function of NOAA, or any data, information, or record created or acquired by NOAA as a result of the discharge of its official duties, without the prior authorization of the general counsel or the general counsel's designee.

(b) Upon receiving a subpena which orders the giving of testimony, a NOAA officer or employee shall immediately notify the Office of General Counsel. The officer or employee shall decline to testify unless otherwise authorized by the general counsel or designee. If, as a result of having complied with the provisions of this section, the officer or employee is ordered to show cause why he or she should not be held in contempt of the court issuing the subpena, the general counsel shall request the Department of Justice to represent the officer or employee.

§909.5 Conditions for authorizing testimony.

(a) Any non-Federal party desiring testimony from a NOAA officer or employee shall make a written request therefor addressed to the Office of General Counsel. The request shall include a general statement of the testimony to be elicited, the requester's interest in that testimony, a brief description of the intended use of the testimony and a statement as to why the testimony is not available elsewhere.

(b) The general counsel or designee shall authorize a NOAA officer or employee to provide factual testimony when the requesting party has sufficiently shown: (1) That the evidence to be adduced is not reasonably available from any other source; (2) that no NOAA record or data could be introduced in evidence in substitution for the testimony; and (3) that the other requirements of this part have been met.

(c) Where less than all of the conditions of paragraph (b) of this section are met, the general counsel or designee may authorize NOAA employees

and officers to provide factual or expert testimony on any matters where NOAA has a significant interest in the litigation and the outcome may affect the implementation present or future policies, or where circumstances or conditions make it necessary to provide the information in the public interest.

(d) If the general counsel or designee authorizes the testimony of a NOAA officer or employee, then the Office of General Counsel may arrange for the taking of the testimony by methods that are less disruptive of the official activities of the officer or employee than providing testimony in court. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other method allowable by law. Costs of providing testimony, including transcripts, will be borne by the party requesting the testimony.

PART 911—THE UNITED STATES GEOSTATIONARY OPERATIONAL ENVIRONMENTAL SATELLITE (GOES) DATA COLLECTION SYSTEM (DCS)

Sec.
911.1 General information.
911.2 Use of the GOES DCS.
911.3 Treatment of data.
911.4 Continuation of GOES–DCS.
911.5 GOES–DCS Use Agreements.

AUTHORITY: 15 U.S.C. 313; 49 U.S.C. 1463; 15 U.S.C. 1525; 7 U.S.C. 450b; 5 U.S.C. 552.

SOURCE: 46 FR 48635, Oct. 2, 1981, unless otherwise noted.

§ 911.1 General information.

(a) The GOES Data Collection System (DCS) provides an effective method for obtaining environmental data from remote locations where conventional communications are either absent or inadequate. The use of the DCS is limited to the collection of environmental data in accordance with applicable International Telecommunication Union (ITU) regulations concerning use of the allocated frequency bands.

(b)(1) The DCS was established in 1974 to obtain from remote locations data required for the effective accomplishment of programs of the National Oceanic and Atmospheric Administration. The DCS capacity can more than provide for all of NOAA's present and near future domestic and international requirements. This makes it possible to offer to Federal and State agencies or local governments of the United States, and to those private users and foreign government agencies whose use of the system would support a program of a United States agency, the opportunity to make use of the DCS. Policy guidelines are set forth below.

(2) For purposes of this part, *user* refers to a private or governmental organization, whether for-profit or not for-profit, that owns or operates environmental data collection platforms for the purpose of collection and transmission of environmental data through the GOES DCS and for which a Federal agency or State or local government has a requirement for or interest in obtaining the data.

(3) For purposes of this part, *Assistant Administrator* means the Assistant Administrator for Environmental Satellite, Data, and Information Services or his/her designee.

[46 FR 48635, Oct. 2, 1981, as amended at 51 FR 3466, Jan. 28, 1986]

§ 911.2 Use of the GOES DCS.

(a) Use of the GOES DCS can be authorized only for the purpose of collecting environmental data. Environmental data as used here means observations and measurements of the physical, chemical or biological properties of the ocean, rivers, lakes, solid earth, and atmosphere (including space).

(b)(1) Except as provided in paragraph (b)(2) of this section, the GOES DCS is not to be used for data collection where adequate private common carrier communications exist to provide the service. (Adequate is defined in terms of capacity, speed and reliability with respect to the particular use envisioned.) A user must document, with a request for use of the GOES DCS, why private common carrier communications are not adequate.

(2) NOAA may authorize the use of the GOES DCS for environmental data collection critical to a federal program

where adequate common carrier communications exist when use of the common carrier would substantially increase the cost to the federal program of collecting these data.

(c) A user must identify the Federal agency or State or local government which will benefit from the proposed collection of data. NOAA will confirm with the identified sponsor that these data are required by it and that the sponsor is willing to share with the user any frequency channel resource allocated to it.

(d) User agencies and organizations will be admitted to system use with priority status as follows:

(1) NOAA users or users whose data are required for implementation of NOAA programs.

(2) Users whose data are desired to support NOAA programs.

(3) Users whose data and/or use of the GOES DCS will further a program of an agency or department of the United States Government.

(4) Users whose data are required by a State or local government of the United States. No other users will be admitted to system use.

(e) All users of the GOES DCS must use a data collection platform radio set whose technical characteristics conform to specifications established by NOAA. The message format must be as specified by NOAA.

(f) All users are responsible for all costs associated with the procurement and operation of the platforms, any confidential treatment of data under §911.3, and for the acquisition of the data from those platforms either directly from the satellite or from the NOAA GOES Data Collection Center at the World Weather Building in Suitland, Maryland.

(g) Design characteristics of the environmental data collection system on the spacecraft require that users conform to technical standards established by NOAA. See §911.5 of this part.

(h) NOAA will make every effort to maintain the GOES DCS in full operation at all times subject to the availability of appropriations. NOAA will bear no responsibility for any losses as a result of the nonavailability of the DCS.

(Approved by the Office of Management and Budget under control number 0648–0157)

[46 FR 48635, Oct. 2, 1981, as amended at 51 FR 3466, Jan. 28, 1986]

§911.3 Treatment of data.

(a) All users of the GOES DCS must agree to permit NOAA and other agencies of the United States Government the free and open use of all data collected from their platforms, except as otherwise provided for in paragraphs (b) through (f) of this section, and to provide NOAA with the necessary information on data formats to facilitate such use.

(b) NOAA will consider a request from a user, who has otherwise met the criteria of §911.2, for proprietary treatment by NOAA of all or a portion of the data collected from the platforms owned by the user. Each request for proprietary treatment must:

(1) Specifically identify the exact portion(s) of the data claimed to be confidential;

(2) State whether the data claimed to be confidential is commonly known within the user's industry or activity or is readily ascertainable by outside persons with a minimum of time and effort;

(3) State how release of the data would be likely to cause substantial harm to the user's competitive position;

(4) Identify the Federal agency or governmental program which would benefit by gaining access to the data to be collected;

(5) State whether the submitter is authorized to make claims of confidentiality on behalf of the person or organization concerned; and

(6) State when the confidential data may be made public.

(c)(1) NOAA may treat environmental data obtained by the GOES DCS as proprietary if the Assistant Administrator with the advice of the General Counsel and other interested Federal officers, finds that:

(i) The data are trade secrets or commercial information obtained from a user and privileged or confidential; and

(ii) Use of the GOES DCS for collection and proprietary treatment of such

data is in the public interest. Proprietary treatment of data which are required to protect life or property will be deemed not to be in the public interest.

(2) All data for which the Assistant Administrator grants proprietary treatment shall not be publicly disclosed in individually identifiable form without the user's authorization, except in accordance with the procedures set forth in paragraph (f) of this section or pursuant to the order of a court of competent jurisdiction. Such data may be combined and publicly disclosed in such formats as general statistical studies, environmental warnings and forecasts, or aggregated reports or summaries in which the identity of the user(s) furnishing such information or the confidential portions of the data shall not be disclosed.

(d)(1) The Assistant Administrator shall notify the user in writing whether all or a portion of the data will be treated as proprietary and shall state the reasons for the decision. The user may appeal the initial decision of the Assistant Administrator by filing a notice of appeal, including supporting information, with the Administrator of NOAA, Department of Commerce, Washington, DC 20230, within 30 days (excluding Saturdays, Sundays and legal holidays) of receipt of notice.

(2) The Administrator may decide the appeal on the basis of the information already submitted or may request additional information from the user. The decision of the Administrator shall state the reasons for the decision, and shall become effective upon issuance.

(e) The Assistant Administrator after consultation with other interested NOAA officers, shall institute a control system to protect the confidentiality of data that have been granted proprietary treatment under this section and are in the possession of NOAA. The control system will provide for safeguarding the data and ensuring that only authorized officers and employees have access to the data for official purposes.

(f) Data that have been accorded proprietary treatment for which NOAA or another Federal agency has no present requirement may be returned to the possession of the user and kept by the user until such time as NOAA or another Federal agency has a present requirement for the data at which time the data shall be made available to NOAA or to another Federal agency in accordance with the terms of a mutually acceptable agreement.

(g)(1) All requests from any person(s) for data granted proprietary treatment under this section shall be processed consistent with NOAA Freedom of Information Act (FOIA) Regulations (15 CFR part 903), NOAA Directives Manual 21–25, Department of Commerce Administrative Orders 205–12 and 205–14 and 15 CFR part 4.

(2) The user shall be notified within five days (excluding Saturdays, Sundays, and legal public holidays) of receipt by NOAA of an FOIA request for disclosure of data which otherwise have been granted proprietary treatment under this section. The user may submit written objections to release of the data, together with any supporting information, to the Assistant Administrator within five days (excluding Saturdays, Sundays and legal public holidays) of receipt of notice. The failure to object within the prescribed time limit will be considered an acknowledgment that the user does not wish to claim exempt status under the FOIA.

(3) If data which have been granted proprietary treatment under this section are found to be disclosable, in whole or in part, under the FOIA, the user submitting the data will be notified in writing and given five days (excluding Saturdays, Sundays, and legal holidays) from receipt of the notice to seek judicial relief.

(Approved by the Office of Management and Budget under control number 0648–0157)

[46 FR 48635, Oct. 2, 1981, as amended at 51 FR 3466, Jan. 28, 1986]

§ 911.4 Continuation of GOES–DCS.

(a) NOAA expects to continue to operate a geostationary satellite data collection system while it operates GOES satellites, subject to the availability of future appropriations.

(b) As use of the system in support of NOAA programs increases, it eventually may be necessary to restrict the use by other users. If a use restriction should become necessary, or in the

event that NOAA discontinues operation of GOES, NOAA will provide, to the maximum extent possible, advance notice to the affected users.

§911.5 GOES–DCS Use Agreements.

(a) Each user must have an agreement with NOAA to use the GOES DCS.

(b) These agreements will cover, but will not be limited to: (1) The period of time the agreement is valid and procedures for cancelling it, (2) conformance with ITU agreements and regulations, (3) required equipment standards, (4) standards of operation, (5) priorities for use, (6) reporting time and frequencies, (7) data formats, (8) data delivery systems and schedules, (9) user-borne costs, and (10) proprietary treatment of data under §911.3.

(c) The representative of NOAA for evaluating use requests and concluding use agreements will be the Director of Data Services for the National Earth Satellite Service, except that in the case of agreements which involve foreign government agencies or requsts for proprietary treatment of data, the concurrence of the Assistant Administrator will be obtained.

[46 FR 48635, Oct. 2, 1981, as amended at 51 FR 3466, Jan. 28, 1986]

PART 917—NATIONAL SEA GRANT PROGRAM FUNDING REGULATIONS

Subpart A—General

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Subpart E—General Considerations Pertaining to Sea Grant Funding

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917.43 Terms and conditions of Sea Grant funding.

AUTHORITY: Pub. L. 94–461, 90 Stat. 1961 (33 U.S.C. 1121 et seq.).

Source: 43 FR 15307, Apr. 11, 1978, unless otherwise noted.

Subpart A—General

§917.1 Basic provisions.

(a) This section sets forth the basic purposes for which Sea Grant funding may be made pursuant to the following sections of the Act: 33 U.S.C. 1124, 1127, 1125 and 1124a. These sections provide for the funding of programs and projects in fields related to ocean and coastal resources that involve marine research, marine education and training, and marine advisory services. However, there is a significant difference in focus among these sections since section 1124(a) is concerned chiefly with regional and state needs relative to ocean and coastal resources (including the funding of Sea Grant Fellowships under section 1127) while section 1125 is concerned with national needs and problems relative to ocean and coastal resources, and section 1124a is concerned with programs of international cooperation assistance with respect to those resources.

(b) *Comment:* Statutory citation 33 U.S.C. 1124(a):

> In General. The Secretary may make grants and enter into contracts under this subsection to assist any Sea Grant program or project if the Secretary finds that such program or project will—
>
> (1) Implement the objective set forth in Section 202(b); and
>
> (2) Be responsive to the needs or problems of individual states or regions.
>
> The total amount paid pursuant to any such grant or contract may equal 66⅔ percent, or any lesser percent, of the total cost of the Sea Grant program or project involved.

(c) *Comment:* Statutory citation 33 U.S.C. 1127(a):

In General. The Secretary may enter into contracts and make grants under this section to—

(1) Enhance the research and development capability of developing foreign nations with respect to ocean and coastal resources.

(2) Promote the international exchange of information and data with respect to the assessment, development, utilization, and conservation of such resources.

§ 917.2 Definitions.

(a) The term *Act* means the Sea Grant Program Improvement Act of 1976, as amended (33 U.S.C. 1121 *et seq.*).

(b) The term *Secretary* means the Secretary of Commerce.

(c) The term *Administrator* means the Administrator of the National Oceanic and Atmospheric Administration.

(d) The term *Office of Sea Grant* means the National Oceanic and Atmospheric Administration's Office of Sea Grant, which administers the National Sea Grant Program provided for in the Act.

(e) The term *objective of the Act* means the objective set forth at 33 U.S.C. 1121(b) and is ''is to increase the understanding, assessment, development, utilization, and conservation of the Nation's ocean and coastal resources by providing assistance to promote a strong educational base, responsive research and training activities, and broad and prompt dissemination of knowledge and techniques.''

(f) The term *ocean and coastal resource(s)* is as defined at 33 U.S.C. 1122(7) and means:

any resource (whether living, nonliving, manmade, tangible, intangible, actual, or potential) which is located in, derived from, or traceable to, the marine environment.

Such term includes the habitat of any such living resource, the coastal space, the ecosystems, the nutrient rich areas, and the other components of the marine environment which contribute to or provide (or which are capable of contributing to or providing) recreational, scenic, esthetic, biological, habitational, commercial, economic, or conservation values. Living resources include natural and cultured plant life, fish, shellfish, marine mammals, and wildlife. Nonliving resources include energy sources, minerals, and chemical substances.

(g) The term *marine environment* used in the definition for ''ocean and coastal resources'' in § 917.2(e) and used elsewhere in these regulations is as defined at 33 U.S.C. 1122(6) and means:

the coastal zone, as defined in Section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)); the seabed, subsoil, and waters of the territorial sea of the United States; the waters of any zone over which the United States asserts exclusive fishery management authority; the waters of the high seas; and the seabed and subsoil of and beyond the outer Continental Shelf.

(h) The term *person* is as defined at 33 U.S.C. 1122(9) and means: ''any individual; any public or private corporation, partnership, or other association or entity (including any Sea Grant College, Sea Grant Regional Consortium, education, institute, or laboratory); or any state, political subdivision of a state, or agency or officer thereof.''

(i) The term *Sea Grant College* is as defined at 33 U.S.C. 1122(10) and means: ''any public or private institution of higher education which is designated as such by the Secretary . . .'' pursuant to regulations promulgated at 15 CFR part 918.

(j) The term *Sea Grant Program* is as defined at 33 U.S.C. 1122(11) and means: ''any program which'' (1) is administered by a Sea Grant College, Sea Grant Regional Consortium, institution of higher education, institute, laboratory, or state or local agency; and (2) includes two or more projects involving one or more of the following activities in fields related to ocean and coastal resources:

(i) Research,

(ii) Education,

(iii) Training, or

(iv) Advisory services.

(k) The term *Sea Grant Program Directors* means the local Directors of the Sea Grant coherent area programs, insititutional programs, Sea Grant Colleges, and Sea Grant Regional Consortia.

(l) The term *Sea Grant Regional Consortium* is as defined at 33 U.S.C. 1122(12) and means: ''any association or alliance which is designated as such by the Secretary . . .'' pursuant to regulations promulgated at 15 CFR part 918.

(m) The term *state* is as defined at 33 U.S.C. 1122 (14) and means: ''any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam,

American Samoa, the Commonwealth of the Mariana Islands, or any other territory or possession of the United States.''

(n) The term *developing foreign nations* includes any foreign nation other than a foreign nation that is ineligible for designation under section 502(b) of the Trade Act of 1974, (19 U.S.C. 2462(b)) as a benificiary developing country under Title of that Act.

Subpart B—Sea Grant Matched Funding Program

§917.10 General.

(a) 33 U.S.C. 1124(a) establishes a program for the funding of Sea Grant Programs and projects dealing with marine research, marine education and training, and/or marine advisory services, that are designed to achieve the objective of the Act and that generally respond to the needs of individual states or regions. Included as a part of this program is the Sea Grant Fellowship Program, established by 33 U.S.C. 1127. Any person may apply to the Office of Sea Grant for Sea Grant Matched Funding Program Monies, except for Sea Grant Fellowship funding. Sea Grant Fellowship funding may be granted only to Sea Grant Colleges, Sea Grant Regional Consortia, institutions of higher education, and professional associations and institutions.

(b) Federal Sea Grant funding for the section 1124(a) Matched Funding Program cannot exceed 66⅔ percent of the total cost of the project involved.

§917.11 Guidelines for Sea Grant Fellowships.

(a) Sea Grant Fellowships are designed to provide educational and training assistance to qualified individuals at the undergraduate and graduate levels of education in fields related to ocean and coastal resources. The objective of the program is to increase the national supply of individuals educated and trained in the assessment, development, utilization, and conservation of ocean and coastal resources. The purpose of this section is to provide guidelines regarding the content of applications for Sea Grant Fellowship funding.

(b) Funding will be made to eligible entities (see §917.10 of this part) that are selected to award and administer Sea Grant Fellowships. Fellowships will not be awarded directly to students by the Office of Sea Grant. The entity receiving Fellowship funding will select the students to be awarded the Fellowships and will handle the administration of the Fellowships.

(c) Proposals for Fellowship funding will be expected to address (1) the nature and focus of the proposed Fellowship Program, (2) the utilization of institutional or other appropriate resources in the education and training of Sea Grant Fellows, (3) the method of advertising availability of the Fellowships, (4) the method of selection of recipients, and (5) the terms of tenure and method of determining continuity of tenure.

(d) Innovation and uniqueness will be significant factors in the determination of which proposals will be funded. Another factor considered will be the potential of the proposed program to stimulate interest in marine related careers among those individuals; for example, minorities, women, and the handicapped whose previous background or training might not have generated such an interest.

(e) The total amount that may be provided for grants under the Sea Grant Fellowship Program during any fiscal year cannot exceed an amount equal to five percent of the total funds appropriated for the Matched Funding Program for that year. Fellowship programs are subject to the requirement of a minimum of 33⅓ percent matching funds from non-Federal sources to which all Matched Funding Program projects are subject. Indirect costs are not allowable for either the Fellowships or for any costs associated with the Fellowships.

Considering the variations in the cost-of-living and the differences in tuition, fees, etc., between one college or university and another, the amount of money requested and awarded per Fellowship may vary.

Subpart C—National Projects

§917.20 General.

(a) 33 U.S.C. 1125 requires the Secretary to identify specific national needs and problems relative to ocean

and coastal resources. This responsibility has been delegated to the Administrator. The designation is intended to focus public attention on needs and problems of the marine environment that are considered to be of particular national importance at a given point in time.

(b) 33 U.S.C. 1125 provides for the funding of national projects in marine research, marine education and training, and marine advisory services that are designed to deal with the national needs and problems concerning ocean and coastal resources identified by the Administrator.

(c) The Administrator will identify the national needs and problems apart from considerations of Office of Sea Grant funding for ''National Projects'' responsive to national needs and problems that are identified.

§ 917.21 National needs and problems.

(a) The Administrator will, periodically, publish in the FEDERAL REGISTER the identified national needs and problems with respect to ocean and coastal resources at a given point in time.

(b) Suggestions from the general public as to the identity of national needs and problems may be submitted to the Office of Sea Grant at any time. These suggestions will be reviewed by the Office of Sea Grant and the Sea Grant Review Panel, and those receiving a positive critique will be forwarded to the Administrator. In addition, suggestions concerning the identification of national needs and problems will be requested from the Sea Grant Program Directors.

(c) The Administrator has identified the following as currently being national needs and problems with respect to ocean and coastal resources:global and regional climate and primary productivity.

(1) Improve the prediction of extreme natural events and their effects on ocean coastal and continental shelf locations as well as analogous regions of the Great Lakes.

(2) Improve the predictability of global sea-level change and determine the impact of this change on coastal areas.

(3) Define the processes that determine ocean variability on the time scale of a few weeks to a few years, and the relationship to fluctuations in global and regional climate, primary productivity, and fisheries production.

(4) Improve understanding of the flow fields and mixing processes on the continental shelves of the United States.

(5) Develop an increased understanding of the arctic and antarctic environment and a capability to predict the special hazards posed to transportation and resource development.

(6) Develop and increased capability to characterize the engineering properties of ocean botton sediments.

(7) Reduce the recurring economic loss due to corrosion of structures, vessels, and other devices in the marine environment.

(8) Gain a fundamental understanding of the processes by which biological fouling and associated corrosion are initiated upon material surfaces exposed to seawater.

(9) Investigate methods to improve man's underwater capability to conduct undersea research and perform useful work.

(10) Investigate the wider application of remotely operated and artificial intelligence techniques for vehicles for undersea activities.

(11) Expand/improve remote sensing technologies for use on the ocean and Great Lakes.

(12) Advance knowledge of acoustics in the ocean and ocean bottom in order to exploit the burgeoning acoustics technologies.

(13) Develop techniques for in-situ monitoring of biological, chemical, and physical processes in the Great Lakes, oceans, and their connecting waterways which are cost effective and provide data in real time.

(14) Improve the position of the U.S. seafood industry in world seafood markets.

(15) Design more efficient mechanisms to allocate U.S. fish resources to achieve optimum yield and minimize industry dislocations.

(16) Gain a fundamental understanding of the biological productivity of estuarine and coastal waters.

(17) Conduct research leading to the restoration and/or enhancement of heavily exploited fishery stocks.

(18) Improve the capability for stock assessment, predicting yield, age-class strength, and long-term population status of important fisheries.

(19) Conduct research to increase the economic potential of low-value, high-volume fish products.

(20) Develop productive and profitable aquaculture industries in the United States and technology that can be exported to less developed nations of the world with different climate, cultural, and economic constraints.

(21) Explore marine biochemicals as source of chemical feedstocks, enzymes, pharmacological substance, and other bioactive agents such as pesticides.

(22) Apply modern biotechnology to exploiting marine plants, animals, and microorganisms for good and services.

(23) Develop rapid, efficient, and specific methods for assaying the potential of marine organisms to communicate disease to humans.

(24) Develop innovations that would promote safe, nondestructive, recreational access to and use of marine and Great Lakes water.

(25) Re-examine the ocean as an appropriate place for the disposal of wastes from land-based society.

(26) Develop an increased understanding of the impacts of low density, nonbiodegradable, solid wastes on marine and Great Lakes species.

(27) Conduct research for realizing the economic potential of the nonliving resources of the U.S. 200-mile Exclusive Economic Zone.

(28) Investigate the effect of seafloor hydrothermal systems on the seafloor, oceans, and atmosphere.

(29) Develop a better understanding of the value the marine sector contributes to the U.S. economy and culture.

(30) Improve the competitive position of American ports in the face of rapid technological and social change.

(31) Improve the capability of developing nations to address their marine resource needs.

(32) Develop eductional programs to increase application of marine sector research.

(33) Develop syntheses of and better access to existing multidisciplinary marine and Great Lakes information.

[43 FR 15307, Apr. 11, 1978, as amended at 51 FR 35210, Oct. 2, 1986]

§917.22 National Projects funding.

(a) National Projects funding proposals will be expected to address: (1) The relevance of the proposed project to a national need or problem that has been identified by the Administrator; (2) the nature and focus of the proposed project; (3) a demonstrated capacity to carry out the proposed project in a competent and cost-effective manner; and (4) the utilization of existing capability and coordination with other relevant projects. Innovation and uniqueness will be significant factors in determining whether to fund a proposed project.

(b) Any person may apply to the Office of Sea Grant for National Project funding. In addition, the Office of Sea Grant may invite applications for National Project funding.

(c) The total amount provided for National Projects' funding during any fiscal year can never exceed an amount equal to 10 percent of the total funds appropriated for the Matched Funding Program. Federal Sea Grant funding for National Projects can be up to 100 percent of the total cost of the project involved.

Subpart D—International Cooperation Assistance

§917.30 General.

(a) 33 U.S.C. 1124a sets up a program of International Cooperation Assistance in marine reseach, marine education and training, and marine advisory services designed to enhance the research and technical capability of developing foreign nations with respect to ocean and coastal resources and to promote the international exchange of information and data with respect to the assessment, development, utilization, and conservation of such resources. Any Sea Grant College or Sea Grant Regional Consortium or any institution of higher education, laboratory, or institute (if such institution,

laboratory or institute is located within any state) may apply for and receive International Cooperation Assistance funding.

(b) International Cooperation Assistance funding proposals will be expected to address: (1) The nature and focus of the proposed project, (2) the utilization of institutional and other appropriate resources in the implementation of the project, (3) a clear indication of the foreign participant's (individual or institution) commitment to the project, (4) identification of accomplishments expected from a single granting interval, (5) implicit or explicit out-year commitment of resources, and (6) the impact of the proposed project on the institution receiving funding.

(c) The projects supported by International Cooperation Assistance funding are intended to be genuinely cooperative. Innovation and uniqueness will be significant factors in the determination of proposals to be funded. In the case of a proposed international project that is submitted from an institution where a Sea Grant program is in existence, the extent to which the proposed project takes advantage of the Sea Grant institutional capability existing at that institution and thereby strengthening it, as opposed to being a mere appendage to the ongoing Sea Grant program, will also be an important evaluation factor. The U.S. Department of State will be given the opportunity to review all International Cooperation Assistance projects and none will be funded without this consultation. Because the United Nations Educational, Scientific, and Cultural Organization (UNESCO) also funds international projects of the kind that can be funded under the Sea Grant International Cooperation Assistance program, and, to effect coordination in this area between Sea Grant and UNESCO, the Division of Marine Sciences (UNESCO) will be informed of all International Cooperation Assistance projects funded.

Subpart E—General Considerations Pertaining to Sea Grant Funding

§ 917.40 General.

This subpart sets forth general considerations pertaining to Sea Grant funding.

§ 917.41 Application guidance for Sea Grant funding.

(a) Detailed guidance for submission of applications for National Sea Grant Program Funding is given in the publication, ''The National Sea Grant Program: Program Description and Suggestions for Preparing Proposals,'' available on request from: Office of Sea Grant Program, 3300 Whitehaven Street NW., Washington, DC 20235.

(b) It is noted here that application for Sea Grant funding shall be made pursuant to the following Federal provisions:

(1) OMB Circular A–110 ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.''

(2) OMB Circular A–111, ''Designation of Federal Programs Suitable for Joint Funding Purposes.''

(3) GSA FMC 73–6, ''Coordinating Indirect Cost Rates and Audit at Educational Institutions.''

(4) GSA FMC 73–7, ''Administration of College and University Research Grants.''

(5) GSA FMC 73–8, ''Cost Principles for Educational Institutions.''

(6) GSA FMC 74–4, ''Cost Principles Applicable to Grants and Contracts with State and Local Governments.''

(7) OMB Circular A–102, ''Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.''

(8) NOAA General Provisions implementing OMB Circular A–110, ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.''

§917.42 Categories of support available for the conducting of Sea Grant activities.

(a) Three categories of support are available for the conducting of Sea Grant activities: Projects; coherent area programs; and institutional programs. In general, funding for institutional programs and coherent area programs are made with expectation of renewal, as long as the funding recipient maintains a high level of quality and relevance in its activities. Project funding is made generally for a single item of research, education and training, or advisory service, but may be renewed under certain conditions; each renewal is negotiated individually.

(b) Project support is for a clearly defined activity to be conducted over a definite period of time to achieve a specified goal. The project may be in research, education, training, or advisory services. Support for a project is made to an individual investigator or project director through his organization.

(c) Intermediate between the institutional programs and individual projects are coherent area programs. These have two main purposes:

(1) To bring into the National Sea Grant Program institutions of higher education that have a strong core of capability in some aspects of marine affairs, but which do not qualify or do not wish to qualify for institutional program support at this time. The purpose of support in such cases is to enable the institution to apply its existing competence to its regional problems and opportunities while developing the broader base of capability and the internal organization that will lead to institutional support. This program category requires a definite commitment on the part of the institution to develop an institutional program and to present a multiproject, multidisciplinary program involving the existing competence of an institution in a unified or coherent attack on well-defined local or regional problems. Such a coherent area program should include research, education and training, and advisory services, to the extent of the institution's capability.

(2) To bring into the National Sea Grant Program (on a more or less continuing basis) qualified entities that have rare or unique capability in a specialized field of marine affairs. Such entities need not be institutions of higher education.

(d) Institutional grants are made to institutions of higher education or to a combination of institutions that have an existing broad base of competence in marine affairs. To qualify, an institution must make a positive, long-range commitment to objectives of the National Sea Grant Program as evidence by committing the institution's own resources in the form of matching funds, creation of the organization necessary for management of the Sea Grant Program, quality education programs in marine areas, establishment of interdisciplinary research teams, and development of advisory service mechanisms for strong interaction with marine communities in its region. A Sea Grant institutional program is expected to provide intellectual leadership in assisting its region to solve problems and to realize opportunities of its marine environment. To the extent possible, an institutional program should involve all appropriate elements of the institution, whether colleges or departments, and devise cooperative or mutally supporting programs with other institutions of higher education, and with Federal and state agencies, local agencies, and industry. An institutional program should have substantial strength in the three basic Sea Grant activities: research, education and training, and advisory services. Sea Grant institutional programs that meet the qualifications for Sea Grant College or Sea Grant Regional Consortium status set forth at 15 CFR part 918 will be so designated by the Secretary.

§917.43 Terms and conditions of Sea Grant funding.

No Sea Grant funding may be applied to:

(a)(1) the purchase or rental of any land or (2) the purchase, rental, construction, preservation, or repair of any building, dock, or vessel, except that payment under any such grant or contract may (if approved by the Assistant Administrator for Administration of the National Oceanic and Atmospheric Administration or designee)

be applied to the purchase, rental, construction, preservation, or repair of non-self-propelled habitats, buoys, platforms, and other similar devices or structures, or to the rental of any research vessel which is used in direct support of activities under any Sea Grant program or project.

(b) In addition, Sea Grant funding under the Sea Grant Matched Funding Program will be subject to the limitation that the total amount which may be obligated within any one state to persons under the Sea Grant Matched Funding Program in any fiscal year shall not exceed an amount equal to 15 percent of the funds appropriated for the Sea Grant Matched Funding Program.

(c) Any person who receives or utilizes Sea Grant funding shall keep the records required by OMB Circular A–110, ''Grant and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' and by NOAA General Provision, implementing OMB Circular A–110, by OMB Circular A–102, ''Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments,'' including records that fully disclose the amount and disposition by the recipient of such proceeds, the total cost of the program or project in which such proceeds were used, and the amount, if any, of such cost which was provided through other sources. Such records shall be maintained for three years after the completion of such a program or project. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and evaulation, to any books, documents, papers, and records of receipt which, in the opinion of the Secretary or the Comptroller General, may be related or pertinent to such grants and contracts.

PART 918—SEA GRANTS

Sec.

918.1 Introduction.
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918.7 Application for designation.

AUTHORITY: Sec. 207, National Sea Grant College Program Act, as amended (Pub. L. 94–461, 33 U.S.C. 1121, et seq.).

SOURCE: 44 FR 75054, Dec. 18, 1979, unless otherwise noted.

§ 918.1 Introduction.

Pursuant to section 207 of the National Sea Grant College Program Act, as amended (Pub. L. 94–461, 33 U.S.C. 1121 *et seq.*), herein referred to as the Act, the following guidelines establish the procedures by which organizations can qualify for designation as Sea Grant Colleges or Sea Grant Regional Consortia, and the responsibilities required of organizations so designated.

§ 918.2 Definitions.

(a) *Marine environment.* The term *Marine Environment* means any or all of the following: the coastal zone, as defined in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)); the seabed, subsoil and waters of the territorial sea of the United States, including the Great Lakes; the waters of any zone over which the United States asserts exclusive fishery management authority; the waters of the high seas; and the seabed and subsoil of and beyond the Outer Continental Shelf.

(b) *Ocean, Great Lakes, and coastal resources.* The term *ocean, Great Lakes, and coastal resources* means any resource (whether living, nonliving, manmade, tangible, intangible, actual, or potential) which is located in, derived from, or traceable to, the marine environment. Such term includes the habitat of any such living resource, the coastal space, the ecosystems, the nutrient-rich areas, and the other components of the marine environment which contribute to or provide (or which are capable of contributing to or providing) recreational, scenic, aesthetic, biological, habitational, commercial, economic, or conservation values. Living resources include natural and cultured plant life, fish, shellfish, marine mammals, and wildlife. Nonliving resources

include energy sources, minerals, and chemical substances.

(c) *Person.* The term *Person* means any public or private corporation, partnership, or other association or entity (including any Sea Grant College, Sea Grant Regional Consortium, institution of higher education, institute, or laboratory); or any State, political subdivision of a State, or agency or officer thereof.

(d) *Sea Grant College.* The term *Sea Grant College* means any public or private institution of higher education or confederation of such institutions which is designated as such by the Secretary under section 207 of the National Sea Grant Program Act. Included in this term are all campuses (or other administrative entities) of a designated Sea Grant College, working through the established management structure of the Sea Grant College.

(e) *Sea Grant Program.* The term *Sea Grant Program* means any program which:

(1) Is administered by a Sea Grant College, Sea Grant Regional Consortium, institution of higher education, institute, laboratory, or State or local agency; and

(2) Includes two or more Sea Grant projects involving one or more of the following activities in fields related to ocean, Great Lakes, and coastal resources:

(i) Research,

(ii) Education and training, and

(iii) Advisory services.

(f) *Sea Grant project.* A Sea Grant project is any separately described activity which has been proposed to the National Sea Grant College Program, and has subsequently been approved.

(g) *Sea Grant Regional Consortium.* The term *Sea Grant Regional Consortium* means any association or other alliance of two or more persons as defined above (other than individuals) established for the purpose of pursuing programs in marine research education, training, and advisory services on a regional basis (i.e., beyond the boundaries of a single state) and which is designated as a consortium by the Secretary under section 207 of the National Sea Grant Program Act.

(h) *Field related to Ocean, Great Lakes, and coastal resources.* The term *field related to Ocean, Great Lakes, and coastal resources* means any discipline or field (including marine sciences and the physical, natural, and biological sciences, and engineering, included therein, marine technology, education, economics, sociology, communications, planning law, international affairs, public administration, humanities, and the arts) which is concerned with, or likely to improve the understanding, assessment, development, utilization, or conservation of, ocean, Great Lakes, and coastal resources.

§918.3 Eligibility, qualifications, and responsibility of a Sea Grant College.

(a) To be eligible for designation as a Sea Grant College, the institution of higher education or confederation of such institutions must have demonstrated a capability to maintain a high quality and balanced program of research, education, training, and advisory services in fields related to ocean, Great Lakes, and coastal resources for a minimum of three years, and have received financial assistance as an Institutional program under either section 205 of the National Sea Grant College Program Act or under section 204(c) of the earlier National Sea Grant College and Program Act of 1966.

(b) To be eligible for designation as a Sea Grant College, the candidate institution or confederation of institutions must meet the qualifications set forth above as evaluated by a site review team composed of members of the Sea Grant Review Panel, NOAA's Office of Sea Grant, and other experts named by NOAA. As a result of this review, the candidate must be rated highly in all of the following qualifying areas:

(1) *Leadership.* The Sea Grant College candidate must have achieved recognition as an intellectual and practical leader in marine science, engineering, education, and advisory service in its state and region.

(2) *Organization.* The Sea Grant College candidate must have created the management organization to carry on a viable and productive Sea Grant Program, and must have the backing of its administration at a sufficiently high level to fulfill its multidisciplinary and multifaceted mandate.

(3) *Relevance.* The Sea Grant College candidate's program must be relevant to local, State, regional, or National opportunities and problems in the marine environment. Important factors in evaluating relevance are the need for marine resource emphasis and the extent to which capabilities have been developed to be responsive to that need.

(4) *Programmed team approach.* The Sea Grant College candidate must have a programmed team approach to the solution of marine problems which includes relevant, high quality, multidisciplinary research with associated educational and advisory services capable of producing identifiable results.

(5) *Education and training.* Education and training must be clearly relevant to National, regional, State and local needs in fields related to ocean, Great Lakes, and coastal resources. As appropriate, education may include pre-college, college, post-graduate, public and adult levels.

(6) *Advisory services.* The Sea Grant College candidate must have a strong program through which information, techniques,and research results from any reliable source, domestic or international, may be communicated to and utilized by user communities. In addition to the educational and information dissemination role, the advisory service program must aid in the identification and communication of user communities' research and educational needs.

(7) *Relationships.* The Sea Grant College candidate must have close ties with Federal agencies. State agencies and administrations, local authorities, business and industry, and other educational institutions. These ties are: (i) To ensure the relevance of its programs, (ii) to give assistance to the broadest possible audience, (iii) to involve a broad pool of talent in providing this assistance (including universities and other administrative entities outside the Sea Grant College), and (iv) to assist others in developing research and management competence. The extent and quality of an institution's relationships are critical factors in evaluating the institutional program.

(8) *Productivity.* The Sea Grant College candidate must have demonstrated the degree of productivity (of research results, reports, employed students, service to State agencies and industry, etc.) commensurate with the length of its Sea Grant operations and the level of funding under which it has worked.

(9) *Support.* The Sea Grant College candidate must have the ability to obtain matching funds from non-Federal sources, such as state legislatures, university management, state agencies, business, and industry. A diversity of matching fund sources is encouraged as a sign of program vitality and the ability to meet the Sea Grant requirement that funds for the general programs be matched with at least one non-Federal dollar for every two Federal dollars.

(c) Finally, it must be found that the Sea Grant College candidate will act in accordance with the following standards relating to its continuing responsibilities if it should be designated a Sea Grant College:

(1) Continue pursuit of excellence and high performance in marine research, education, training, and advisory services.

(2) Provide leadership in marine activities including coordinated planning and cooperative work with local, state, regional, and Federal agencies, other Sea Grant Programs, and non-Sea Grant universities.

(3) Maintain an effective management framework and application of institutional resources to the achievement of Sea Grant objectives.

(4) Develop and implement long-term plans for research, education, training, and advisory services consistent with Sea Grant goals and objectives.

(5) Advocate and further the Sea Grant concept and the full development of its potential within the institution and the state.

(6) Provide adequate and stable matching financial support for the program from non-Federal sources.

(7) Establish and operate an effective system to control the quality of its Sea Grant programs.

§ 918.4 Duration of Sea Grant College designation.

Designation will be made on the basis of merit and the determination by the Secretary of Commerce that such a designation is consistent with the

goals of the Act. Continuation of the Sea Grant College designation is contingent upon the institution's ability to maintain a high quality performance consistent with the requirements outlined above. The Secretary may, for cause and after an opportunity for hearing, suspend or terminate a designation as a Sea Grant College.

§918.5 Eligibility, qualifications, and responsibilities—Sea Grant Regional Consortia.

(a) To be eligible for designation as a Sea Grant Regional Consortium, the candidate association or alliance of organizations must provide, in significant breadth and quality, one or more services in the areas of research, education, and training, or advisory service in fields related to ocean, Great Lakes, and coastal resources. Further, it is essential that the candidate Sea Grant Consortium be required to provide all three services as soon as possible after designation. Further, such association or alliance must demonstrate that:

(1) It has been established for the purpose of sharing expertise, research, educational facilities, or training facilities, and other capabilities in order to facilitate research, education, training, and advisory services in any field related to ocean, Great Lakes, and coastal resources; and

(2) It will encourage and follow a regional multi-State approach to solving problems or meeting needs relating to ocean, Great Lakes, and coastal resources, in cooperation with appropriate Sea Grant Colleges, Sea Grant Programs and other persons in the region.

(b) Although it is recognized that the distribution of effort between research, education, training, and advisory services to achieve appropriate balance in a Sea Grant Regional Consortium may differ from a Sea Grant College, sustained effort in all of these areas is, nonetheless, an essential requirement for retention of such designation. To be eligible for designation as a Sea Grant Regional Consortium, the candidate association or alliance of organizations must meet the qualifications set forth above as evaluated by a site review team composed of members of the Sea Grant Review Panel, the Office of Sea Grant, and other experts. Further, the candidate must be rated highly in all of the following qualifying areas which are pertinent to the Consortium's program:

(1) *Leadership.* The Sea Grant Regional Consortium candidate must have achieved recognition as an intellectual and practical leader in marine science, engineering, education, and advisory service in its region.

(2) *Organization.* The Sea Grant Regional Consortium candidate must have created the management organization to carry on a viable and productive multidisciplinary Sea Grant Program and have the backing of the administrations of its component organizations at a sufficiently high level to fulfill its multidisciplinary and multifaceted mandate.

(3) *Relevance.* The Sea Grant Regional Consortium candidate's Sea Grant Program must be relevant to regional opportunities and problems in the marine environment. Important factors in evaluating relevance are the extent and depth of the need of a region for a focused marine resource emphasis and the degree to which the candidate has developed its capability to be responsive to that need.

(4) *Education and training.* Education and training must be clearly relevant to regional needs and must be of high quality in fields related to ocean, Great Lakes, and coastal resources. As appropriate, education may include precollege, college, post-graduate, public and adult levels.

(5) *Advisory services.* The Sea Grant Regional Consortium candidate must have a strong program through which information techniques, and research results from any reliable source, domestic or international, may be communicated to and utilized by user communities. In addition to the educational and information dissemination role, the advisory service program must aid in the identification and communication of user communities' research and educational needs.

(6) *Relationships.* The Sea Grant Regional Consortium candidate must have close ties with federal agencies, state agencies and administrations, regional authorities, regional business

and industry, and other regional educational institutions. These regional ties are: (i) To ensure the relevance of programs, (ii) to generate requests for such assistance as the consortium may offer, and (iii) to assist others in developing research and management competence. The extent and quality of a candidate's relationships are critical factors in evaluating the proposed designation.

(7) *Productivity*. The Sea Grant Regional Consortium candidate must have demonstrated a degree of productivity (of research results, reports, employed students, service to regional agencies, industry, etc.) commensurate with the length of its Sea Grant operations and the level of funding under which it has worked.

(8) *Support*. The Sea Grant Regional Consortium candidate must have the ability to obtain matching funds from non-Federal sources, such as State legislatures, university management, State agencies, and business and industry. A diversity of matching funds sources is encouraged as a sign of program vitality and the ability to meet the Sea Grant requirement that funds for the general programs be matched with at least one non-Federal dollar for every two Federal dollars.

(c) Finally, it must be found that the Sea Grant Regional Consortium candidate will act in accordance with the following standards relating to its continuing responsibilities as a Sea Grant Regional Consortium:

(1) Continue pursuit of excellence and high performance in marine research education, training, and advisory services.

(2) Provide regional leadership in marine activities including coordinated planning and cooperative work with local, State, regional, and Federal agencies, other Sea Grant Programs, and non-Sea Grant organizations.

(3) Maintain an effective management framework and application of organizational resources to the achievement of Sea Grant objectives.

(4) Develop and implement long-term plans for research, education, training, and advisory services consistent with Sea Grant goals and objectives.

(5) Advocate and further the Sea Grant concept and the full development of its potential within the consortium and the region.

(6) Provide adequate and stable matching financial support for the program from non-Federal sources.

(7) Establish and operate an effective system to control the quality of its Sea Grant program.

§ 918.6 Duration of Sea Grant Regional Consortium designation.

Designation will be made on the basis of merit and the determination by the Secretary of Commerce that such a designation is consistent with the goals of the Act. Continuation of the Sea Grant Regional Consortium designation is contingent upon the alliance's ability to maintain a high quality performance consistent with the standards outlined above. The Secretary may, for cause and after an opportunity for hearing, suspend or terminate the designation as a Sea Grant Regional Consortium.

§ 918.7 Application for designation.

(a) All applications for initial designation as a Sea Grant College or a Regional Consortium should be addressed to the Secretary of Commerce and submitted to the Director, National Sea Grant College Program, National Oceanic and Atmospheric Administration. The application should contain an outline of the capabilities of the applicant and the reasons why the applicant believes that it merits designation under the guidelines contained in this regulation. Upon receipt of the application, the Director will present the institution's case to the Sea Grant Review Panel for evaluation. The Panel's recommendation will be forwarded to the Secretary for final action.

(b) An existing Sea Grant College or Regional Consortium may also apply as in paragraph (a) of this section, for a change in the scope of designation to include or exclude other administrative entities of the institution or association. If approved by the Secretary such included (excluded) administrative entities shall share (lose) the full rights and responsibilities of a Sea Grant College or Regional Consortium.

SUBCHAPTER B—OCEAN AND COASTAL RESOURCE MANAGEMENT

PART 921—NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM REGULATIONS

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APPENDIX I TO PART 921—BIOGEOGRAPHIC CLASSIFICATION SCHEME
APPENDIX II TO PART 921—TYPOLOGY OF NATIONAL ESTUARINE RESEARCH RESERVES

AUTHORITY: Section 315 of the Coastal Zone Management Act, as amended (16 U.S.C. 1461).

SOURCE: 58 FR 38215, July 15, 1993, unless otherwise noted.

Subpart A—General

§921.1 Mission, goals and general provisions.

(a) The mission of the National Estuarine Research Reserve Program is the establishment and management, through Federal-state cooperation, of a national system (National Estuarine Research Reserve System or System) of estuarine research reserves (National Estuarine Research Reserves or Reserves) representative of the various regions and estuarine types in the United States. National Estuarine Research Reserves are established to provide opportunities for long-term research, education, and interpretation.

(b) The goals of the Program are to:

(1) Ensure a stable environment for research through long-term protection of National Estuarine Research Reserve resources;

(2) Address coastal management issues identified as significant through coordinated estuarine research within the System;

(3) Enhance public awareness and understanding of estuarine areas and provide suitable opportunities for public education and interpretation;

(4) Promote Federal, state, public and private use of one or more Reserves within the System when such entities conduct estuarine research; and

(5) Conduct and coordinate estuarine research within the System, gathering and making available information necessary for improved understanding and management of estuarine areas.

(c) National Estuarine Research Reserves shall be open to the public to the extent permitted under state and Federal law. Multiple uses are allowed to the degree compatible with each Reserve's overall purpose as provided in the management plan (see § 921.13) and consistent with paragraphs (a) and (b) of this section. Use levels are set by the state where the Reserve is located and analyzed in the management plan. The Reserve management plan shall describe the uses and establish priorities among these uses. The plan shall identify uses requiring a state permit, as well as areas where uses are encouraged or prohibited. Consistent with resource protection and research objectives, public access and use may be restricted to certain areas or components within a Reserve.

(d) Habitat manipulation for research purposes is allowed consistent with the following limitations. Manipulative research activities must be specified in the management plan, be consistent with the mission and goals of the program (see paragraphs (a) and (b) of this section) and the goals and objectives set forth in the Reserve's management plan, and be limited in nature and extent to the minimum manipulative activity necessary to accomplish the stated research objective. Manipulative research activities with a significant or long-term impact on Reserve resources require the prior approval of the state and the National Oceanic and Atmospheric Administration (NOAA). Manipulative research activities which can reasonably be expected to have a significant adverse impact on the estuarine resources and habitat of a Reserve, such that the activities themselves or their resulting short- and long-term consequences compromise the representative character and integrity of a Reserve, are prohibited. Habitat manipulation for resource management purposes is prohibited except as specifically approved by NOAA as: (1) A restoration activity consistent with paragraph (e) of this section; or (2) an activity necessary for the protection of public health or the preservation of other sensitive resources which have been listed or are eligible for protection under relevant Federal or state authority (*e.g.,* threatened/endangered species or significant historical or cultural resources) or if the manipulative activity is a long-term pre-existing use (*i.e.,* has occurred prior to designation) occurring in a buffer area. If habitat manipulation is determined to be necessary for the protection of public health, the preservation of sensitive resources, or if the manipulation is a long-term pre-existing use in a buffer area, then these activities shall be specified in the Reserve management plan in accordance with § 921.13(a)(10) and shall be limited to the reasonable alternative which has the least adverse and shortest term impact on the representative and ecological integrity of the Reserve.

(e) Under the Act an area may be designated as an estuarine Reserve only if the area is a representative estuarine ecosystem that is suitable for long-term research. Many estuarine areas have undergone some ecological change as a result of human activities (*e.g.,* hydrological changes, intentional/unintentional species composition changes—introduced and exotic species). In those areas proposed or designated as National Estuarine Research Reserves, such changes may have diminished the representative character and integrity of the site. Although restoration of degraded areas is not a primary purpose of the System, such activities may be permitted to improve the representative character and integrity of a Reserve. Restoration activities must be carefully planned and approved by NOAA through the Reserve management plan. Historical research may be necessary to determine the ''natural'' representative state of an estuarine area (*i.e.,* an estuarine ecosystem minimally affected by

human activity or influence). Frequently, restoration of a degraded estuarine area will provide an excellent opportunity for management oriented research.

(f) NOAA may provide financial assistance to coastal states, not to exceed, per Reserve, 50 percent of all actual costs or $5 million whichever amount is less, to assist in the acquisition of land and waters, or interests therein. NOAA may provide financial assistance to coastal states not to exceed 70 percent of all actual costs for the management and operation of, the development and construction of facilities, and the conduct of educational or interpretive activities concerning Reserves (see subpart I). NOAA may provide financial assistance to any coastal state or public or private person, not to exceed 70 percent of all actual costs, to support research and monitoring within a Reserve. Predesignation, acquisition and development, operation and management, special research and monitoring, and special education and interpretation awards are available under the National Estuarine Reserve Program. Predesignation awards are for site selection/feasibility, draft management plan preparation and conduct of basic characterization studies. Acquisition and development awards are intended primarily for acquisition of interests in land, facility construction and to develop and/or upgrade research, monitoring and education programs. Operation and management awards provide funds to assist in implementing, operating and managing the administrative, and basic research, monitoring and education programs, outlined in the Reserve management plan. Special research and monitoring awards provide funds to conduct estuarine research and monitoring projects with the System. Special educational and interpretive awards provide funds to conduct estuarine educational and interpretive projects within the System.

(g) Lands already in protected status managed by other Federal agencies, state or local governments, or private organizations may be included within National Estuarine Research Reserves only if the managing entity commits to long-term management consistent with paragraphs (d) and (e) of this section in the Reserve management plan. Federal lands already in protected status may not comprise a majority of the key land and water areas of a Reserve (see §921.11(c)(3)).

(h) To assist the states in carrying out the Program's goals in an effective manner, NOAA will coordinate a research and education information exchange throughout the National Estuarine Research Reserve System. As part of this role, NOAA will ensure that information and ideas from one Reserve are made available to others in the System. The network will enable Reserves to exchange information and research data with each other, with universities engaged in estuarine research, and with Federal, state, and local agencies. NOAA's objective is a system-wide program of research and monitoring capable of addressing the management issues that affect long-term productivity of our Nation's estuaries.

§921.2 Definitions.

(a) *Act* means the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(b) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management or delegee.

(c) *Coastal state* means a state of the United States, in or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of these regulations the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas Islands, the Trust Territories of the Pacific Islands, and American Samoa (see 16 U.S.C. 1453(4)).

(d) *State agency* means an instrumentality of a coastal state to whom the coastal state has delegated the authority and responsibility for the creation and/or management/operation of a National Estuarine Research Reserve. Factors indicative of this authority may include the power to receive and expend funds on behalf of the Reserve, acquire and sell or convey real and personal property interests, adopt rules for the protection of the Reserve, enforce rules applicable to the Reserve,

or develop and implement research and education programs for the reserve. For the purposes of these regulations, the terms ''coastal state'' and ''State agency'' shall be synonymous.

(e) *Estuary* means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes estuary-type areas with measurable freshwater influence and having unimpaired connections with the open sea, and estuary-type areas of the Great Lakes and their connecting waters (see 16 U.S.C. 1453(7)).

(f) *National Estuarine Research Reserve* means an area that is a representative estuarine ecosystem suitable for long-term research, which may include all of the key land and water portion of an estuary, and adjacent transitional areas and uplands constituting to the extent feasible a natural unit, and which is set aside as a natural field laboratory to provide long-term opportunities for research, education, and interpretation on the ecological relationships within the area (see 16 U.S.C. 1453(8)) and meets the requirements of 16 U.S.C. 1461(b). This includes those areas designated as National Estuarine Sanctuaries or Reserves under section 315 of the Act prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990 and each area subsequently designated as a National Estuarine Research Reserve.

§ 921.3 National Estuarine Research Reserve System Biogeographic Classification Scheme and Estuarine Typologies.

(a) National Estuarine Research Reserves are chosen to reflect regional differences and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's coastal zone has been developed. The biogeographic classification scheme is used to ensure that the National Estuarine Research Reserve System includes at least one site from each region. The estuarine typology system is utilized to ensure that sites in the System reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in appendix I, contains 29 regions. Figure 1 graphically depicts the biogeographic regions of the United States.

(c) The typology system is presented in appendix II.

§ 921.4 Relationship to other provisions of the Coastal Zone Management Act, and to the Marine Protection, Research and Sanctuaries Act.

(a) The National Estuarine Research Reserve System is intended to provide information to state agencies and other entities involved in addressing coastal management issues. Any coastal state, including those that do not have approved coastal management programs under section 306 of the Act, is eligible for an award under the National Estuarine Research Reserve Program (see § 921.2(c)).

(b) For purposes of consistency review by states with a federally approved coastal management program, the designation of a National Estuarine Research Reserve is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved state coastal management program as provided by section 1456(c)(1) of the Act, and implementing regulations at 15 CFR part 930, subpart C. In accordance with section 1456(c)(1) of the Act and the applicable regulations NOAA will be responsible for certifying that designation of the Reserve is consistent with the state's approved coastal management program. The state must concur with or object to the certification. It is recommended that the lead state agency for Reserve designation consult, at the earliest practicable time, with the appropriate state officials concerning the consistency of a proposed National Estuarine Research Reserve.

(c) The National Estuarine Research Reserve Program will be administered in close coordination with the National Marine Sanctuary Program (Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431–1445), also administered by NOAA. Title III authorizes the Secretary of Commerce to designate discrete areas

of the marine environment as National Marine Sanctuaries to protect or restore such areas for their conservation, recreational, ecological, historical, research, educational or esthetic values. National Marine Sanctuaries and Estuarine Research Reserves may not overlap, but may be adjacent.

Subpart B—Site Selection, Post Site Selection and Management Plan Development

§921.10 General.

(a) A coastal state may apply for Federal financial assistance for the purpose of site selection, preparation of documents specified in §921.13 (draft management plan (DMP) and environmental impact statement (EIS)), and the conduct of limited basic characterization studies. The total Federal share of this assistance may not exceed $100,000. Federal financial assistance for preacquisition activities under §921.11 and §921.12 is subject to the total $5 million for which each Reserve is eligible for land acquisition. In the case of a biogeographic region (see appendix I) shared by two or more coastal states, each state is eligible for Federal financial assistance to establish a separate National Estuarine Research Reserve within their respective portion of the shared biogeographic region. Each separate National Estuarine Research Reserve is eligible for the full complement of funding. Financial assistance application procedures are specified in subpart I.

(b) In developing a Reserve program, a state may choose to develop a multiple-site Reserve reflecting a diversity of habitats in a single biogeographic region. A multiple-site Reserve allows the state to develop complementary research and educational programs within the individual components of its multi-site Reserve. Multiple-site Reserves are treated as one Reserve in terms of financial assistance and development of an overall management framework and plan. Each individual site of a proposed multiple-site Reserve shall be evaluated both separately under §921.11(c) and collectively as part of the site selection process. A coastal state may propose to establish a multiple-site Reserve at the time of the initial site selection, or at any point in the development or operation of the Reserve. If the state decides to develop a multiple-site National Estuarine Research Reserve after the initial acquisition and development award is made for a single site, the proposal is subject to the requirements set forth in §921.33(b). However, a state may not propose to add one or more sites to an already designated Reserve if the operation and management of such Reserve has been found deficient and uncorrected or the research conducted is not consistent with the Estuarine Research Guidelines referenced in §921.51. In addition, Federal funds for the acquisition of a multiple-site Reserve remain limited to $5,000,000 (see §921.20). The funding for operation of a multiple-site Reserve is limited to the maximum allowed for any one Reserve per year (see §921.32(c)) and preacquisition funds are limited to $100,000 per Reserve.

§921.11 Site selection and feasibility.

(a) A coastal state may use Federal funds to establish and implement a site selection process which is approved by NOAA.

(b) In addition to the requirements set forth in subpart I, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the biogeographic classification scheme and typology (§921.3);

(2) An identification of the site selection agency and the potential management agency; and

(3) A description of how public participation will be incorporated into the process (see §921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site(s). NOAA has final authority in approving such sites. Site selection shall be guided by the following principles:

(1) The site's contribution to the biogeographical and typological balance of the National Estuarine Research Reserve System. NOAA will give priority consideration to proposals to establish Reserves in biogeographic regions or subregions or incorporating types that

are not represented in the system. (see the biogeographic classification scheme and typology set forth in § 921.3 and appendices I and II);

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site must be a representative estuarine ecosystem and should, to the maximum extent possible, be an estuarine ecosystem minimally affected by human activity or influence (see § 921.1(e)).

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. Reserve boundaries must encompass the area within which adequate control has or will be established by the managing entity over human activities occurring within the Reserve. Generally, Reserve boundaries will encompass two areas: Key land and water areas (or ''core area'') and a buffer zone. Key land and water areas and a buffer zone will likely require significantly different levels of control (see § 921.13(a)(7)). The term ''key land and water areas'' refers to that core area within the Reserve that is so vital to the functioning of the estuarine ecosystem that it must be under a level of control sufficient to ensure the long-term viability of the Reserve for research on natural processes. Key land and water areas, which comprise the core area, are those ecological units of a natural estuarine system which preserve, for research purposes, a full range of significant physical, chemical and biological factors contributing to the diversity of fauna, flora and natural processes occurring within the estuary. The determination of which land and water areas are ''key'' to a particular Reserve must be based on specific scientific knowledge of the area. A basic principle to follow when deciding upon key land and water areas is that they should encompass resources representative of the total ecosystem, and which if compromised could endanger the research objectives of the Reserve. The term ''buffer zone'' refers to an area adjacent to or surrounding key land and water areas and essential to their integrity. Buffer zones protect the core area and provide additional protection for estuarine-dependent species, including those that are rare or endangered. When determined appropriate by the state and approved by NOAA, the buffer zone may also include an area necessary for facilities required for research and interpretation. Additionally, buffer zones should be established sufficient to accommodate a shift of the core area as a result of biological, ecological or geomorphological change which reasonably could be expected to occur. National Estuarine Research Reserves may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced. However, NOAA will not approve a site for potential National Estuarine Research Reserve status that is dependent primarily upon the inclusion of currently protected Federal lands in order to meet the requirements for Reserve status (such as key land and water areas). Such lands generally will be included within a Reserve to serve as a buffer or for other ancillary purposes; and may be included, subject to NOAA approval, as a limited portion of the core area;

(4) The site's suitability for long-term estuarine research, including ecological factors and proximity to existing research facilities and educational institutions;

(5) The site's compatibility with existing and potential land and water uses in contiguous areas as well as approved coastal and estuarine management plans; and

(6) The site's importance to education and interpretive efforts, consistent with the need for continued protection of the natural system.

(d) Early in the site selection process the state must seek the views of affected landowners, local governments, other state and Federal agencies and other parties who are interested in the area(s) being considered for selection as a potential National Estuarine Research Reserve. After the local government(s) and affected landowner(s) have been contacted, at least one public

meeting shall be held in the vicinity of the proposed site. Notice of such a meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal newspaper at least 15 days prior to the date of the meeting and by NOAA in the FEDERAL REGISTER.

(e) A state request for NOAA approval of a proposed site (or sites in the case of a multi-site Reserve) must contain a description of the proposed site(s) in relationship to each of the site selection principals (§921.11(c)) and the following information:

(1) An analysis of the proposed site(s) based on the biogeographical scheme/typology discussed in §921.3 and set forth in appendices I and II;

(2) A description of the proposed site(s) and its (their) major resources, including location, proposed boundaries, and adjacent land uses. Maps are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted. Copies of all correspondence, including contact letters to all affected landowners must be appended;

(4) A list of all sites considered and a brief statement of the reasons why a site was not preferred; and

(5) A nomination of the proposed site(s) for designation as a National Estuarine Research Reserve by the Governor of the coastal state in which the state is located.

(f) A state proposing to reactivate an inactive site, previously approved by NOAA for development as an Estuarine Sanctuary or Reserve, may apply for those funds remaining, if any, provided for site selection and feasibility (§921.11a)) to determine the feasibility of reactivation. This feasibility study must comply with the requirements set forth in §921.11(c) through (e).

§921.12 Post site selection.

(a) At the time of the coastal state's request for NOAA approval of a proposed site, the state may submit a request for funds to develop the draft management plan and for preparation of the EIS. At this time, the state may also submit a request for the remainder of the predesignation funds to perform a limited basic characterization of the physical, chemical and biological characteristics of the site approved by NOAA necessary for providing EIS information to NOAA. The state's request for these post site selection funds must be accompanied by the information specified in subpart I and, for draft management plan development and EIS information collection, the following programmatic information:

(1) A draft management plan outline (see §921.13(a) below); and

(2) An outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state role in Reserve management during the initial period of Federal funding and expressing the state's long-term commitment to operate and manage the Reserve.

(b) The state is eligible to use the funds referenced in §921.12(a) after the proposed site is approved by NOAA under the terms of §921.11.

§921.13 Management plan and environmental impact statement development.

(a) After NOAA approves the state's proposed site and application for funds submitted pursuant to §921.12, the state may begin draft management plan development and the collection of information necessary for the preparation by NOAA of an EIS. The state shall develop a draft management plan, including an MOU. The plan shall set out in detail:

(1) Reserve goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) An administrative plan including staff roles in administration, research, education/interpretation, and surveillance and enforcement;

(3) A research plan, including a monitoring design;

(4) An education/interpretive plan;

(5) A plan for public access to the Reserve;

(6) A construction plan, including a proposed construction schedule, general descriptions of proposed developments and general cost estimates. Information should be provided for proposed minor construction projects in sufficient detail to allow these projects to begin in the initial phase of acquisition and development. A categorical exclusion, environmental assessment, or EIS may be required prior to construction;

(7)(i) An acquisition plan identifying the ecologically key land and water areas of the Reserve, ranking these areas according to their relative importance, and including a strategy for establishing adequate long-term state control over these areas sufficient to provide protection for Reserve resources to ensure a stable environment for research. This plan must include an identification of ownership within the proposed Reserve boundaries, including land already in the public domain; the method(s) of acquisition which the state proposes to use—acquisition (including less-than-fee simple options) to establish adequate long-term state control; an estimate of the fair market value of any property interest—which is proposed for acquisition; a schedule estimating the time required to complete the process of establishing adequate state control of the proposed research reserve; and a discussion of any anticipated problems. In selecting a preferred method(s) for establishing adequate state control over areas within the proposed boundaries of the Reserve, the state shall perform the following steps for each parcel determined to be part of the key land and water areas (control over which is necessary to protect the integrity of the Reserve for research purposes), and for those parcels required for research and interpretive support facilities or buffer purposes:

(A) Determine, with appropriate justification, the minimum level of control(s) required [*e.g.,* management agreement, regulation, less-than-fee simple property interest (*e.g.,* conservation easement), fee simple property acquisition, or a combination of these approaches]. This does not preclude the future necessity of increasing the level of state control;

(B) Identify the level of existing state control(s);

(C) Identify the level of additional state control(s), if any, necessary to meet the minimum requirements identified in paragraph (a)(7)(i)(A) of this section;

(D) Examine all reasonable alternatives for attaining the level of control identified in paragraph (a)(7)(i)(C) of this section, and perform a cost analysis of each; and

(E) Rank, in order of cost, the methods (including acquisition) identified in paragraph (a)(7)(i)(D) of this section.

(ii) An assessment of the relative cost-effectiveness of control alternatives shall include a reasonable estimate of both short-term costs (*e.g.,* acquisition of property interests, regulatory program development including associated enforcement costs, negotiation, adjudication, etc.) and long-term costs (*e.g.,* monitoring, enforcement, adjudication, management and coordination). In selecting a preferred method(s) for establishing adequate state control over each parcel examined under the process described above, the state shall give priority consideration to the least costly method(s) of attaining the minimum level of long-term control required. Generally, with the possible exception of buffer areas required for support facilities, the level of control(s) required for buffer areas will be considerably less than that required for key land and water areas. This acquisition plan, after receiving the approval of NOAA, shall serve as a guide for negotiations with landowners. A final boundary for the reserve shall be delineated as a part of the final management plan;

(8) A resource protection plan detailing applicable authorities, including allowable uses, uses requiring a permit and permit requirements, any restrictions on use of the research reserve, and a strategy for research reserve surveillance and enforcement of such use restrictions, including appropriate government enforcement agencies;

(9) If applicable, a restoration plan describing those portions of the site that may require habitat modification to restore natural conditions;

(10) If applicable, a resource manipulation plan, describing those portions

of the Reserve buffer in which long-term pre-existing (prior to designation) manipulation for reasons not related to research or restoration is occurring. The plan shall explain in detail the nature of such activities, shall justify why such manipulation should be permitted to continue within the reserve buffer; and shall describe possible effects of this manipulation on key land and water areas and their resources;

(11) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the National Estuarine Research Reserve, and expressing a long-term commitment by the state to maintain and manage the Reserve in accordance with section 315 of the Act, 16 U.S.C. 1461, and applicable regulations. In conjunction with the MOU, and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection and operation of the National Estuarine Research Reserve. If other MOUs are necessary (such as with a Federal agency, another state agency or private organization), drafts of such MOUs must be included in the plan. All necessary MOU's shall be signed prior to Reserve designation; and

(12) If the state has a federally approved coastal management program, a certification that the National Estuarine Research Reserve is consistent to the maximum extent practicable with that program. See §921.4(b) and §921.30(b).

(b) Regarding the preparation of an EIS under the National Environmental Policy Act on a National Estuarine Research Reserve proposal, the state and NOAA shall collect all necessary information concerning the socioeconomic and environmental impacts associated with implementing the draft management plan and feasible alternatives to the plan. Based on this information, the state will draft and provide NOAA with a preliminary EIS.

(c) Early in the development of the draft management plan and the draft EIS, the state and NOAA shall hold a scoping meeting (pursuant to NEPA) in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action. NOAA will publish a notice of the meeting in the FEDERAL REGISTER at least 15 days prior to the meeting. The state shall be responsible for publishing a similar notice in the local media.

(d) NOAA will publish a FEDERAL REGISTER notice of intent to prepare a draft EIS. After the draft EIS is prepared and filed with the Environmental Protection Agency (EPA), a Notice of Availability of the draft EIS will appear in the FEDERAL REGISTER. Not less than 30 days after publication of the notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed national estuarine research reserve. The hearing will be held no sooner than 15 days after appropriate notice of the meeting has been given in the principal news media by the state and in the FEDERAL REGISTER by NOAA. After a 45-day comment period, a final EIS will be prepared by the state and NOAA.

Subpart C—Acquisition, Development and Preparation of the Final Management Plan

§921.20 General.

The acquisition and development period is separated into two major phases. After NOAA approval of the site, draft management plan and draft MOU, and completion of the final EIS, a coastal state is eligible for an initial acquisition and development award(s). In this initial phase, the state should work to meet the criteria required for formal research reserve designation; *e.g.*, establishing adequate state control over the key land and water areas as specified in the draft management plan and preparing the final management plan. These requirements are specified in §921.30. Minor construction in accordance with the draft management plan may also be conducted during this initial phase. The initial acquisition and development phase is expected to last no longer than three years. If necessary, a longer time period may be negotiated between the state and NOAA. After Reserve designation, a state is eligible for a supplemental acquisition and development award(s) in accordance with §921.31. In

this post-designation acquisition and development phase, funds may be used in accordance with the final management plan to construct research and educational facilities, complete any remaining land acquisition, for program development, and for restorative activities identified in the final management plan. In any case, the amount of Federal financial assistance provided to a coastal state with respect to the acquisition of lands and waters, or interests therein, for any one National Estuarine Research Reserve may not exceed an amount equal to 50 per cent of the costs of the lands, waters, and interests therein or $5,000,000, whichever amount is less.

§ 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient prior to designation in:

(1) Acquiring a fee simple or less-than-fee simple real property interest in land and water areas to be included in the Reserve boundaries (see § 921.13(a)(7); § 921.30(d));

(2) Minor construction, as provided in paragraphs (b) and (c) of this section;

(3) Preparing the final management plan; and

(4) Initial management costs, *e.g.*, for implementing the NOAA approved draft management plan, hiring a Reserve manager and other staff as necessary and for other management-related activities. Application procedures are specified in subpart I.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. The preparation of architectural and engineering plans, including specifications, for any proposed construction, or for proposed restorative activities, is permitted. In addition, minor construction activities, consistent with paragraph (c) of this section also are allowed. The NOAA-approved draft management plan must, however, include a construction plan and a public access plan before any award funds can be spent on construction activities.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted during the initial acquisition and development phase. No more than five (5) percent of the initial acquisition and development award may be expended on such activities. NOAA must make a specific determination, based on the final EIS, that the construction activity will not be detrimental to the environment.

(d) Except as specifically provided in paragraphs (a) through (c) of this section, construction projects, to be funded in whole or in part under an acquisition and development award(s), may not be initiated until the Reserve receives formal designation (see § 921.30). This requirement has been adopted to ensure that substantial progress in establishing adequate state control over key land and water areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in establishing adequate state control/acquisition has been made, as defined by the state in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

(e) For any real property acquired in whole or part with Federal funds for the Reserve, the state shall execute suitable title documents to include substantially the following provisions, or otherwise append the following provisions in a manner acceptable under applicable state law to the official land record(s):

(1) Title to the property conveyed by this deed shall vest in the [recipient of the award granted pursuant to section 315 of the Act, 16 U.S.C. 1461 or other NOAA approved state agency] subject to the condition that the designation of the [name of National Estuarine Reserve] is not withdrawn and the property remains part of the federally designated [name of National Estuarine Research Reserve]; and

(2) In the event that the property is no longer included as part of the Reserve, or if the designation of the Reserve of which it is part is withdrawn, then NOAA or its successor agency, after full and reasonable consultation with the State, may exercise the following rights regarding the disposition of the property:

(i) The recipient may retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property;

(ii) If the recipient does not elect to retain title, the Federal Government may either direct the recipient to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (after deducting actual and reasonable selling and repair or renovation expenses, if any, from the sale proceeds), or direct the recipient to transfer title to the Federal Government. If directed to transfer title to the Federal Government, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the original project to the current fair market value of the property; and

(iii) Fair market value of the property must be determined by an independent appraiser and certified by a responsible official of the state, as provided by Department of Commerce regulations at 15 CFR part 24, and Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally assisted programs at 15 CFR part 11.

(f) Upon instruction by NOAA, provisions analogous to those of §921.21(e) shall be included in the documentation underlying less-then-fee-simple interests acquired in whole or part with Federal funds.

(g) Federal funds or non-Federal matching share funds shall not be spent to acquire a real property interest in which the state will own the land concurrently with another entity unless the property interest has been identified as a part of an acquisition strategy pursuant to §921.13(7) which has been approved by NOAA prior to the effective date of these regulations.

(h) Prior to submitting the final management plan to NOAA for review and approval, the state shall hold a public meeting to receive comment on the plan in the area affected by the estuarine research reserve. NOAA will publish a notice of the meeting in the FEDERAL REGISTER at least 15 days prior to the public meeting. The state shall be responsible for having a similar notice published in the local newspaper(s).

Subpart D—Reserve Designation and Subsequent Operation

§921.30 Designation of National Estuarine Research Reserves.

(a) The Under Secretary may designate an area proposed for designation by the Governor of the state in which it is located, as a National Esturaine Research Reserve if the Under Secretary finds:

(1) The area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(2) Key land and water areas of the proposed Reserve, as identified in the management plan, are under adequate state control sufficient to provide long-term protection for reserve resources to ensure a stable environment for research;

(3) Designation of the area as a Reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation;

(4) A final management plan has been approved by NOAA;

(5) An MOU has been signed between the state and NOAA ensuring a long-term commitment by the state to the effective operation and implementation of the area as a National Estuarine Research Reserve;

(6) All MOU's necessary for reserve management (*i.e.*, with relevant Federal, state, and local agencies and/or private organizations) have been signed; and

(7) The coastal state in which the area is located has complied with the requirements of subpart B.

(b) NOAA will determine whether the designation of a National Estuarine Research Reserve in a state with a federally approved coastal zone management program directly affects the coastal zone. If the designation is found to directly affect the coastal

zone, NOAA will make a consistency determination pursuant to § 307(c)(1) of the Act, 16 U.S.C. 1456, and 15 CFR part 930, subpart C. See § 921.4(b). The results of this consistency determination will be published in the FEDERAL REGISTER when the notice of designation is published. See § 921.30(c).

(c) NOAA will publish the notice of designation of a National Estuarine Research Reserve in the FEDERAL REGISTER. The state shall be responsible for having a similar notice published in the local media.

(d) The term ''state control'' in § 921.30(a)(3) does not necessarily require that key land and water areas be owned by the state in fee simple. Acquisition of less-than-fee simple interests (*e.g.*, conservation easements) and utilization of existing state regulatory measures are encouraged where the state can demonstrate that these interests and measures assure adequate long-term state control consistent with the purposes of the research reserve (see also § 921.13(a)(7); § 921.21(g)). Should the state later elect to purchase an interest in such lands using NOAA funds, adequate justification as to the need for such acquisition must be provided to NOAA.

§ 921.31 Supplemental acquisition and development awards.

After National Estuarine Research Reserve designation, and as specified in the approved management plan, a coastal state may request a supplemental acquisition and/or development award(s) for acquiring additional property interests identified in the management plan as necessary to strengthen protection of key land and water areas and to enhance long-term protection of the area for research and education, for facility and exhibit construction, for restorative activities identified in the approved management plan, for administrative purposes related to acquisition and/or facility construction and to develop and/or upgrade research, monitoring and education/interpretive programs. Federal financial assistance provided to a National Estuarine Research Reserve for supplemental development costs directly associated with facility construction (*i.e.*, major construction activities) may not exceed 70 percent of the total project cost. NOAA must make a specific determination that the construction activity will not be detrimental to the environment. Acquisition awards for the acquisition of lands or waters, or interests therein, for any one reserve may not exceed an amount equal to 50 per centum of the cost of the lands, waters, and interests therein or $5,000,000, whichever amount is less. In the case of a biogeographic region (see Appendix I) shared by two or more states, each state is eligible independently for Federal financial assistance to establish a separate National Estuarine Research Reserve within their respective portion of the shared biogeographic region. Application procedures are specified in subpart I. Land acquisition must follow the procedures specified in § 921.13(a)(7), § 921.21(e) and (f) and § 921.81.

§ 921.32 Operation and management: Implementation of the management plan.

(a) After the Reserve is formally designated, a coastal state is eligible to receive Federal funds to assist the state in the operation and management of the Reserve including the management of research, monitoring, education, and interpretive programs. The purpose of this Federally funded operation and management phase is to implement the approved final management plan and to take the necessary steps to ensure the continued effective operation of the Reserve.

(b) State operation and management of the Reserves shall be consistent with the mission, and shall further the goals of the National Estuarine Research Reserve program (see § 921.1).

(c) Federal funds are available for the operation and management of the Reserve. Federal funds provided pursuant to this section may not exceed 70% of the total cost of operating and managing the Reserve for any one year. In the case of a biogeographic region (see Appendix I) shared by two or more states, each state is eligible for Federal financial assistance to establish a separate Reserve within their respective portion of the shared biogeographic region (see § 921.10).

(d) Operation and management funds are subject to the following limitations:

(1) Eligible coastal state agencies may apply for up to the maximum share available per Reserve for that fiscal year. Share amounts will be announced annually by letter from the Sanctuary and Reserves Division to all participating states. This letter will be provided as soon as practicable following approval of the Federal budget for that fiscal year.

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities.

§921.33 Boundary changes, amendments to the management plan, and addition of multiple-site components.

(a) Changes in the boundary of a Reserve and major changes to the final management plan, including state laws or regulations promulgated specifically for the Reserve, may be made only after written approval by NOAA. NOAA may require public notice, including notice in the FEDERAL REGISTER and an opportunity for public comment before approving a boundary or management plan change. Changes in the boundary of a Reserve involving the acquisition of properties not listed in the management plan or final EIS require public notice and the opportunity for comment; in certain cases, a categorical exclusion, an environmental assessment and possibly an environmental impact statement may be required. NOAA will place a notice in the FEDERAL REGISTER of any proposed changes in Reserve boundaries or proposed major changes to the final management plan. The state shall be responsible for publishing an equivalent notice in the local media. See also requirements of §921.4(b) and §921.13(a)(11).

(b) As discussed in §921.10(b), a state may choose to develop a multiple-site National Estuarine Research Reserve after the initial acquisition and development award for a single site has been made. NOAA will publish notice of the proposed new site including an invitation for comments from the public in the FEDERAL REGISTER. The state shall be responsible for publishing an equivalent notice in the local newspaper(s). An EIS, if required, shall be prepared in accordance with section §921.13 and shall include an administrative framework for the multiple-site Reserve and a description of the complementary research and educational programs within the Reserve. If NOAA determines, based on the scope of the project and the issues associated with the additional site(s), that an environmental assessment is sufficient to establish a multiple-site Reserve, then the state shall develop a revised management plan which, concerning the additional component, incorporates each of the elements described in §921.13(a). The revised management plan shall address goals and objectives for all components of the multi-site Reserve and the additional component's relationship to the original site(s).

(c) The state shall revise the management plan for a Reserve at least every five years, or more often if necessary. Management plan revisions are subject to (a) above.

(d) NOAA will approve boundary changes, amendments to management plans, or the addition of multiple-site components, by notice in the FEDERAL REGISTER. If necessary NOAA will revise the designation document (findings) for the site.

Subpart E—Ongoing Oversight, Performance Evaluation and Withdrawal of Designation

§921.40 Ongoing oversight and evaluations of designated National Estuarine Research Reserves.

(a) The Sanctuaries and Reserve Division shall conduct, in accordance with section 312 of the Act and procedures set forth in 15 CFR part 928, ongoing oversight and evaluations of Reserves. Interim sanctions may be imposed in accordance with regulations promulgated under 15 CFR part 928.

(b) The Assistant Administrator may consider the following indicators of non-adherence in determining whether to invoke interim sanctions:

(1) Inadequate implementation of required staff roles in administration, research, education/interpretation, and

surveillance and enforcement. Indicators of inadequate implementation could include: No Reserve Manager, or no staff or insufficient staff to carry out the required functions.

(2) Inadequate implementation of the required research plan, including the monitoring design. Indicators of inadequate implementation could include: Not carrying out research or monitoring that is required by the plan, or carrying out research or monitoring that is inconsistent with the plan.

(3) Inadequate implementation of the required education/interpretation plan. Indicators of inadequate implementation could include: Not carrying out education or interpretation that is required by the plan, or carrying out education/interpretation that is inconsistent with the plan.

(4) Inadequate implementation of public access to the Reserve. Indicators of inadequate implementation of public access could include: Not providing necessary access, giving full consideration to the need to keep some areas off limits to the public in order to protect fragile resources.

(5) Inadequate implementation of facility development plan. Indicators of inadequate implementation could include: Not taking action to propose and budget for necessary facilities, or not undertaking necessary construction in a timely manner when funds are available.

(6) Inadequate implementation of acquisition plan. Indicators of inadequate implementation could include: Not pursuing an aggressive acquisition program with all available funds for that purpose, not requesting promptly additional funds when necessary, and evidence that adequate long-term state control has not been established over some core or buffer areas, thus jeopardizing the ability to protect the Reserve site and resources from offsite impacts.

(7) Inadequate implementation of Reserve protection plan. Indicators of inadequate implementation could include: Evidence of non-compliance with Reserve restrictions, insufficient surveillance and enforcement to assure that restrictions on use of the Reserve are adhered to, or evidence that Reserve resources are being damaged or destroyed as a result of the above.

(8) Failure to carry out the terms of the signed Memorandum of Understanding (MOU) between the state and NOAA, which establishes a long-term state commitment to maintain and manage the Reserve in accordance with section 315 of the Act. Indicators of failure could include: State action to allow incompatible uses of state-controlled lands or waters in the Reserve, failure of the state to bear its fair share of costs associated with long-term operation and management of the Reserve, or failure to initiate timely updates of the MOU when necessary.

§ 921.41 Withdrawal of designation.

The Assistant Administrator may withdraw designation of an estuarine area as a National Estuarine Research Reserve pursuant to and in accordance with the procedures of section 312 and 315 of the Act and regulations promulgated thereunder.

Subpart F—Special Research Projects

§ 921.50 General.

(a) To stimulate high quality research within designated National Estuarine Research Reserves, NOAA may provide financial support for research projects which are consistent with the Estuarine Research Guidelines referenced in § 921.51. Research awards may be awarded under this subpart to only those designated Reserves with approved final management plans. Although research may be conducted within the immediate watershed of the Reserve, the majority of research activities of any single research project funded under this subpart may be conducted within Reserve boundaries. Funds provided under this subpart are primarily used to support management-related research projects that will enhance scientific understanding of the Reserve ecosystem, provide information needed by Reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues. Special research projects may be oriented to specific Reserves; however, research projects that would benefit more than one Reserve in the

National Estuarine Reserve Research System are encouraged.

(b) Funds provided under this subpart are available on a competitive basis to any coastal state or qualified public or private person. A notice of available funds will be published in the FEDERAL REGISTER. Special research project funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with §921.81(e)(4) (''allowable costs'').

§921.51 Estuarine research guidelines.

(a) Research within the National Estuarine Research Reserve System shall be conducted in a manner consistent with Estuarine Research Guidelines developed by NOAA.

(b) A summary of the Estuarine Research Guidelines is published in the FEDERAL REGISTER as a part of the notice of available funds discussed in §921.50(c).

(c) The Estuarine Research Guidelines are reviewed annually by NOAA. This review will include an opportunity for comment by the estuarine research community.

§921.52 Promotion and coordination of estuarine research.

(a) NOAA will promote and coordinate the use of the National Estuarine Research Reserve System for research purposes.

(b) NOAA will, in conducting or supporting estuarine research other than that authorized under section 315 of the Act, give priority consideration to research that make use of the National Estuarine Research Reserve System.

(c) NOAA will consult with other Federal and state agencies to promote use of one or more research reserves within the National Estuarine Research Reserve System when such agencies conduct estuarine research.

Subpart G—Special Monitoring Projects

§921.60 General.

(a) To provide a systematic basis for developing a high quality estuarine resource and ecosystem information base for National Estuarine Research Reserves and, as a result, for the System, NOAA may provide financial support for basic monitoring programs as part of operations and management under §921.32. Monitoring funds are used to support three major phases of a monitoring program: (1) Studies necessary to collect data for a comprehensive site description/characterization; (2) development of a site profile; and (3) formulation and implementation of a monitoring program.

(b) Additional monitoring funds may be available on a competitive basis to the state agency responsible for Reserve management or a qualified public or private person or entity. However, if the applicant is other than the managing entity of a Reserve that applicant must submit as a part of the application a letter from the Reserve manager indicating formal support of the application by the managing entity of the Reserve. Funds provided under this subpart for special monitoring projects are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with §921.81(e)(4) (''allowable costs'').

(c) Monitoring projects funded under this subpart must focus on the resources within the boundaries of the Reserve and must be consistent with the applicable sections of the Estuarine Research Guidelines referenced in §921.51. Portions of the project may occur within the immediate watershed of the Reserve beyond the site boundaries. However, the monitoring proposal must demonstrate why this is necessary for the success of the project.

Subpart H—Special Interpretation and Education Projects

§921.70 General.

(a) To stimulate the development of innovative or creative interpretive and educational projects and materials to enhance public awareness and understanding of estuarine areas, NOAA may fund special interpretive and educational projects in addition to those activities provided for in operations and management under §921.32. Special

interpretive and educational awards may be awarded under this subpart to only those designated Reserves with approved final management plans.

(b) Funds provided under this subpart may be available on a competitive basis to any state agency. However, if the applicant is other than the managing entity of a Reserve, that applicant must submit as a part of the application a letter from the Reserve manager indicating formal support of the application by the managing entity of the Reserve. These funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) (''allowable costs'').

(c) Applicants for education/interpretive projects that NOAA determines benefit the entire National Estuarine Research Reserve System may receive Federal assistance of up to 100% of project costs.

Subpart I—General Financial Assistance Provisions

§ 921.80 Application information.

(a) Only a coastal state may apply for Federal financial assistance awards for preacquisition, acquisition and development, operation and management, and special education and interpretation projects under subpart H. Any coastal state or public or private person may apply for Federal financial assistance awards for special estuarine research or monitoring projects under subpart G. The announcement of opportunities to conduct research in the System appears on an annual basis in the FEDERAL REGISTER. If a state is participating in the national Coastal Zone Management Program, the applicant for an award under section 315 of the Act shall notify the state coastal management agency regarding the application.

(b) An original and two copies of the formal application must be submitted at least 120 working days prior to the proposed beginning of the project to the following address: Sanctuaries and Reserves Division Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235. Application for Federal Assistance Standard Form 424 (Non-construction Program) constitutes the formal application for site selection, post-site selection, operation and management, research, and education and interpretive awards. The Application for Federal Financial Assistance Standard Form 424 (Construction Program) constitutes the formal application for land acquisition and development awards. The application must be accompanied by the information required in subpart B (predesignation), subpart C and § 921.31 (acquisition and development), and § 921.32 (operation and management) as applicable. Applications for development awards for construction projects, or restorative activities involving construction, must include a preliminary engineering report, a detailed construction plan, a site plan, a budget and categorical exclusion check list or environmental assessment. All applications must contain back up data for budget estimates (Federal and non-Federal shares), and evidence that the application complies with the Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Written approval from NOAA of the draft management plan for initial acquisition and development award(s); and

(3) A preliminary engineering report for construction activities.

§ 921.81 Allowable costs.

(a) Allowable costs will be determined in accordance with applicable OMB Circulars and guidance for Federal financial assistance, the financial assistant agreement, these regulations, and other Department of Commerce and NOAA directives. The term ''costs'' applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the award period.

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) General guidelines for the non-Federal share are contained in Department of Commerce Regulations at 15 CFR part 24 and OMB Circular A–110. Copies of Circular A–110 can be obtained from the Sanctuaries and Reserves Division; 1825 Connecticut Avenue, NW., suite 714; Washington, DC 20235. The following may be used in satisfying the matching requirement:

(1) *Site selection and post site selection awards.* Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) *Acquisition and development awards.* Cash and in-kind contributions are allowable. In general, the fair market value of lands to be included within the Reserve boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. However, the fair market value of real property allowable as match is limited to the fair market value of a real property interest equivalent to, or required to attain, the level of control over such land(s) identified by the state and approved by the Federal Government as that necessary for the protection and management of the National Estuarine Research Reserve. Appraisals must be performed according to Federal appraisal standards as detailed in Department of Commerce regulations at 15 CFR part 24 and the Uniform Relocation Assistance and Real Property Acquisition for Federal land Federally assisted programs in 15 CFR part 11. The fair market value of privately donated land, at the time of donation, as established by an independent appraiser and certified by a responsible official of the state, pursuant to 15 CFR part 11, may also be used as match. Land, including submerged lands already in the state's possession, may be used as match to establish a National Estuarine Research Reserve. The value of match for these state lands will be calculated by determining the value of the benefits foregone by the state, in the use of the land, as a result of new restrictions that may be imposed by Reserve designation. The appraisal of the benefits foregone must be made by an independent appraiser in accordance with Federal appraisal standards pursuant to 15 CFR part 24 and 15 CFR part 11. A state may initially use as match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the National Estuarine Research Reserve (see also §921.20). Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match.

(3) *Operation and management awards.* Generally, cash and in-kind contributions (directly benefiting and specifically identifiable to operations and management), except land, are allowable.

(4) *Research, monitoring, education and interpretive awards.* Cash and in-kind contributions (directly benefiting and specifically identifiable to the scope of work), except land, are allowable.

§921.82 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revisions of the approved project budget or original scope of work, or extension of the performance period must be submitted to NOAA on Standard Form 424 and approved in writing.

APPENDIX I TO PART 921—BIOGEOGRAPHIC CLASSIFICATION SCHEME

Acadian

1. Northern of Maine (Eastport to the Sheepscot River.)
2. Southern Gulf of Maine (Sheepscot River to Cape Cod.)

Virginian

3. Southern New England (Cape Cod to Sandy Hook.)
4. Middle Atlantic (Sandy Hook to Cape Hatteras.)
5. Chesapeake Bay.

Carolinian

6. North Carolinas (Cape Hatteras to Santee River.)
7. South Atlantic (Santee River to St. John's River.)

8. East Florida (St. John's River to Cape Canaveral.)

West Indian

9. Caribbean (Cape Canaveral to Ft. Jefferson and south.)
10. West Florida (Ft. Jefferson to Cedar Key.)

Louisianian

11. Panhandle Coast (Cedar Key to Mobile Bay.)
12. Mississippi Delta (Mobile Bay to Galveston.)
13. Western Gulf (Galveston to Mexican border.)

Californian

14. Southern California (Mexican border to Point Conception.)
15. Central California (Point Conception to Cape Mendocino.)
16. San Francisco Bay.

Columbian

17. Middle Pacific (Cape Mendocino to the Columbia River.)
18. Washington Coast (Columbia River to Vancouver Island.)
19. Puget Sound.

Great Lakes

20. Lake Superior (including St. Mary's River.)
21. Lakes Michigan and Huron (including Straits of Mackinac, St. Clair River, and Lake St. Clair.)
22. Lake Erie (including Detroit River and Niagara Falls.)
23. Lake Ontario (including St. Lawrence River.)

Fjord

24. Southern Alaska (Prince of Wales Island to Cook Inlet.)
25. Aleutian Island (Cook Inlet Bristol Bay.)

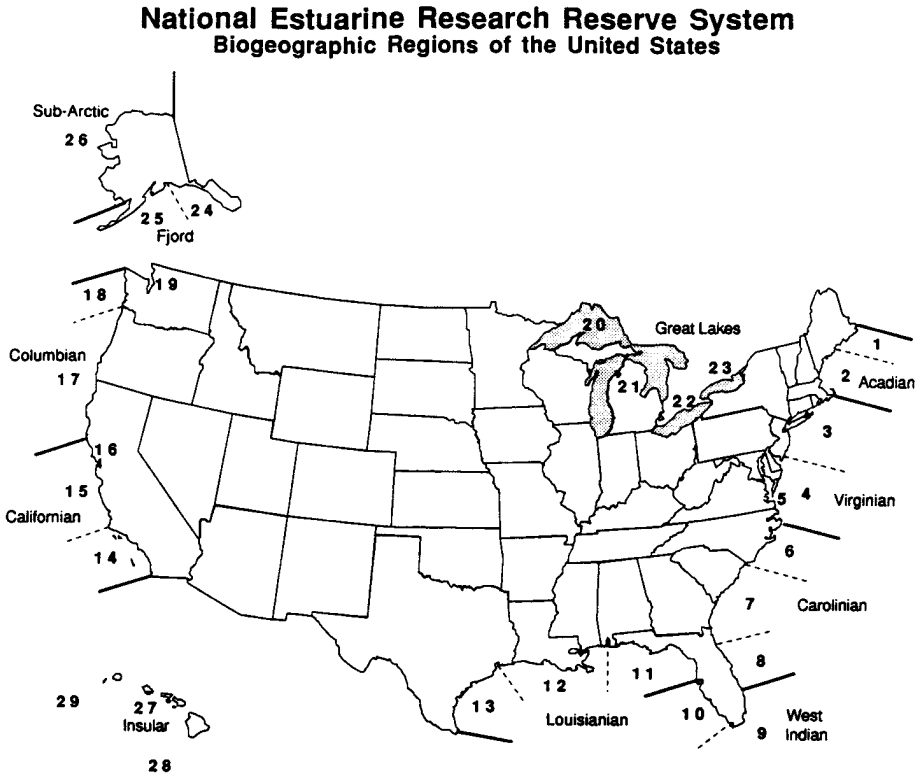
Sub-Arctic

26. Northern Alaska (Bristol Bay to Damarcation Point.)

Insular

27. Hawaiian Islands.
28. Western Pacific Island.
29. Eastern Pacific Island.

FIGURE 1


National Estuarine Research Reserve System
Biogeographic Regions of the United States
Sub-Arctic
26
25
24
Fjord
18
19
Columbian
17
16
15
Californian
14
20
Great Lakes
21
22
23
1
2
Acadian
3
5
4
Virginian
6
7
Carolinian
8
11
12
13
Louisianian
10
9
West
Indian
29
27
Insular
28

APPENDIX II TO PART 921—TYPOLOGY OF NATIONAL ESTUARINE RESEARCH RESERVES

This typology system reflects significant differences in estuarine characteristics that are not necessarily related to regional location. The purpose of this type of classification is to maximize ecosystem variety in the selection of national estuarine reserves. Priority will be given to important ecosystem types as yet unrepresented in the reserve system. It should be noted that any one site may represent several ecosystem types or physical characteristics.

Class I—Ecosystem Types

Group I—Shorelands

A. Maritime Forest-Woodland. That have developed under the influence of salt spray. It can be found on coastal uplands or recent features such as barrier islands and beaches, and may be divided into the following biomes:

1. Northern coniferous forest biome: This is an area of predominantly evergreens such as the sitka spruce (Picea), grand fir (Abies), and white cedar (Thuja), with poor development of the shrub and herb leyera, but high annual productivity and pronounced seasonal periodicity.

2. Moist temperate (Mesothermal) coniferous forest biome: Found along the west coast of North America from California to Alaska, this area is dominated by conifers, has relatively small seasonal range, high humidity with rainfall ranging from 30 to 150 inches, and a well-developed understory of vegetation with an abundance of mosses and other moisture-tolerant plants.

3. Temperate deciduous forest biome: This biome is characterized by abundant, evenly distributed rainfall, moderate temperatures which exhibit a distinct seasonal pattern, well-developed soil biota and herb and shrub layers, and numerous plants which produce pulpy fruits and nuts. A distinct subdivision of this biome is the pine edible forest of the southeastern coastal plain, in which only a small portion of the area is occupied by climax vegetation, although it has large areas covered by edaphic climax pines.

4. Broad-leaved evergreen subtropical forest biome: The main characteristic of this biome is high moisture with less pronounced differences between winter and summer. Examples are the hammocks of Florida and the live oak forests of the Gulf and South Atlantic coasts. Floral dominants include pines, magnolias, bays, hollies, wild tamarine, strangler fig, gumbo limbo, and palms.

B. Coast shrublands. This is a transitional area between the coastal grasslands and woodlands and is characterized by woody species with multiple stems and a few centimeters to several meters above the ground developing under the influence of salt spray and occasional sand burial. This includes thickets, scrub, scrub savanna, heathlands, and coastal chaparral. There is a great variety of shrubland vegetation exhibiting regional specificity:

1. Northern areas: Characterized by Hudsonia, various erinaceous species, and thickets of Myricu, prunus, and Rosa.

2. Southeast areas: Floral dominants include Myrica, Baccharis, and Iles.

3. Western areas: Adenostoma, arcotyphylos, and eucalyptus are the dominant floral species.

C. Coastal grasslands. This area, which possesses sand dunes and coastal flats, has low rainfall (10 to 30 inches per year) and large amounts of humus in the soil. Ecological succession is slow, resulting in the presence of a number of seral stages of community development. Dominant vegetation includes mid-grasses (5 to 8 feet tall), such as Spartina, and trees such as willow (Salix sp.), cherry (Prunus sp.), and cottonwood (Pupulus deltoides.) This area is divided into four regions with the following typical strand vegetation:

1. Arctic/Boreal: Elymus;
2. Northeast/West: Ammophla;
3. Southeast Gulf: Uniola; and
4. Mid-Atlantic/Gulf: Spartina patens.

D. Coastal tundra. This ecosystem, which is found along the Arctic and Boreal coasts of North America, is characterized by low temperatures, a short growing season, and some permafrost, producing a low, treeless mat community made up of mosses, lichens, heath, shrubs, grasses, sedges, rushes, and herbaceous and dwarf woody plants. Common species include arctic/alpine plants such as Empetrum nigrum and Betula nana, the lichens Cetraria and Cladonia, and herbaceous plants such as Potentilla tridentata and Rubus chamaemorus. Common species on the coastal beach ridges of the high arctic desert include Bryas intergrifolia and Saxifrage oppositifolia. This area can be divided into two main subdivisions:

1. Low tundra: Characterized by a thick, spongy mat of living and undecayed vegetation, often with water and dotted with ponds when not frozen; and

2. High Tundra: A bare area except for a scanty growth of lichens and grasses, with underlaying ice wedges forming raised polygonal areas.

E. Coastal cliffs. This ecosystem is an important nesting site for many sea and shore birds. It consists of communities of herbaceous, graminoid, or low woody plants (shrubs, heath, etc.) on the top or along rocky faces exposed to salt spray. There is a diversity of plant species including mosses, lichens, liverworts, and ''higher'' plant representatives.

Group II—Transition Areas

A. Coastal marshes. These are wetland areas dominated by grasses (Poacea), sedges (Cyperaceae), rushes (Juncaceae), cattails (Typhaceae), and other graminoid species and is subject to periodic flooding by either salt or freshwater. This ecosystem may be subdivided into: (a) Tidal, which is periodically flooded by either salt or brackish water; (b) nontidal (freshwater); or (c) tidal freshwater. These are essential habitats for many important estuarine species of fish and invertebrates as well as shorebirds and waterfowl and serve important roles in shore stabilization, flood control, water purification, and nutrient transport and storage.

B. Coastal swamps. These are wet lowland areas that support mosses and shrubs together with large trees such as cypress or gum.

C. Coastal mangroves. This ecosystem experiences regular flooding on either a daily, monthly, or seasonal basis, has low wave action, and is dominated by a variety of salt-tolerant trees, such as the red mangrove (Rhizophora mangle), black mangrove (Avicennia Nitida), and the white mangrove (Laguncularia racemosa.) It is also an important habitat for large populations of fish, invertebrates, and birds. This type of ecosystem can be found from central Florida to extreme south Texas to the islands of the Western Pacific.

D. Intertidal beaches. This ecosystem has a distinct biota of microscopic animals, bacteria, and unicellular algae along with macroscopic crustaceans, mollusks, and worms with a detritus-based nutrient cycle. This area also includes the driftline communities found at high tide levels on the beach. The dominant organisms in this ecosystem include crustaceans such as the mole crab (Emerita), amphipods (Gammeridae), ghost crabs (Ocypode), and bivalve mollusks such as the coquina (Donax) and surf clams (Spisula and Mactra.)

E. Intertidal mud and sand flats. These areas are composed of unconsolidated, high organic content sediments that function as a short-term storage area for nutrients and organic carbons. Macrophytes are nearly absent in this ecosystem, although it may be heavily colonized by benthic diatoms, dinoflaggellates, filamintous blue-green and green algae, and chaemosynthetic purple sulfur bacteria. This system may support a considerable population of gastropods, bivalves, and polychaetes, and may serve as a feeding area for a variety of fish and wading birds. In sand, the dominant fauna include the wedge shell Donax, the scallop Pecten, tellin shells Tellina, the heart urchin Echinocardium, the lug worm Arenicola, sand dollar Dendraster, and the sea pansy Renilla. In mud, faunal dominants adapted to low oxygen levels include the terebellid Amphitrite, the boring clam Playdon, the deep sea scallop Placopecten, the Quahog Mercenaria, the echiurid worm Urechis, the mud snail Nassarius, and the sea cucumber Thyone.

F. Intertidal algal beds. These are hard substrates along the marine edge that are dominated by macroscopic algae, usually thalloid, but also filamentous or unicellular in growth form. This also includes the rocky coast tidepools that fall within the intertidal zone. Dominant fauna of these areas are barnacles, mussels, periwinkles, anemones, and chitons. Three regions are apparent:

1. Northern latitude rocky shores: It is in this region that the community structure is best developed. The dominant algal species include Chondrus at the low tide level, Fucus and Ascophylium at the mid-tidal level, and Laminaria and other kelplike algae just beyond the intertidal, although they can be exposed at extremely low tides or found in very deep tidepools.

2. Southern latitudes: The communities in this region are reduced in comparison to those of the northern latitudes and possesses algae consisting mostly of single-celled or filamentour green, blue-green, and red algae, and small thalloid brown algae.

3. Tropical and subtropical latitudes: The intertidal in this region is very reduced and contains numerous calcareous algae such as Porolithon and Lithothamnion, as well and green algae with calcareous particles such as Halimeda, and numerous other green, red, and brown algae.

Group III—Submerged Bottoms

A. Subtidal hardbottoms. This system is characterized by a consolidated layer of solid rock or large pieces of rock (neither of biotic origin) and is found in association with geomorphological features such as submarine canyons and fjords and is usually covered with assemblages of sponges, sea fans, bivalves, hard corals, tunicates, and other attached organisms. A significant feature of estuaries in many parts of the world is the oyster reef, a type of subtidal hardbottom. Composed of assemblages of organisms (usually bivalves), it is usually found near an estuary's mouth in a zone of moderate wave action, salt content, and turbidity. If light levels are sufficient, a covering of microscopic and attached macroscopic algae, such as keep, may also be found.

B. Subtidal softbottoms. Major characteristics of this ecosystem are an unconsolidated layer of fine particles of silt, sand, clay, and gravel, high hydrogen sulfide levels, and anaerobic conditions often existing below the surface. Macrophytes are either sparse or absent, although a layer of benthic microalgae may be present if light levels are sufficient. The faunal community is dominated by a diverse population of deposit feeders including polychaetes, bivalves, and burrowing crustaceans.

C. Subtidal plants. This system is found in relatively shallow water (less than 8 to 10 meters) below mean low tide. It is an area of extremely high primary production that provides food and refuge for a diversity of faunal groups, especially juvenile and adult fish, and in some regions, manatees and sea turtles. Along the North Atlantic and Pacific coasts, the seagrass Zostera marina predominates. In the South Atlantic and Gulf coast areas, Thalassia and Diplanthera predominate. The grasses in both areas support a number of epiphytic organisms.

Class II—Physical Characteristics

Group I—Geologic

A. Basin type. Coastal water basins occur in a variety of shapes, sizes, depths, and appearances. The eight basic types discussed below will cover most of the cases:

1. Exposed coast: Solid rock formations or heavy sand deposits characterize exposed ocean shore fronts, which are subject to the full force of ocean storms. The sand beaches are very resilient, although the dunes lying just behind the beaches are fragile and easily damaged. The dunes serve as a sand storage area making them chief stabilizers of the ocean shorefront.

2. Sheltered coast: Sand or coral barriers, built up by natural forces, provide sheltered areas inside a bar or reef where the ecosystem takes on many characteristics of confined waters-abundant marine grasses, shellfish, and juvenile fish. Water movement is reduced, with the consequent effects pollution being more severe in this area than in exposed coastal areas.

3. Bay: Bays are larger confined bodies of water that are open to the sea and receive strong tidal flow. When stratification is pronounced the flushing action is augmented by river discharge. Bays vary in size and in type of shorefront.

4. Embayment: A confined coastal water body with narrow, restricted inlets and with a significant freshwater inflow can be classified as an embayment. These areas have more restricted inlets than bays, are usually smaller and shallower, have low tidal action, and are subject to sedimentation.

5. Tidal river: The lower reach of a coastal river is referred to as a tidal river. The coastal water segment extends from the sea or estuary into which the river discharges to a point as far upstream as there is significant salt content in the water, forming a salt front. A combination of tidal action and freshwater outflow makes tidal rivers well-flushed. The tidal river basin may be a simple channel or a complex of tributaries, small associated embayments, marshfronts, tidal flats, and a variety of others.

6. Lagoon: Lagoons are confined coastal bodies of water with restricted inlets to the sea and without significant freshwater inflow. Water circulation is limited, resulting in a poorly flushed, relatively stagnant body of water. Sedimentation is rapid with a great potential for basin shoaling. Shores are often gently sloping and marshy.

7. Perched coastal wetlands: Unique to Pacific islands, this wetland type found above sea level in volcanic crater remnants forms as a result of poor drainage characteristics of the crater rather than from sedimentation. Floral assemblages exhibit distinct zonation while the faunal constituents may include freshwater, brackish, and/or marine species. EXAMPLE: Aunu's Island, American Samoa.

8. Anchialine systems: These small coastal exposures of brackish water form in lava depressions or elevated fossil reefs have only a subsurface connection in the ocean, but show tidal fluctuations. Differing from true estuaries in having no surface continuity with streams or ocean, this system is characterized by a distinct biotic community dominated by benthis algae such as Rhizoclonium, the mineral encrusting Schiuzothrix, and the vascular plant Ruppia maritima. Characteristic fauna which exhibit a high degree of endemicity, include the mollusks Theosoxus neglectus and Tcariosus. Although found throughout the world, the high islands of the Pacific are the only areas within the U.S. where this system can be found.

B. Basin structure. Estuary basins may result from the drowning of a river valley (coastal plains estuary), the drowning of a glacial valley (fjord), the occurrence of an offshore barrier (bar-bounded estuary), some tectonic process (tectonic estuary), or volcanic activity (volcanic estuary).

1. Coastal plains estuary: Where a drowned valley consists mainly of a single channel, the form of the basin is fairly regular forming a simple coastal plains estuary. When a channel is flooded with numerous tributaries an irregular estuary results. Many estuaries of the eastern United States are of this type.

2. Fjord: Estuaries that form in elongated steep headlands that alternate with deep U-shaped valleys resulting from glacial scouring are called fjords. They generally possess rocky floors or very thin veneers of sediment, with deposition generally being restricted to the head where the main river enters. Compared to total fjord volume river discharge is small. But many fjords have restricted tidal ranges at their mouths due to sills, or upreaching sections of the bottom which limit free movement of water, often making river flow large with respect to the tidal prism. The deepest portions are in the upstream reaches, where maximum depths can range from 800m to 1200m while sill depths usually range from 40m to 150m.

3. Bar-bounded estuary: These result from the development of an offshore barrier such as a beach strand, a line of barrier islands,

reef formations a line of moraine debris, or the subsiding remnants of a deltaic lobe. The basin is often partially exposed at low tide and is enclosed by a chain of offshore bars of barrier islands broken at intervals by inlets. These bars may be either deposited offshore or may be coastal dunes that have become isolated by recent seal level rises.

4. Tectonic estuary: These are coastal indentures that have formed through tectonic processes such as slippage along a fault line (San Francisco Bay), folding or movement of the earth's bedrock often with a large inflow of freshwater.

5. Volcanic estuary: These coastal bodies of open water, a result of volcanic processes are depressions or craters that have direct and/or subsurface connections with the ocean and may or may not have surface continuity with streams. These formations are unique to island areas of volcanic orgin.

C. Inlet type. Inlets in various forms are an integral part of the estuarine environment as they regulate to a certain extent, the velocity and magnitude of tidal exchange, the degree of mixing, and volume of discharge to the sea.

1. Unrestricted: An estuary with a wide unrestricted inlet typically has slow currents, no significant turbulence, and receives the full effect of ocean waves and local disturbances which serve to modify the shoreline. These estuaries are partially mixed, as the open mouth permits the incursion of marine waters to considerable distances upstream, depending on the tidal amplitude and stream gradient.

2. Restricted: Restrictions of estuaries can exist in many forms: Bars, barrier islands, spits, sills, and more. Restricted inlets result in decreased circulation, more pronounced longitudinal and vertical salinity gradients, and more rapid sedimentation. However, if the estuary mouth is restricted by depositional features or land closures, the incoming tide may be held back until it suddenly breaks forth into the basin as a tidal wave, or bore. Such currents exert profound effects on the nature of the subtrate, turbidity, and biota of the estuary.

3. Permanent: Permanent inlets are usually opposite the mouths of major rivers and permit river water to flow into the sea.

4. Temporary (Intermittent): Temporary inlets are formed by storms and frequently shift position, depending on tidal flow, the depth of the sea, and sound waters, the frequency of storms, and the amount of littoral transport.

D. Bottom composition. The bottom composition of estuaries attests to the vigorous, rapid, and complex sedimentation processes characteristic of most coastal regions with low relief. Sediments are derived through the hydrologic processes of erosion, transport, and deposition carried on by the sea and the stream.

1. Sand: Near estuary mouths, where the predominating forces of the sea build spits or other depositional features, the shore and substrates of the estuary are sandy. The bottom sediments in this area are usually coarse, with a graduation toward finer particles in the head region and other zones of reduced flow, fine silty sands are deposited. Sand deposition occurs only in wider or deeper regions where velocity is reduced.

2. Mud: At the base level of a stream near its mouth, the bottom is typically composed of loose muds, silts, and organic detritus as a result of erosion and transport from the upper stream reaches and organic decomposition. Just inside the estuary entrance, the bottom contains considerable quantities of sand and mud, which support a rich fauna. Mud flats, commonly built up in estuarine basins, are composed of loose, coarse, and fine mud and sand, often dividing the original channel.

3. Rock: Rocks usually occur in areas where the stream runs rapidly over a steep gradient with its coarse materials being derived from the higher elevations where the stream slope is greater. The larger fragments are usually found in shallow areas near the stream mouth.

4. Oyster shell: Throughout a major portion of the world, the oyster reef is one of the most significant features of estuaries, usually being found near the mouth of the estuary in a zone of moderate wave action, salt content, and turbidity. It is often a major factor in modifying estuarine current systems and sedimentation, and may occur as an elongated island or peninsula oriented across the main current, or may develop parallel to the direction of the current.

Group II—Hydrographic

A. Circulation. Circulation patterns are the result of combined influences of freshwater inflow, tidal action, wind and oceanic forces, and serve many functions: Nutrient transport, plankton dispersal, ecosystem flushing, salinity control, water mixing, and more.

1. Stratified: This is typical of estuaries with a strong freshwater influx and is commonly found in bays formed from ''drowned'' river valleys, fjords, and other deep basins. There is a net movement of freshwater outward at the top layer and saltwater at the bottom layer, resulting in a net outward transport of surface organisms and net inward transport of bottom organisms.

2. Non-stratified: Estuaries of this type are found where water movement is sluggish and flushing rate is low, although there may be sufficient circulation to provide the basis for a high carrying capacity. This is common to shallow embayments and bays lacking a good supply of freshwater from land drainage.

3. Lagoonal: An estuary of this type is characterized by low rates of water movement resulting from a lack of significant freshwater influx and a lack of strong tidal exchange because of the typically narrow inlet connecting the lagoon to the sea. Circulation whose major driving force is wind, is the major limiting factor in biological productivity within lagoons.

B. Tides. This is the most important ecological factor in an estuary as it affects water exchange and its vertical range determines the extent of tidal flats which may be exposed and submerged with each tidal cycle. Tidal action against the volume of river water discharged into an estuary results in a complex system whose properties vary according to estuary structure as well as the magnitude of river flow and tidal range. Tides are usually described in terms of the cycle and their relative heights. In the United States, tide height is reckoned on the basis of average low tide, which is referred to as datum. The tides, although complex, fall into three main categories:

1. Diurnal: This refers to a daily change in water level that can be observed along the shoreline. There is one high tide and one low tide per day.

2. Semidiurnal: This refers to a twice daily rise and fall in water that can be observed along the shoreline.

3. Wind/Storm tides: This refers to fluctuations in water elevation to wind and storm events, where influence of lunar tides is less.

C. Freshwater. According to nearly all the definitions advanced, it is inherent that all estuaries need freshwater, which is drained from the land and measurably dilutes seawater to create a brackish condition. Freshwater enters an estuary as runoff from the land either from a surface and/or subsurface source.

1. Surface water: This is water flowing over the ground in the form of streams. Local variation in runoff is dependent upon the nature of the soil (porosity and solubility), degree of surface slope, vegetational type and development, local climatic conditions, and volume and intensity of precipitation.

2. Subsurface water: This refers to the precipitation that has been absorbed by the soil and stored below the surface. The distribution of subsurface water depends on local climate, topography, and the porosity and permeability of the underlying soils and rocks. There are two main subtypes of surface water:

a. Vadose water: This is water in the soil above the water table. Its volume with respect to the soil is subject to considerable fluctuation.

b. Groundwater: This is water contained in the rocks below the water table, is usually of more uniform volume than vadose water, and generally follows the topographic relief of the land being high hills and sloping into valleys.

Group III—Chemical

A. Salinity. This reflects a complex mixture of salts, the most abundant being sodium chloride, and is a very critical factor in the distribution and maintenance of many estuarine organisms. Based on salinity, there are two basic estuarine types and eight different salinity zones (expressed in parts per thousand-ppt.)

1. Positive estuary: This is an estuary in which the freshwater influx is sufficient to maintain mixing, resulting in a pattern of increasing salinity toward the estuary mouth. It is characterized by low oxygen concentration in the deeper waters and considerable organic content in bottom sediments.

2. Negative estuary: This is found in particularly arid regions, where estuary evaporation may exceed freshwater inflow, resulting in increased salinity in the upper part of the basin, especially if the estuary mouth is restricted so that tidal flow is inhibited. These are typically very salty (hyperhaline), moderately oxygenated at depth, and possess bottom sediments that are poor in organic content.

3. Salinity zones (expressed in ppt):

a. Hyperhaline—greater than 40 ppt.

b. Euhaline—40 ppt to 30 ppt.

c. Mixhaline—30 ppt to 0.5 ppt.

(1) Mixoeuhaline—greater than 30 ppt but less than the adjacent euhaline sea.

(2) Polyhaline—30 ppt to 18 ppt.

(3) Mesohaline—18 ppt to 5 ppt.

(4) Oligohaline—5 ppt to 0.5 ppt.

d. Limnetic: Less than 0.5 ppt.

B. pH Regime: This is indicative of the mineral richness of estuarine waters and falls into three main categories:

1. Acid: Waters with a pH of less than 5.5.

2. Circumneutral: A condition where the pH ranges from 5.5 to 7.4.

3. Alkaline: Waters with a pH greater than 7.4.

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

SOURCE: 60 FR 66877, Dec. 27, 1995, unless otherwise noted.

Subpart A—General

§ 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D and E apply to all ten National Marine Sanctuaries for which site-specific regulations appear in subparts F through O, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

§ 922.2 Mission, goals, and special policies.

(a) In accordance with the standards set forth in title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, also known as the National Marine Sanctuaries Act (Act) the mission of the National Marine Sanctuary program (Program) is to identify, designate and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

(b) The goals of the Program are to carry out the mission to:

(1) Identify and designate as National Marine Sanctuaries areas of the marine environment which are of special national significance;

(2) Provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

(3) Support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;

(4) Enhance public awareness, understanding, appreciation, and wise use of the marine environment;

(5) Facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

(6) Develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

(7) Create models of, and incentives for, ways to conserve and manage these areas;

(8) Cooperate with global programs encouraging conservation of marine resources; and

(9) Maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.

(c) To the extent consistent with the policies set forth in the Act, in carrying out the Program's mission and goals:

(1) Particular attention will be given to the establishment and management

of marine areas as National Marine Sanctuaries for the protection of the area's natural resource and ecosystem values; particularly for ecologically or economically important or threatened species or species assemblages, and for offshore areas where there are no existing special area protection mechanisms;

(2) The size of a National Marine Sanctuary, while highly dependent on the nature of the site's resources, will be no larger than necessary to ensure effective management;

(d) Management efforts will be coordinated to the extent practicable with other countries managing marine protected areas;

(e) Program regulations, policies, standards, guidelines, and procedures under the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, the Archeological and Historical Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa *et seq.* The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated National Marine Sanctuaries. The management of historical resources under the authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR part 7) and other relevant Federal regulations. The Secretary of the Interior's Standards and Guidelines for Archeology may also be consulted for guidance. These guidelines are available from the Office of Ocean and Coastal Management at (301) 713–3125.

§922.3 Definitions.

Act means title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*, also known as the National Marine Sanctuaries Act.

Active Candidate means a site selected by the Secretary from the Site Evaluation List for further consideration for possible designation as a National Marine Sanctuary.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), or designee.

Benthic community means the assemblage of organisms, substrate, and structural formations found at or near the bottom that is periodically or permanently covered by water.

Commercial fishing means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals.

Conventional hook and line gear means any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hind- or electrically operated, hand-held or mounted. This term does not include bottom longlines.

Cultural resources means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.

Director means, except where otherwise specified, the Director of the Office of Ocean and Coastal Resource Management, NOAA, or designee.

Exclusive economic zone means the exclusive economic zone as defined in the Magnuson Fishery Conservation and Management Act, 16 U.S. 1801 *et seq.*

Fish wastes means waste materials resulting from commercial fish processing operations.

Historical resource means a resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events. Historical resource also includes ''historical properties'' as defined in the National Historic Preservation Act, as amended, 16 U.S.C. 470 *et seq.*, and its implementing regulations, as amended.

Indian tribe means any American Indian tribe, band, group, or community recognized as such by the Secretary of the Interior.

Injure means to change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of. This includes, but is not limited to, to cause the loss of or destroy.

Lightering means at-sea transfer of petroleum-based products, materials, or other matter from vessel to vessel.

Marine means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law.

Mineral means clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other matter of commercial value.

National historic landmark means a district, site, building, structure or object designated as such by the Secretary of the Interior under the National Historic Landmarks Program (36 CFR part 65).

National Marine Sanctuary means an area of the marine environment of special national significance due to its resource or human-use values, which is designated as such to ensure its conservation and management.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, of any State or local unit of government, or of any foreign government.

Regional Fishery Management Council means any fishery council established under section 302 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Sanctury quality means any particular and essential characteristic of a Sanctuary, including, but not limited to, water, sediment, and air quality.

Sanctuary resource means any living or none-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.

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

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

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

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

Subsistence use means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles; and for barter, if for food or non-edible items other than money, if the exchange is of a limited and non-commercial nature.

Take or taking means: (1) For any marine mammal, sea turtle, or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, to harass, harm, pursue, hunt, shoot, would, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct; (2) For any other marine mammal, sea turtle, or seabird, to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct. For the purposes of both (1) and (2) of this definition, this includes, but is not limited to, to collect any dead or injured marine mammal, sea turtle or seabird, or any part thereof; to restrain or detain any marine

mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; to tag any sea turtle, marine mammal or seabird; to operate a vessel or aircraft or to do any other act that results in the disturbance or molestation of any marine mammal, sea turtle or seabird.

Tropical fish means fish or minimal sport and food value, usually brightly colored, often used for aquaria purposes and which lives in a direct relationship with live bottom communities.

Vessel means a watercraft of any description capable of being used as a means of transportation in/on the waters of a Sanctuary.

§922.4 Effect of National Marine Sanctuary designation.

The designation of a National Marine Sanctuary, and the regulations implementing it, are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of the United States for designated sites beyond the U.S. territorial sea, and the regulations implementing the designation shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with:

(a) Generally recognized principles of international law;

(b) An agreement between the United States and the foreign state of which the person is a citizen; or

(c) An agreement between the United States and the flag state of the foreign vessel, if the person is a crew member of the vessel.

Subpart B—Site Evaluation List (SEL)

§922.10 General.

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

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

(c) Only sites on the SEL may be considered for subsequent review as active candidates for designation.

(d) Placement of a site on the SEL, or selection of a site from the SEL as an active candidate for designation as provided for in §922.21, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

Subpart C—Designation of National Marine Sanctuaries

§922.20 Standards and procedures for designation.

In designating a National Marine Sanctuary, the Secretary shall apply the standards and procedures set forth in section 303 and section 304 of the Act.

§922.21 Selection of active candidates.

(a) The Secretary shall, from time to time, select a limited number of sites from the SEL for Active Candidate consideration based on a preliminary assessment of the designation standards set forth in section 303 of the Act.

(b) Selection of a site as an Active Candidate shall begin the formal Sanctuary designation-evaluation process. A notice of intent to prepare a draft environmental impact statement shall be published in the FEDERAL REGISTER and in newspapers in the area(s) of local concern. A brief written analysis describing the site shall be provided. The Secretary, at any time, may drop a site from consideration if the Secretary determines that the site does not meet the designation standards and criteria set forth in the Act.

§922.22 Development of designation materials.

(a) In designating a National Marine Sanctuary, the Secretary shall prepare the designation materials described in section 304 of the Act.

(b) If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional Fishery Management Council(s) which shall have one hundred and twenty (120) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishery regulations and to submit them to the Secretary. In preparing its recommendations and draft regulations, the Council(s) shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed Sanctuary designation. Fishery activities not proposed for regulation under section 304(a)(5) of the Act may be listed in the draft Sanctuary designation document as potentially subject to regulation, without following the procedures specified in section 304(a)(5) of the Act. If the Secretary subsequently determines that regulation of any such fishery activity is necessary, then the procedures specified in section 304(a)(5) of the Act shall be followed.

§ 922.23 Coordination with States and other Federal agencies.

(a) The Secretary shall consult and cooperate with affected States throughout the National Marine Sanctuary designation process. In particular the Secretary shall:

(1) Consult with the relevant State officials prior to selecting any site on the SEL as an Active Candidate pursuant to § 922.21, especially concerning the relationship of any site to State waters and the consistency of the proposed designation with a federally approved State coastal zone management program. For the purposes of a consistency review by States with federally approved coastal zone management programs, designation of a National Marine Sanctuary is deemed to be a Federal activity, which, if affecting the State's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved State coastal zone program as provided by section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, and implementing regulations at 15 CFR part 930, subpart.

(2) Ensure that relevant State agencies are consulted prior to holding any public hearings pursuant to section 304(a)(3) of the Act.

(3) Provide the Governor(s) of any State(s) in which a proposed Sanctuary would be located an opportunity to certify the designation or any of its terms as unacceptable as specified in section 304(b)(1) of the Act.

(b) The Secretary shall develop proposed regulations relating to activities under the jurisdiction of one or more other Federal agencies in consultation with those agencies.

§ 922.24 Congressional documents.

In designating a National Marine Sanctuary, the Secretary shall prepare and submit to Congress those documents described in section 304 of the Act.

§ 922.25 Designation determination and findings.

(a) In designating a National Marine Sanctuary, the Secretary shall prepare a written Designation Determination and Findings which shall include those findings and determinations described in section 303 of the Act.

(b) In addition to those factors set forth in section 303 of the Act, the Secretary, when making a designation determination, shall consider the Program's fiscal capability to manage the area as a National Marine Sanctuary.

Subpart D—Management Plan Development and Implementation

§ 922.30 General.

(a) The Secretary shall implement each management plan, and applicable regulations, including carrying out surveillance and enforcement activities and conducting such research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of the Act.

(b) Consistent with Sanctuary management plans, the Secretary shall develop and implement site-specific contingency and emergency-response plans designed to protect Sanctuary resources. The plans shall contain alert procedures and actions to be taken in

the event of an emergency such as a shipwreck or an oil spill.

§922.31 Promotion and coordination of Sanctuary use.

The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of National Marine Sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, or other persons to promote use of one or more Sanctuaries for research, monitoring and education, including coordination with the National Estuarine Research Reserve System.

Subpart E—Regulations of General Applicability

§922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through O is to implement the designations of the ten National Marine Sanctuaries for which site-specific regulations appear in subparts F through O, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas.

§922.41 Boundaries.

The boundary for each of the ten National Marine Sanctuaries covered by this part is described in subparts F through O, respectively.

§922.42 Allowed activities.

All activities except those site-specific activities prohibited or otherwise regulated in subparts F through O, may be conducted subject to any emergency regulations promulgated pursuant to §§922.44 and 922.111(c), subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act.

§922.43 Prohibited or otherwise regulated activities.

Subparts F through O set forth site-specific regulations applicable to the activities specified therein.

§922.44 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank National Marine Sanctuary. See §922.111(c) for the authority to issue emergency regulations with respect to that Sanctuary.

§922.45 Penalties.

(a) Each violation of the Act, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions, and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

§922.46 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable *in rem* to the United States for response costs and damages resulting from such destruction, loss or injury.

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

(a) Leases, permits, licenses, or rights of subsistence use or access in existence on the date of designation of any National Marine Sanctuary shall not be terminated by the Director. The Director may, however, regulate the

exercise of such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

(b) The prohibitions listed in subparts F through O do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as he or she deems necessary to achieve the purpose for which the Sanctuary was designated.

§ 922.48 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by this part if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O.

(b) Applications for such permits should be addressed to the Director and sent to the address specified in subparts F through O. An application must include:

(1) A detailed description of the proposed activity including a timetable for completion;

(2) The equipment, personnel and methodology to be employed;

(3) The qualifications and experience of all personnel;

(4) The potential effects of the activity, if any, on Sanctuary resources and qualities; and

(5) Copies of all other required licenses, permits, approvals or other authorizations.

(c) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.

(d) 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 a prohibited activity, in accordance with the criteria found in subparts F through O. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

(e) A permit granted pursuant to this section is nontransferable.

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or subparts F through O or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.

(a) The prohibitions set forth in regulations found in subparts L through O, do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designated by any Federal, State or local authority of competent jurisdiction, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal or extension of such authorization) within fifteen (15) days of the date of application or of the effective date of Sanctuary designation, whichever is later;

(2) The applicant complies with the other provisions of this section;

(3) The Director notifies the applicant and authorizing agency that he or

she does not object to issuance of the authorization (or amendment, renewal or extension); and

(4) The applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for a lease, permit, license, approval or other authorization for any Federal, State or local authority (or for an amendment, renewal or extension of such authorization) may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by regulations in this part.

(c) Notifications of filings of applications and requests for findings should be addressed to the address found in subparts F through O. A copy of the application must accompany the notification.

(d) The Director may request additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, approval or other authorization (or to issuance of an amendment, extension or renewal of such authorization), or what terms and conditions are necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the application.

(e) The Director shall notify, in writing, the agency to which application has been made of his or her review of the application and possible objection to issuance. After review of the application and information received with respect thereto, the Director, or designee shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems necessary to protect Sanctuary resources and qualities. The Director shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed necessary to protect Sanctuary resources and qualities.

(f) The Director may amend the terms and conditions deemed necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

(h) The applicant may appeal any objection by or terms or conditions imposed by the Director, to the Assistant Administrator in accordance with the procedures set forth in §922.50.

§922.50 Appeals of administrative action.

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit, license or right of subsistence use or access under §922.47; or, for those Sanctuaries described in subparts L through O, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

(i) The granting, denial, conditioning, amendment, suspension or revocation by the Director of a National Marine Sanctuary or Special Use permit;

(ii) The conditioning, amendment, suspension or revocation of a certification under §922.47; or

(iii) For those Sanctuaries described in subparts L through O, the objection to issuance of or the imposition of terms and conditions on a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(2) For those National Marine Sanctuaries described in subparts F through K, any interested person may also appeal the same actions described in paragraphs (a)(1) (i) and (ii) of this section. For appeals arising from actions taken with respect to these National Marine Sanctuaries, the term ''appellant'' includes any such interested persons.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director. Appeals should be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910.

(c)(1) The Assistant Administrator may request the appellant to submit such information as the Assistant Administrator deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. For the Monitor National Marine Sanctuary, if the appellant has requested a hearing, the Assistant Administrator shall grant an informal hearing. For all other National Marine Sanctuaries, the Assistant Administrator may determine whether to hold an informal hearing on the appeal. If the Assistant Administrator determines that an informal hearing should be held, the Assistant Administrator may designate an officer before whom the hearing shall be held.

(2) The hearing officer shall give notice in the FEDERAL REGISTER of the time, place and subject matter of the hearing. The appellant and the Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator.

(d) The Assistant Administrator shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator shall notify the appellant of the final decision and he reason(s) therefore in writing. The Assistant Administrator's decision shall constitute final agency action for the purpose of the Administrative Procedure Act.

(e) Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal may be extended by the Assistant Administrator or hearing office for good cause.

Subpart F—Monitor National Marine Sanctuary

§ 922.60 Boundary.

The Monitor National Marine Sanctuary (Sanctuary) consists of a vertical water column in the Atlantic Ocean one mile in diameter extending from the surface to the seabed, the center of which is at 35°00′23″ north latitude and 75°24′32″ west longitude.

§ 922.61 Prohibited or otherwise regulated activities.

Except as may be permitted by the Director, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(a) Anchoring in any manner, stopping, remaining, or drifting without power at any time;

(b) Any type of subsurface salvage or recovery operation;

(c) Diving of any type, whether by an individual or by a submersible;

(d) Lowering below the surface of the water any grappling, suction, conveyor, dredging or wrecking device;

(e) Detonating below the surface of the water any explosive or explosive mechanism;

(f) Drilling or coring the seabed;

(g) Lowering, laying, positioning or raising any type of seabed cable or cable-laying device;

(h) Trawling; or

(i) Discharging waster material into the water in violation of any Federal statute or regulation.

§ 922.62 Permit procedure and criteria.

(a) Any person or entity may conduct in the Sanctuary any activity listed in § 922.61 if such activity is either: (1) For the purpose of research related to the Monitor, or (2) Pertains to salvage or recovery operations in connection with

an air or marine casualty and such person or entity is in possession of a valid permit issued by the Director authorizing the conduct of such activity; except that, no permit is required for the conduct of any activity immediately and urgently necessary for the protection of life, property or the environment.

(b) Any person or entity who wishes to conduct in the Sanctuary an activity for which a permit is authorized by this section (hereafter a permitted activity) may apply in writing to the Director for a permit to conduct such activity citing this section as the basis for the application. Such application should be made to: Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Monitor National Marine Sanctuary, Building 1519, NOAA, Fort Eustis, VA 23604–5544.

(c) In considering whether to grant a permit for the conduct of a permitted activity for the purpose of research related to the Monitor, the Secretary shall evaluate such matters as:

(1) The general professional and financial responsibility of the applicant;

(2) The appropriateness of the research method(s) envisioned to the purpose(s) of the research;

(3) The extent to which the conduct of any permitted activity may diminish the value of the MONITOR as a source of historic, cultural, aesthetic and/or maritime information;

(4) The end value of the research envisioned; and

(5) Such other matters as the Director deems appropriate.

(d) In considering whether to grant a permit for the conduct of a permitted activity in the Sanctuary in relation to an air or marine casualty, the Director shall consider such matters as:

(1) The fitness of the applicant to do the work envisioned;

(2) The necessity of conducting such activity;

(3) The appropriateness of any activity envisioned to the purpose of the entry into the Sanctuary;

(4) The extent to which the conduct of any such activity may diminish the value of the Monitor as a source of historic, cultural, aesthetic and/or maritime information; and

(5) Such other matters as the Director deems appropriate.

(e) In considering any application submitted pursuant to this section, the Director shall seek and consider the views of the Advisory Council on Historic Preservation.

(f) The Director may observe any activity permitted by this section; and/or may require the submission of one or more reports of the status or progress of such activity.

Subpart G—Channel Islands National Marine Sanctuary

§922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of the waters off the coast of California of approximately 1252.5 square nautical miles (NM) adjacent to the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (collectively the Islands) extending seaward to a distance of six NM. The boundary coordinates are listed in appendix A to this subpart.

§922.71 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for the national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with §922.48 and §922.72, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Exploring for, developing, and producing hydrocarbons except pursuant to leases executed prior to March 30, 1981, and except the laying of pipeline, if the following oil spill contingency equipment is available at the site of such operations:

(i) 1500 feet of open ocean containment boom and a boat capable of deploying the boom;

(ii) One oil skimming device capable of open ocean use; and

(iii) Fifteen bales of oil sorbent material, and subject to all prohibitions, restrictions and conditions imposed by

applicable regulations, permits, licenses or other authorizations and consistency reviews including those issued by the Department of the Interior, the Coast Guard, the Corps of Engineers, the Environmental Protection Agency and under the California Coastal Management Program and its implementing regulations.

(2) Discharging or depositing any material or other matter except:

(i) Fish or fish parts and chumming materials (bait);

(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by:

(A) Marine sanitation devices;

(B) Routine vessel maintenance, e.g., deck wash down;

(C) Engine exhaust; or

(D) Meals on board vessels;

(iii) Effluents incidental to hydrocarbon exploration and exploitation activities allowed by paragraph (a)(1) of this section.

(3) Except in connection with the laying of any pipeline as allowed by paragraph (a)(1) of this section, within 2 NM of any Island:

(i) Constructing any structure other than a navigation aid,

(ii) Drilling through the seabed, or

(iii) Dredging or otherwise altering the seabed in any way, other than

(A) To anchor vessels, or

(B) To bottom trawl from a commercial fishing vessel.

(4) Except to transport persons or supplies to or from an Island, operating within one NM of an Island any vessel engaged in the trade of carrying cargo, including, but not limited to, tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing (including kelp harvesting), recreational, or research vessels.

(5) Disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one NM of any Island except:

(i) For enforcement purposes;

(ii) To engage in kelp bed surveys; or

(iii) To transport persons or supplies to or from an Island.

(6) Removing or damaging any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impact shall be determined in consultation between the Director and the Department of Defense.

§ 922.72 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct any activity in the Sanctuary prohibited under § 922.71 if such activity is either:

(1) Research related to the resources of the Sanctuary,

(2) To further the educational value of the Sanctuary; or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to: Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109.

(c) In considering whether to grant a permit the Director shall evaluate such matters as:

(1) The general professional, and financial responsibility of the applicant;

(2) The appropriateness of the methods envisioned to the purpose(s) of the activity;

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, or as a source of educational or scientific information;

(4) The end value of the activity and

(5) Such other matters as may be deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained shall be available to the public.

APPENDIX A TO SUBPART G OF PART 922—CHANNEL ISLANDS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Point No.	Latitude north	Longitude west
Northern Channel Islands Section		
01	33°56′28.959″	119°16′23.800″
02	33°58′03.919″	119°14′56.964″
03	34°01′33.846″	119°14′07.740″
04	34°04′24.203″	119°15′21.308″
05	34°06′06.653″	119°17′27.002″
06	34°06′54.809″	119°19′46.046″
07	34°06′57.988″	119°23′24.905″
08	34°06′51.627″	119°24′04.198″
09	34°07′01.640″	119°25′40.819″′
10	34°06′59.904″	119°26′50.959″
11	34°08′02.002″	119°28′47.501″
12	34°08′17.693″	119°29′27.698″
13	34°08′52.234″	119°30′39.562″
14	34°09′16.780″	119°35′22.667″
15	34°09′05.106″	119°36′41.694″
16	34°08′02.782″	119°39′33.421″
17	34°08′46.870″	119°41′48.621″
18	34°09′35.563″	119°45′57.284″
19	34°09′32.627″	119°46′37.335″
20	34°09′33.396″	119°47′32.285″
21	34°09′43.668″	119°48′09.018″
22	34°10′10.616″	119°50′07.659″
23	34°10′21.586″	119°51′05.146″
24	34°10′33.161″	119°53′17.044″
25	34°10′36.545″	119°55′57.373″
26	34°10′21.283″	119°57′26.403″
27	34°08′07.255″	120°01′07.233″
28	34°08′13.144″	120°02′27.930″
29	34°07′47.772″	120°05′05.449″
30	34°07′29.314″	120°06′36.262″
31	34°07′30.691″	120°09′35.238″
32	34°06′36.285″	120°12′39.335″
33	34°06′40.634″	120°13′33.940″
34	34°08′10.759″	120°15′07.017″
35	34°09′12.290″	120°17′07.046″
35A	34°09′50.706″	120°17′31.649″
36	34°10′56.346″	120°18′40.520″
36B	34°11′28.249″	120°19′29.213″
37	34°12′08.078″	120°21′00.835″
37C	34°12′25.468″	120°25′01.261″
38	34°12′18.754″	120°25′39.373″
38D	34°11′33.184″	120°27′33.921″
39	34°12′19.470″	120°30′22.620″
39E	34°12′17.540″	120°32′19.959″
40	34°10′54.592″	120°35′57.887″
40F	34°06′07.491″	120°38′27.883″
41	34°04′53.454″	120°38′16.602″
41G	34°03′30.539″	120°37′39.442″
42	34°01′09.860″	120°35′04.808″
42H	34°00′48.573″	120°34′25.106″
43	33°59′13.122″	120°33′53.385″
44	33°57′01.427″	120°31′54.590″
45	33°55′36.973″	120°27′37.188″
46	33°55′30.037″	120°25′14.587″
47	33°54′50.522″	120°22′29.536″
48	33°55′01.640″	120°19′26.722″
49	33°54′34.409″	120°18′27.344″
50	33°53′23.129″	120°17′39.927″
51	33°50′39.990″	120°15′13.874″
52	33°49′53.260″	120°13′41.904″
53	33°49′03.437″	120°12′06.750″
54	33°48′36.087″	120°11′10.821″
55	33°47′39.280″	120°07′59.707″
56	33°47′37.617″	120°06′04.002″
57	33°47′59.351″	120°04′08.370″
58	33°48′38.700″	120°02′33.188″
59	33°48′52.167″	120°01′50.244″
60	33°50′28.486″	119°57′50.820″
61	33°50′55.128″	119°55′19.934″
62	33°52′13.338″	119°52′53.439″
63	33°52′04.900″	119°52′10.719″
64	33°51′39.919″	119°47′21.152″
65	33°51′48.592″	119°46′13.213″
66	33°51′35.798″	119°44′34.589″
67	33°51′44.374″	119°41′12.738″
68	33°52′23.857″	119°39′14.708″
69	33°53′09.365″	119°37′30.784″
70	33°53′12.754″	119°35′35.793″
71	33°53′17.114″	119°34′54.567″
72	33°53′38.865″	119°32′51.578″
73	33°54′02.277″	119°31′06.274″
74	33°54′56.444″	119°28′54.052″
75	33°54′39.349″	119°27′37.512″
76	33°54′15.236″	119°25′23.779″
77	33°54′07.847″	119°24′22.849″
78	33°54′04.682″	119°22′58.006″
79	33°54′14.311″	119°21′44.573″
80	33°54′22.824″	119°21′09.003″
81	33°54′46.904″	119°19′54.677″
82	33°55′05.834″	119°19′16.027″
Santa Barbara Island Section		
83	33°28′56.904″	119°10′04.092″
84	33°26′32.364″	119°10′01.328″
85	33°24′19.904″	119°08′52.236″
86	33°23′26.019″	119°07′54.826″
87	33°22′04.836″	119°05′16.716″
88	33°21′49.387″	119°04′01.551″
89	33°21′44.594″	119°02′49.887″
90	33°21′49.556″	119°01′37.839″
91	33°22′07.538″	118°59′49.357″
92	33°22′27.774″	118°58′51.623″
93	33°22′47.957″	118°58′07.633″
94	33°23′20.805″	118°57′14.375″
95	33°24′18.458″	118°56′08.450″
96	33°26′24.130″	118°54′51.352″
97	33°29′02.820″	118°54′22.276″
98	33°31′27.917″	118°54′50.367″
99	33°32′17.935″	118°55′18.396″
100	33°35′10.090″	118°59′40.091″
101	33°35′24.575″	119°01′22.108″
102	33°35′06.497″	119°03′59.463″
103	33°34′48.322″	119°05′03.374″
104	33°32′37.151″	119°08′37.201″
105	33°30′41.731″	119°09′45.845″

Subpart H—Point Reyes/Farallon Islands National Marine Sanctuary

§922.80 Boundary.

(a) The Point Reyes/Farallon Islands Marine Sanctuary (Sanctuary) consists of an area of the waters adjacent to the coast of California north and south of the Point Reyes Headlands, between Bodega Head and Rocky Point and the Farallon Islands (including Noonday Rock), and includes approximately 948 square nautical miles (NM). The boundary coordinates are listed in Appendix A to this subpart.

(b) The shoreward boundary follows the mean high tide line and the seaward limit of Point Reyes National

Seashore. Between Bodega Head and Point Reyes Headlands, the Sanctuary extends seaward 3 NM beyond State waters. The Sanctuary also includes the waters within 12 NM of the Farallon Islands, and between the Islands and the mainland from Point Reyes Headlands to Rocky Point. The Sanctuary includes Bodega Bay, but not Bodega Harbor.

§ 922.81 Definitions.

In addition to those definitions found at § 922.3, the following definition applies to this subpart:

Areas of Special Biological Significance (ASBS) means those areas established by the State of California prior to the designation of the Sanctuary except that for purposes of the regulations in this subpart, the area established around the Farallon Islands shall not be included.

§ 922.82 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.83, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Exploring for, developing and producing oil or gas except that pipelines related to hydrocarbon operations outside the Sanctuary may be placed at a distance greater than 2 NM from the Farallon Islands, Bolinas Lagoon, and ASBS where certified to have no significant effect on Sanctuary resources in accordance with § 922.84.

(2) Discharging or depositing any material or other matter except:

(i) Fish or fish parts and chumming materials (bait).

(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by:

(A) Marine sanitation devices;

(B) Routine vessel maintenance, e.g., deck wash down;

(C) Engine exhaust; or

(D) Meals on board vessels.

(iii) Dredge material disposed of at the interim dumpsite now established approximately 10 NM south of the southeast Farallon Island and municipal sewage provided such discharges are certified in accordance with § 922.84.

(3) Except in connection with the laying of pipelines or construction of an outfall if certified in accordance with § 922.84:

(i) Constructing any structure other than a navigation aid,

(ii) Drilling through the seabed, and

(iii) Dredging or otherwise altering the seabed in any way other than by anchoring vessels or bottom trawling from a commercial fishing vessel, except for routine maintenance and navigation, ecological maintenance, mariculture, and the construction of docks and piers in Tomales Bay.

(4) Except to transport persons or supplies to or from islands or mainland areas adjacent to Sanctuary waters, within an area extending 2 NM from the Farallon Islands, Bolinas Lagoon, or any ASBS, operating any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(5) Disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one NM of the Farallon Islands, Bolinas Lagoon, or any ASBS except to transport persons or supplies to or from the Islands or for enforcement purposes.

(6) Removing or damaging any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

§922.83 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and §922.48 may conduct any activity in the Sanctuary, prohibited user §922.82, if such an activity is

(1) Research related to the resources of the Sanctuary,

(2) To further the educational value of the Sanctuary, or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Point Reyes/Farallon Islands National Marine Sanctuary, Fort Mason, building #201, San Francisco, CA 94123.

(c) In considering whether to grant a permit, the Director shall evaluate

(1) The general professional and financial responsibility of the applicant,

(2) The appropriateness of the methods envisioned to the purpose(s) of the activity,

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary,

(4) The end value of the activity, and

(5) Other matters as deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

§922.84 Certification of other permits.

(a) A permit, license, or other authorization allowing the discharge of municipal sewage, the laying of any pipeline outside 2 NM from the Farallon Islands, Bolinas Lagoon and ASBS, or the disposal of dredge material at the interim dumpsite now established approximately 10 NM south of the Southeast Farallon Island prior to the selection of a permanent dumpsite shall be valid if certified by the Director as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(b) In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

(c) Any certification called for in this section shall be presumed unless the Director acts to deny or condition certification within 60 days from the date that the Director receives notice of the proposed permit and the necessary supporting data.

(d) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.

APPENDIX A TO SUBPART H OF PART 922—POINT REYES/FARALLON ISLANDS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Point No.	Latitude north	Longitude west
1	38°15′50.349″	123°10′48.933″
2	38°12′36.338″	123°07′04.846″
3	38°09′57.033″	123°05′27.435″
4	38°08′26.872″	123°04′52.524″
5	38°07′42.125″	123°05′10.714″
6	38°06′08.017″	123°05′48.920″
7	38°05′26.765″	123°06′09.922″
8	38°04′44.587″	123°06′29.251″
9	38°03′54.439″	123°06′57.591″
10	38°03′07.527″	123°07′37.755″
11	37°59′32.425″	123°08′24.905″
12	37°59′22.344″	123°14′06.127″
13	37°57′31.931″	123°19′19.187″
14	37°54′16.943″	123°23′18.456″
15	37°50′05.522″	123°25′28.791″
16	37°45′33.799″	123°25′32.666″
17	37°41′20.351″	123°23′29.811″
18	37°38′01.053″	123°19′37.445″
19	37°36′04.665″	123°14′30.483″
20	37°35′30.191″	123°13′31.060″
21	37°33′47.197″	123°11′50.904″
22	37°31′12.270″	123°07′39.618″
23	37°30′29.706″	123°05′42.221″
24	37°29′39.287″	123°00′23.711″
25	37°30′34.337″	122°54′18.139″
26	37°31′47.784″	122°51′31.592″
27	37°34′17.533″	122°48′10.415″
28	37°36′58.627″	122°46′05.779″
29	37°39′59.303″	122°44′59.838″
30	37°52′56.355″	122°37′35.195″

Subpart I—Gray's Reef National Marine Sanctuary

§922.90 Boundary.

The Gray's Reef National Marine Sanctuary (Sanctuary) consists of 16.68 square nautical miles (NM) of high sea waters off the coast of Georgia. The Sanctuary boundary includes all waters within a rectangle starting at coordinate 31°21′45″N, 80°55′17″W, commencing to coordinate 31°25′15″N, 80°55′17″W, thence to coordinate 31°25′15″N, 80°49′42″W, thence to coordinate 31°21′45″N, 80°49′42″W, thence back to the point of origin.

§922.91 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with §922.48 and §922.92, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Dredging, drilling, or otherwise altering the seabed in any way nor constructing any structure other than a navigation aid.

(2) Discharging or depositing any material or other matter except:

(i) Fish or parts, bait, and chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling waters.

(3) Operating a watercraft other than in accordance with the Federal rules and regulations that would apply if there were no Sanctuary.

(4) Using, placing, or possessing wire fish traps.

(5) Using a bottom trawl, specimen dredge, or similar vessel-towed bottom sampling device.

(6)(i)(A) Breaking, cutting, or similarly damaging, taking, or removing any bottom formation, marine invertebrate, or marine plant.

(B) Taking any tropical fish.

(C) Using poisons, electric charges, explosives, or similar methods to take any marine animal not otherwise prohibited to be taken.

(ii) There shall be a rebuttable presumption that any bottom formation, marine invertebrate, tropical fish, marine plant, or marine animal found in the possession of a person within the Sanctuary have been collected within or removed from the Sanctuary.

(7) Tampering with, damaging, or removing any historic or cultural resources.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not

subject to the prohibitions in this section. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

§922.92 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and §922.48 may conduct the specific activity in the Sanctuary including any activity specifically prohibited under §922.91, if such activity is

(1) Research related to the resources of the Sanctuary,

(2) To further the educational value of the Sanctuary, or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

(c) In considering whether to grant a permit, the Director shall evaluate

(1) The general professional and financial responsibility of the applicant,

(2) The appropriateness of the methods envisioned to the purpose(s) of the activity,

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary,

(4) The end value of the activity, and

(5) Other matters as deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

Subpart J—Fagatele Bay National Marine Sanctuary

§922.100 Scope of regulations.

The provisions of this subpart J apply only to the area of the Territory of American Samoa within the boundary of the Fagatele Bay National Marine Sanctuary (Sanctuary). Neither the provisions of this subpart J nor any permit issued under their authority shall be construed to relieve a person from any other requirements imposed by statute or regulation of the Territory of American Samoa or of the United States. In addition, no statute or regulation of the Territory of American Samoa shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this subpart J.

§922.101 Boundary.

The Sanctuary is a 163-acre (0.25 sq. mi.) coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, Territory of American Samoa and includes Fagatele Bay in its entirety. The landward boundary is defined by the mean high high water (MHHW) line between Fagatele Point (14°22′15″ S, 170°46′5″ W) and Steps Point (14°22′44″ S, 170°45′27″ W). The seaward boundary of the Sanctuary is defined by a straight line between Fagatele Point and Steps Point.

§922.102 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense or to respond to an emergency threatening life, property, or the environment, or as may be permitted by the Director in accordance with §922.48 and §922.104, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1)(i)(A) Gathering, taking, breaking, cutting, damaging, destroying, or possessing any invertebrate, coral, bottom formation, or marine plant.

(B) Taking, gathering, cutting, damaging, destroying, or possessing any crown-of-thorns starfish (*Acanthaster planci*).

(C) Possessing or using poisons, electrical charges, explosives, or similar environmentally destructive methods.

(D) Possessing or using spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, bang sticks, or any similar taking device.

(E) Possessing or using a seine, trammel net, or any type of fixed net.

(ii) There shall be a rebuttable presumption that any items listed in this paragraph (a)(1) found in the possession of a person within the Sanctuary have been used, collected, or removed within or from the Sanctuary.

(2)(i) Operating a vessel closer than 200 feet (60.96 meters) from another vessel displaying a dive flag at a speed exceeding three knots.

(ii) Operating a vessel in a manner which causes the vessel to strike or otherwise cause damage to the natural features of the Sanctuary.

(3) Diving or conducting diving operations from a vessel not flying in a conspicuous manner the international code flag alpha ''A.''

(4) Littering, depositing, or discharging, into the waters of the Sanctuary, any material or other matter.

(5) Disturbing the benthic community by dredging, filling, dynamiting, bottom trawling, or otherwise altering the seabed.

(6) Removing, damaging, or tampering with any historical or cultural resource within the boundary of the Sanctuary.

(7) Ensnaring, entrapping, or fishing for any sea turtle listed as a threatened or endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(8) Except for law enforcement purposes, using or discharging explosives or weapons of any description. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers shall not be considered weapons for purposes of this section.

(9) Marking, defacing, or damaging in any way, or displacing or removing or tampering with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, or other boundary markers related to the Sanctuary.

(b) In addition to those activities prohibited or otherwise regulated under paragraph (a) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted landward of the straight line connecting Fagatele Point (14°22′15″ S, 170°46′5″ W) and Matautuloa Benchmark (14°22′18″ S, 170°45′35″ W).

(1) Possessing or using fishing poles, handlines, or trawls.

(2) Fishing commercially.

§ 922.103 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the Sanctuary pursuant to the Act. The American Samoa Economic and Development Planning Office (EDPO) will assist NOAA in the administration of the Sanctuary, and act as the lead agency, in conformance with the Designation Document, these regulations, and the terms and provisions of any grant or cooperative agreement. NOAA may act to deputize enforcement agents of the American Samoa Government (ASG) to enforce the regulations in this subpart in accordance with existing law. If NOAA chooses to exercise this provision, a memorandum of understanding shall be executed between NOAA and the ASG or the person(s) or entity authorized to act on their behalf.

§ 922.104 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director, in consultation with the EDPO, in accordance with this section and § 922.48, may conduct an activity otherwise prohibited by § 922.102 in the Sanctuary if such activity is judged not to cause long-term or irreparable harm to the resources of the Sanctuary, and is:

(1) Related to research involving Sanctuary resources designed to enhance understanding of the Sanctuary environment or to improve resource management decisionmaking;

(2) Intended to further the educational value of the Sanctuary and thereby enhance understanding of the Sanctuary environmental or improve resource management decisionmaking; or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Coordinator,

Fagatele Bay National Marine Sanctuary, P.O. Box 4318, Pago Pago, AS 96799.

(c) In considering whether to grant a permit, the Director shall evaluate such matters as:

(1) The general professional and financial responsibility of the applicant;

(2) The appropriateness of the methods being proposed for the purpose(s) of the activity;

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information; and

(4) The end value of the activity.

(d) In addition to meeting the criteria in this section and §922.48, the applicant also must demonstrate to the Director that:

(1) The activity shall be conducted with adequate safeguards for the environment; and

(2) The environment shall be returned to, or will regenerate to, the condition which existed before the activity occurred.

(e) The Director may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject the permit to such condition(s) as he or she deems necessary. A permit granted for research related to the Sanctuary may include, but is not limited to, the following conditions:

(1) The Director may observe any activity permitted by this section;

(2) any information obtained in the research site shall be made available to the public; and

(3) The submission of one or more reports of the status of such research activity may be required.

Subpart K—Cordell Bank National Marine Sanctuary

§922.110 Boundary

The Cordell Bank National Marine Sanctuary (Sanctuary) consists of a 397.05 square nautical mile (NM) area of marine waters approximately 50 miles west-northwest of San Francisco, California extending at 180° from the northernmost boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the PRNMS boundary and back to the northwest along this boundary to the beginning point. The boundary coordinates are listed in appendix A to this subpart.

§922.111 Prohibited or otherwise regulated activities.

(a) Except as necessary for national defense or to respond to an emergency threatening life, property or the environment, or except as permitted in accordance with §922.48 and §922.112 or certified in accordance with §922.47, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) (i) Depositing or discharging, from any location within the boundary of the Sanctuary, material or other matter of any kind except:

(A) Fish, fish parts, chumming materials (bait) produced and discarded during routine fishing activities conducted in the Sanctuary; and

(B) Water (including cooling water) and other biodegradable effluents incidental to use of a vessel in the Sanctuary and generated by: Marine sanitation devices approved by the United States Coast Guard; routine vessel maintenance, e.g., deck wash down; engine exhaust; or meals on board vessels.

(ii) Depositing or discharging, from any location beyond the boundaries of the Sanctuary, material or other matter of any kind, except for the exclusions listed in paragraph (a)(1)(i) of this section, which enter the Sanctuary and injure a Sanctuary resource.

(2) Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person. This prohibition does not apply to accidental removal, injury, or takings during normal fishing operations.

(3) Exploring for, or developing or producing, oil, gas, or minerals in any area of the Sanctuary.

(b) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation that are necessary for national defense are exempt from the prohibitions contained in the regulations in this subpart. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted by the Director after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in the regulations in this subpart.

(c) Where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, any activity may be regulated within the limits of the Act on an emergency basis for no more than 120 days.

§ 922.112 Permit procedures and criteria.

(a) If a person wishes to conduct an activity prohibited under § 922.111, that person must apply for, receive, and have in possession on board any vessel used a valid permit issued pursuant to this section and § 922.48 authorizing that person to conduct that activity.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Cordell Bank National Marine Sanctuary, Fort Mason, Building #201, San Francisco, CA 94123.

(c) The Director, at his or her discretion, may issue a permit subject to such terms and conditions as deemed appropriate, to conduct an activity otherwise prohibited by § 922.111, if the Director finds that the activity will further research related to Sanctuary resources; further the educational or historical 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 the management of the Sanctuary. In deciding whether to issue a permit, the Director may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity; 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 the values for which the Sanctuary was designated; and the end value of the applicant's overall activity.

APPENDIX A TO SUBPART K OF PART 922—CORDELL BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Point No.	Latitude	Longitude
1	38°15′51.72″	123°10′52.44″
2	38°07′55.88″	123°38′33.53″
3	38°06′45.21″	123°38′00.40″
4	38°04′58.41″	123°37′14.34″
5	38°04′28.22″	123°37′17.83″
6	38°03′42.75″	123°36′55.66″
7	38°03′11.10″	123°36′19.78″
8	38°02′46.12″	123°36′21.98″
9	38°02′02.74″	123°35′56.56″
10	38°01′27.10″	123°35′55.12″
11	38°01′22.28″	123°36′55.13″
12	38°01′11.54″	123°37′28.21″
13	38°00′49.16″	123°37′29.77″
14	37°59′54.49″	123°36′47.90″
15	37°59′12.39″	123°35′59.55″
16	37°58′39.40″	123°35′14.85″
17	37°58′00.57″	123°34′42.93″
18	37°57′18.99″	123°33′43.15″
19	37°56′56.42″	123°32′51.97″
20	37°56′18.90″	123°32′49.24″
21	37°55′22.37″	123°32′36.96″
22	37°54′26.10″	123°32′21.73″
23	37°53′07.46″	123°31′46.81″
24	37°52′34.93″	123°31′18.90″
25	37°51′42.81″	123°31′19.10″
26	37°50′59.58″	123°31′02.96″
27	37°49′22.64″	123°29′34.07″
28	37°48′49.14″	123°28′44.61″
29	37°48′36.95″	123°28′08.29″
30	37°48′03.37″	123°28′23.27″
31	37°47′41.54″	123°28′01.97″
32	37°47′01.78″	123°27′16.78″
33	37°46′51.92″	123°26′48.98″
34	37°46′13.20″	123°26′04.79″
35	37°46′00.73″	123°25′36.99″
36	37°50′25.31″	123°25′26.53″
37	37°54′32.28″	123°23′16.49″
38	37°57′45.71″	123°19′17.72″
39	37°59′29.27″	123°14′12.16″
40	37°59′43.71″	123°08′27.55″
41	38°03′10.20″	123°07′44.35″
42	38°04′01.64″	123°06′58.92″
43	38°08′33.32″	123°04′56.24″
44	38°12′42.06″	123°07′10.21″

[61 FR 51577, Oct. 3, 1996]

Subpart L—Flower Garden Banks National Marine Sanctuary

§ 922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (the Sanctuary) consists of two separate areas of ocean waters over and surrounding the East and

West Flower Garden Banks, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles (NM) south-southwest of Cameron, Louisiana, and encompasses 19.20 NM^2, and the area designated at the West Bank is located approximately 110 NM southeast of Galveston, Texas, and encompasses 22.50 NM^2. The two areas encompass a total of 41.70 NM^2 (143.21 square kilometers). The boundary coordinates for each area are listed in appendix A to this subpart.

§922.121 Definitions.

In addition to those definitions found at §922.3, the following definition applies to this subpart:

No-activity zone means one of 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 as areas in which activities associated with exploration for, development of, or production of hydrocarbons are prohibited. The precise coordinates of these areas are provided in appendix B of this subpart. These particular coordinates define the geographic scope of the ''no-activity zones'' for purposes of the regulations in this subpart. These coordinates are based on the ''¼ ¼ ¼'' 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.

§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 or otherwise mooring within the Sanctuary a vessel greater than 100 feet (30.48 meters) in registered length.

(ii) Anchoring a vessel of less than or equal to 100 feet (30.48 meters) in registered length within an area of the Sanctuary where a mooring buoy is available.

(iii) Anchoring a vessel within the Sanctuary using more than fifteen feet (4.57 meters) of chain or wire rope attached to the anchor.

(iv) Anchoring a vessel within the Sanctuary using anchor lines (exclusive of the anchor chain or wire rope permitted by paragraph (a)(4) of this section) other than those of a soft fiber or nylon, polypropylene, or similar material.

(3)(i) Discharging or depositing, from within the boundaries of 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;

(B) Biodegradable effluents incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down, and graywater as defined by section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(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) 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 by anchoring); 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) 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.

(8) 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).

(9) 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.

(10) 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), (iii), and (iv), (4) and (10) 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 (10) 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 (10) 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 (10) 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 (10) 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 (10) 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 (10) 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.

§922.123 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by §922.122(a)(2) through (10) 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 Ocean and Coastal Resource Management; ATTN: Manager, Flower Garden Banks National Marine Sanctuary, 1716 Briarcrest Drive, Suite 702, Bryan, TX 77802.

(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 (10), 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.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia,* make it a condition of any permit issued that any information obtained under the permit be made available to the public.

(f) The Director may, *inter alia,* make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress, or results of any activity authorized by the permit.

APPENDIX A TO SUBPART L OF PART 922—FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

The boundary coordinates are based on geographic positions of the North American Datum of 1927 (NAD 27).

Point No.	Latitude	Longitude
East Flower Garden Bank		
E–1	27°52′52.13″	93°37′40.52″
E–2	27°53′33.81″	93°38′22.33″
E–3	27°55′13.31″	93°38′39.07″
E–4	27°57′30.14″	93°38′32.26″
E–5	27°58′27.79″	93°37′42.93″
E–6	27°59′00.29″	93°35′29.56″
E–7	27°58′59.23″	93°35′09.91″
E–8	27°55′20.23″	93°34′13.75″
E–9	27°54′03.35″	93°34′18.42″
E–10	27°53′25.95″	93°35′03.79″
E–11	27°52′51.14″	93°36′57.59″

Point No.	Latitude	Longitude
West Flower Garden Bank		
W–1	27°49′09.24″	93°50′43.35″
W–2	27°50′10.23″	93°52′07.96″
W–3	27°51′13.14″	93°52′50.68″
W–4	27°51′31.24″	93°52′49.79″
W–5	27°52′49.55″	93°52′21.89″
W–6	27°54′59.08″	93°49′41.87″
W–7	27°54′57.08″	93°48′38.52″
W–8	27°54′33.46″	93°47′10.36″
W–9	27°54′13.51″	93°46′48.96″
W–10	27°53′7.67″	93°46′50.67″
W–11	27°52′56.44″	93°47′14.10″
W–12	27°50′38.31″	93°47′22.86″
W–13	27°49′11.23″	93°48′42.59″

APPENDIX B TO SUBPART L OF PART 922—COORDINATES FOR THE DEPARTMENT OF THE INTERIOR TOPOGRAPHIC LEASE STIPULATIONS FOR OCS LEASE SALE 112

East Flower Garden Bank

Block A–366
SE¼, SW¼; S½, NE¼, SE¼; SE¼, NW¼, SE¼; S½, SE¼;
Block A–367
W½, NW¼, SW¼; SW¼, W¼, SW¼.
Block A–374
W½, NW¼, NW¼; W½, SW¼, NW¼; SE¼, SW¼, NW¼; SW¼, NE¼, SW¼; W½, SW¼; W½, SE¼, SW¼; SE¼, SE¼, SW¼.
Block A–375
E½; E½, NW¼, NW¼, SW¼, NW¼, NW¼; E½, SW¼, NW¼; NW¼, SW¼, NW¼, SW¼;
Block A–388
NE¼; E½, NW¼; E½, NW¼, NW¼; NE¼, SW¼, NW¼; E½, SW¼; E½, NE¼, SW¼; NW¼, NE¼, SW¼; NE¼, NW¼, SW¼; NE¼, SE¼, SW¼; NE¼; NE¼, SE¼; W½, NE¼, SE¼; NW¼, SE¼; NE¼, SW¼, SE¼;
Block A–389
NE¼, NW¼; NW¼, NW¼; SW¼, NW¼; NE¼, SE¼, NW¼; W½, SE¼, NW¼; N½, NW¼, SW¼.

West Flower Garden Bank

Block A–383
E½, SE¼, SE¼; SW½, SE¼, SE¼.
Block A–384
W½, SW¼, NE¼; SE¼, SW¼, NE¼; S½, SE¼, NE¼; SE¼, NW¼; E½, SW¼; E½, NW¼, SW¼; SW¼, NW¼, SW¼; SW¼, SW¼; SE¼.
Block A–385
SW¼, SW¼, NW¼; N¼, SW¼; NW¼, SW¼, SW¼.
Block A–397
W½, W½, NW¼; W½, NW¼, SW¼; NW¼, SW¼, SW¼.
Block A–398
Entire block
Block A–399
E½; SE¼, NE¼, NW¼; E½, SE¼, NW¼; E½, NE¼, SW¼; SW¼, NE¼, SW¼; NE¼, SE¼, SW¼.
Block A–401
NE¼, NE¼; N½, NW¼, NE¼; NE¼, SE¼, NE¼.
Block A–Block 134
That portion of the block north of a line connecting points 17 and 18, defined under the universal transverse mercator grid system as follows: Point 17; X=1,378,080.00′; Y=10,096,183.00′; Point 18: X=1,376,079.41′; Y=10,096,183.00′;
Block A–135
That portion of the block northwest of a line connecting points 16 and 17, defined under the universal transverse mercator grid system as follows: Point 16: X=1,383,293.84′; Y=10,103,281.93′; Point 17: X=1,378,080.00′; Y=10,096,183.00′.

Subpart M—Monterey Bay National Marine Sanctuary

§922.130 Boundary.

(a) The Monterey Bay National Marine Sanctuary (Sanctuary) consists of an area of approximately 4,024 square nautical miles of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California.

(b) The northern terminus of the boundary is located along the southern boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) and runs westward to approximately 123°07′W. The boundary then extends south in an arc which generally follows the 500 fathom isobath. At approximately 37°03′N, the boundary arcs south to 122°25′W, 36°10′N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121°41′W, 35°33′N, due west of Cambria. The boundary then extends shoreward towards the mean high-water line. The landward boundary is defined by the mean high-water line between the PRNMS and Cambria, exclusive of a

small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point, Santa Cruz, Moss Landing and Monterey harbors are excluded from the Sanctuary boundary shoreward from their respective International Collision at Sea regulation (Colreg.) demarcation lines except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge is included within the Sanctuary boundary. The boundary coordinates are listed in appendix A to this subpart.

§922.131 Definitions.

In addition to those definitions found at §922.3, the following definitions apply to this subpart:

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).

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Motorized personal water craft means any motorized vessel that is less than fifteen feet in length as manufactured, is capable of exceeding a speed of fifteen knots, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, jet skis, wet bikes, surf jets, miniature speed boats, air boats, and hovercraft.

[60 FR 66877, Dec. 27, 1995, as amended at 61 FR 66917, Dec. 19, 1996]

EFFECTIVE DATE NOTE: At 61 FR 66917, Dec. 19, 1996, in §922.131, the definition of *Attract* or *attracting* was added, effective Jan. 21, 1997.

§922.132 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (f) 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 within the Sanctuary.

(2)(i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(E) Dredged material deposited at disposal sites authorized by the U.S. Environmental Protection Agency (EPA) (in consultation with the U.S. Army Corps of Engineers (COE)) prior to the effective date of Sanctuary designation (January 1, 1993), provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on January 1, 1993.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraphs (a)(2)(i) (A) through (D) of this section and dredged material deposited at the authorized disposal sites described in appendix B to this subpart, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval.

(3) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from kelp harvesting, aquaculture or traditional fishing operations.

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or

abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Aquaculture, kelp harvesting or traditional fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with Federal Projects in existence on January 1, 1993, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties; or

(v) Construction, repair, replacement or rehabilitation of docks or piers.

(5) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(6) Flying motorized aircraft, except as necessary for valid law enforcement purposes, at less than 1000 feet above any of the four zones within the Sanctuary described in appendix C to this subpart.

(7) Operating motorized personal water craft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in appendix D to this subpart.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, sea turtle or seabird taken in violation of regulations, as amended, promulgated under the MMPA, ESA or MBTA.

(9) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(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.

(b) The prohibitions in paragraphs (a)(2) through (9) of this section do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(c) (1) All Department of Defense activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (9) of this section do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). (Copies of the FEIS/MP are available from the Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940). New activities may be exempted from the prohibitions in paragraphs (a)(2) through (9) of this section by the Director after consultation between the Director and the Department of Defense.

(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 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.

(d) The prohibitions in paragraphs (a)(2) through (8) 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 § 922.133 or a Special Use

permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 1, 1993 and issued by any Federal, State or local authority of competent jurisdiction, 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. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit under §922.48 and §922.133 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: the exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to §922.47, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to January 1, 1993. Any purported authorizations issued by other authorities after January 1, 1993 for any of these activities within the Sanctuary shall be invalid.

[60 FR 66877, Dec. 27, 1995, as amended at 61 FR 66917, Dec. 19, 1996]

EFFECTIVE DATE NOTE: At 61 FR 66917, Dec. 19, 1996, §922.132 was amended by adding paragraph (a)(10), effective Jan. 21, 1997.

§922.133 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by §922.132 (a)(2) through (8) 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 Ocean and Coastal Resource Management; ATTN: Manager, Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940.

(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 §922.132 (a)(2) through (8) if the Director finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: Further research related to Sanctuary resources and qualities; 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; assist in managing the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. 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.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia,* make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(f) The Director may, *inter alia,* make it a condition of any permit issued that a NOAA official be allowed to observe

any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

§ 922.134 Notification and review.

(a) The authority granted the Director under § 922.49 to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after January 1, 1993 may not be delegated or otherwise assigned to other Federal officials below the Director's level.

(b)(1) NOAA has entered into a Memorandum of Agreement (MOA) with the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary. With regard to permits, the MOA encompasses:

(i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under § 13377 of the California Water Code; and

(ii) Waste Discharge Requirements issued by the State of California under § 13263 of the California Water Code.

(2) The MOA specifies how the process of § 922.49 will be administered within State waters within the Sanctuary in coordination with the State permit program.

APPENDIX A TO SUBPART M OF PART 922—MONTEREY BAY NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Appendix based on North American datum of 1983.]

Point	Latitude	Longitude
1	37°52′56.09055″	122°37′39.12564″
2	37°39′59.06176″	122°45′ 3.79307″
3	37°36′58.39164″	122°46′ 9.73871″
4	37°34′17.30224″	122°48′14.38141″
5	37°31′47.55649″	122°51′35.56769″
6	37°30′34.11030″	122°54′22.12170″
7	37°29′39.05866″	123°00′27.70792″
8	37°30′29.47603″	123°05′46.22767″
9	37°31′17.66945″	123°07′47.63363″
10	37°27′10.93594″	123°08′24.32210″
11	37°20′35.37491″	123°07′54.12763″
12	37°13′50.21805″	123°06′15.50600″
13	37°07′48.76810″	123°01′43.10994″
14	37°03′46.60999″	122°54′45.39513″
15	37°02′06.30955″	122°46′35.02125″
16	36°55′17.56782″	122°48′21.41121″
17	36°48′22.74244″	122°48′56.29007″
18	36°41′30.91516″	122°48′19.40739″
19	36°34′45.76070″	122°46′26.96772″
20	36°28′24.18076″	122°43′32.43527″
21	36°22′20.70312″	122°39′28.42026″
22	36°16′43.93588″	122°34′26.77255″
23	36°11′44.53838″	122°28′37.16141″
24	36°07′26.88988″	122°21′54.97541″
25	36°04′07.08898″	122°14′39.75924″
26	36°01′28.22233″	122°07′00.19068″
27	35°59′45.46381″	121°58′56.36189″
28	35°58′59.12170″	121°50′26.47931″
29	35°58′53.63866″	121°45′22.82363″
30	35°55′45.60623″	121°42′40.28540″
31	35°50′15.84256″	121°43′09.20193″
32	35°43′14.26690″	121°42′43.79121″
33	35°35′41.88635″	121°41′25.07414″
34	35°33′11.75999″	121°37′49.74192″
35	35°33′17.45869″	121°05′52.89891″
36	37°35′39.73180″	122°31′14.96033″
37	37°36′49.21739″	122°37′00.22577″
38	37°46′00.98983″	122°39′00.40466″
39	37°49′05.69080″	122°31′46.30542″

APPENDIX B TO SUBPART M OF PART 922—DREDGED MATERIAL DISPOSAL SITES ADJACENT TO THE MONTEREY BAY NATIONAL MARINE SANCTUARY

(Appendix based on North American Datum of 1983.)

As of January 1, 1993, the U.S. Army Corps of Engineers operates the following dredged material disposal site adjacent to the Sanctuary off of the Golden Gate:

Point	Latitude	Longitude
1	37°45.875′	122°34.140′
2	37°44.978′	122°37.369′
3	37°44.491′	122°37.159′
4	37°45.406′	122°33.889′
5	37°45.875′	122°34.140′

In addition, the U.S. Environmental Protection Agency, as of January 1, 1993, is (in consultation with the U.S. Army Corps of Engineers) in the process of establishing a dredged material disposal site outside the northern boundary of the Monterey Bay National Marine Sanctuary and within one of three study areas described in 57 FR 43310, Sept. 18, 1992. When that disposal site is authorized, this appendix will be updated to incorporate its precise location.

APPENDIX C TO SUBPART M OF PART 922—ZONES WITHIN THE SANCTUARY WHERE OVERFLIGHTS BELOW 1000 FEET ARE PROHIBITED

The four zones are:

(1) From mean high water out to three nautical miles (NM) between a line extending from Point Santa Cruz on a southwesterly heading of 220° and a line extending from 2.0 NM north of Pescadero Point on a southwesterly heading of 240°;

(2) From mean high water out to three NM between a line extending from the Carmel River mouth on a westerly heading of 270° and a line extending due west along latitude 35° 33′17.5612″ off of Cambria;

(3) From mean high water and within a five NM arc drawn from a center point at the end of Moss Landing Pier; and

(4) Over the waters of Elkhorn Slough east of the Highway On bridge to Elkhorn Road.

APPENDIX D TO SUBPART M OF PART 922—ZONES AND ACCESS ROUTES WITHIN THE SANCTURARY WHERE THE OPERATION OF MOTORIZED PERSONAL WATERCRAFT IS ALLOWED

The four zones and access routes are:

(1) The approximately one [1.0] NM^2 area off Pillar Point Harbor from harbor launch ramps, through harbor entrance to the northern boundary of Zone One bounded by (a) 37°29.6′ N (flashing 5-second breakwater entrance light and horn located at the seaward end of the outer west breakwater), 122°29.1′ W; (b) 37°28.9′ N (bell buoy), 122°29.0′ W; (c) 37°28.8′ N, 122°28′ W; and (d) 37°29.6′ N, 122°28′ W;

(2) The approximately five [5.0] NM^2 area off of Santa Cruz Small Craft Harbor from harbor launch ramps, through harbor entrance, and then along a 100 yard wide access route southwest along a true bearing of approximately 196° (180° magnetic) to the whistle buoy at 36°56.3′ N, 122°00.6′ W. Zone Two is bounded by (a) 36°55′ N, 122°02′ W; (b) 36°55′ N, 121°58′ W; (c) 36°56.5′ N, 121°58′ W; and (d) 36°56.5′ N, 122°02′ W;

(3) The approximately six [6.0] NM^2 area off of Moss Landing Harbor from harbor launch ramps, through harbor entrance, and then along a 100 yard wide access route due west to the eastern boundary of Zone Three bounded by (a) 36°50′ N, 121°49.3′ W; (b) 36°50′ N, 121°50.8′ W; (c) 36°46.7′ N, 121°50.8′ W; (d) 36°46.7′ N, 121°49′ W; (e) 36°47.9′ N (bell buoy), 121°48.1′ W; and (f) 36°48.9′ N, 121°48.2′ W; and

(4) The approximately five [5.0] NM^2 area off of Monterey Harbor from harbor launch ramps to the seaward end of

the U.S. Coast Guard Pier, and then along a 100 yard wide access route due north to the southern boundary of Zone Four bounded by (a) 36°38.7′ N, 121°55.4′ W; (b) 36°36.9′ N, 121°52.5′ W; (c) 36°38.3′ N, 121°51.3′ W; and (d) 36°40′ N, 121°54.4′ W.

[60 FR 66877, Dec. 27, 1995, as amended at 61 FR 14964, Apr. 4, 1996]

Subpart N—Stellwagen Bank National Marine Sanctuary

§ 922.140 Boundary.

(a) The Stellwagen Bank National Marine Sanctuary (Sanctuary) consists of an area of approximately 638 square nautical miles (NM) of Federal marine waters and the submerged lands thereunder, over and around Stellwagen Bank and other submerged features off the coast of Massachusetts. The boundary encompasses the entirety of Stellwagen Bank; Tillies Bank, to the northeast of Stellwagen Bank; and portions of Jeffreys Ledge, to the north of Stellwagen Bank.

(b) The Sanctuary boundary is identified by the following coordinates, indicating the most northeast, southeast, southwest, west-northwest, and north-northwest points: 42°45′59.83″N×70°13′01.77″W (NE); 42°05′35.51″N×70°02′08.14″W (SE); 42°07′44.89″W×70°28′15.44″W (SW); 42°32′53.52″N×70°35′52.38″W (WNW); and 42°39′04.08″N×70°30′11.29″W (NNW). The western border is formed by a straight line connecting the most southwest and the west-northwest points of the Sanctuary. At the most west-northwest point, the Sanctuary border follows a line contiguous with the three-mile jurisdictional boundary of Massachusetts to the most north-northwest point. From this point, the northern border is formed by a straight line connecting the most north-northwest point and the most northeast point. The eastern border is formed by a straight line connecting the most northeast and the most southeast points of the Sanctuary. The southern border follows a straight line between the most southwest point and a point located at 42°06′54.57″N x 70°16′42.7″ W. From that point, the southern border then continues in a west-to-east direction along a line contiguous with the three-mile jurisdictional boundary of Massachusetts until reaching the most southeast point of the Sanctuary. The boundary coordinates are listed in appendix A to this subpart.

§ 922.141 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Industrial material means mineral, as defined in § 922.3.

Traditional fishing means those commercial or recreational fishing methods which have been conducted in the past within the Sanctuary.

§ 922.142 Prohibited or otherwise regulated activities.

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

(1)(i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping; or

(D) Engine exhaust.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(1)(i) (A) through (D) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(2) Exploring for, developing or producing industrial materials within the Sanctuary.

(3) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or

other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations; or

(iii) Installation of navigation aids.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

(5) Taking any marine reptile, marine mammal or seabird in or above the Sanctuary, except as permitted by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(6) Lightering in the Sanctuary.

(7) Possessing within the Sanctuary (regardless of where taken, moved or removed from), except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, marine reptile or seabird taken in violation of the MMPA, ESA or MBTA.

(8) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraphs (a)(1), and (3) through (8) of this section do not apply to any activity necessary to respond to an emergency threatening life, property or the environment.

(c)(1)(i) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(ii) Department of Defense military activities may be exempted from the prohibitions in paragraphs (a)(1) and (3) through (7) of this section by the Director after consultation between the Director and the Department of Defense.

(iii) If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practicable any advance impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph(c).

(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 the Department of Defense, the Department of Defense shall promptly coordinate with the Diretor 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.

(d) The prohibitions in paragraphs (a)(1) and (3) through (7) 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 §922.143 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a)(1) and (3) through (7) of this section do not apply any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation (November 4, 1992) and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant compiles 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 qualifies. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a permit under §922.48 and §922.143, or under section 310 of the act, authorizing, or otherwise approving, the exploration for, development or production of industrial materials within the Sanctuary, or the disposal of dredged materials within the Sanctuary (except by a certification,

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

§ 922.143 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.142 (a) (1) and (3) through (7) if conducted in accordance with scope, purpose, manner, 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 Ocean and Coastal Resource Management; ATTN: Manager, Stellwagen Bank National Marine Sanctuary, 14 Union Street, Plymouth, MA 02360.

(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 § 922.142(a) (1) and (3) through (7), if the Director finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; 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 may 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.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia,* make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(f) The Director may, *inter alia,* make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit an/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

APPENDIX A TO SUBPART N OF PART 922—STELLWAGEN BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Appendix Based on North American Datum of 1927]

Pt.	Latitude	Longitude	Loran	
			9960W	9960X
E1	42°45′59.83″	70°13′01.77″	13,607.19	25,728.57
E2	42°05′35.51″	70°02′08.14″	13,753.39	25,401.78
E3	42°06′8.25″	70°03′17.55″	13,756.72	25,412.46
E4	42°06′2.53″	70°04′03.36″	13,760.30	25,417.53
E5	42°07′02.70″	70°05′13.61″	13,764.52	25,427.27
E6	42°07′13.0″	70°06′23.75″	13,770.54	25,434.45
E7	42°07′35.95″	70°07′27.89″	13,775.08	25,442.51
E8	42°07′42.33″	70°08′26.07″	13,780.35	25,448.27
E9	42°07′59.94″	70°09′19.78″	13,784.24	25,455.02
E10	42°08′04.95″	70°10′24.40″	13,790.27	25,461.28
E11	42°07′55.19″	70°11′47.67″	13,799.38	25,467.56
E12	42°07′59.84″	70°13′03.35″	13,806.58	25,474.95
E13	42°07′46.55″	70°14′21.91″	13,815.52	25,480.62
E14	42°07′27.29″	70°15′22.95″	13,823.21	25,484.05
E15	42°06′54.57″	70°16′42.71″	13,833.88	25,487.79
E16	42°07′44.89″	70°28′15.44″	13,900.14	25,563.22
E17	42°32′53.52″	70°35′52.38″	13,821.60	25,773.51

[Appendix Based on North American Datum of 1927]

Pt.	Latitude	Longitude	Loran	
			9960W	9960X
E18	42°33′30.24″	70°35′14.96″	13,814.43	25,773.54
E19	42°33′48.14″	70°35′03.81″	13,811.68	25,774.28
E20	42°34′30.45″	70°34′22.98″	13,803.64	25,774.59
E21	42°34′50.37″	70°33′21.93″	13,795.43	25,770.55
E22	42°35′16.08″	70°32′32.29″	13,787.92	25,768.31
E23	42°35′41.80″	70°31′44.20″	13,780.57	25,766.25
E24	42°36′23.08″	70°30′58.98″	13,772.14	25,766.14
E25	42°37′15.51″	70°30′23.01″	13,763.69	25,768.12
E26	42°37′58.88″	70°30′06.60″	13,758.09	25,771.07
E27	42°38′32.46″	70°30′06.54″	13,755.07	25,774.58
E28	42°39′04.08″	70°30′11.29″	13,752.75	25,778.35

Subpart O—Olympic Coast National Marine Sanctuary

§922.150 Boundary.

(a) The Olympic Coast National Marine Sanctuary (Sanctuary) consists of an area of approximately 2500 square nautical miles (NM) (approximately 8577 sq. kilometers) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

(b) The Sanctuary boundary extends from Koitlah Point due north to the United States/Canada international boundary. The Sanctuary boundary then follows the U.S./Canada international boundary seaward to the 100 fathom isobath. The seaward boundary of the Sanctuary approximates the 100 fathom isobath in a southerly direction from the U.S./Canada international boundary to a point due west of the mouth of the Copalis River cutting across the heads of Nitnat, Juan de Fuca and Quinault Canyons. The coastal boundary of the Sanctuary is the mean higher high water line when adjacent to Federally managed lands cutting across the mouths of all rivers and streams, except where adjacent to Indian reservations, State and county owned lands; in such case, the coastal boundary is the mean lower low water line. La Push harbor is excluded from the Sanctuary boundary shoreward of the International Collision at Sea regulation (Colreg.) demarcation lines. The boundary coordinates are listed in appendix A to this subpart.

§922.151 Definitions.

In addition to those definitions found at §922.3, the following definitions apply to this subpart:

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

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

Traditional fishing means fishing using a commercial or recreational fishing method that has been used in the Sanctuary before the effective date of Sanctuary designation (July 22, 1994), including the retrieval of fishing gear.

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

§922.152 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (g) 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 within the Sanctuary.

(2)(i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(E) Dredge spoil in connection with beach nourishment projects related to harbor maintenance activities.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(2)(i) (A) through (E) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(3) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

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

(i) Anchoring vessels;

(ii) Traditional fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with Federal Projects in existence on July 22, 1994, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties;

(v) Construction, repair, replacement or rehabilitation of boat launches, docks or piers, and associated breakwaters and jetties; or

(vi) Beach nourishment projects related to harbor maintenance activities.

(5) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or pursuant to any Indian treaty with an Indian tribe to which the United States is a party, provided that the Indian treaty right is exercised in accordance with the MMPA, ESA and MBTA, to the extent that they apply.

(6) Flying motorized aircraft at less than 2,000 feet both above the Sanctuary within one NM of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, or within one NM seaward from the coastal boundary of the Sanctuary, except for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian tribe.

(7) Possessing within the Sanctuary (regardless of where taken, moved or removed from) any historical resource, or any marine mammal, sea turtle, or seabird taken in violation of the MMPA, ESA or MBTA, to the extent that they apply.

(8) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraph (a)(2) through (4), (6) and (7) of this section do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(c) The prohibitions in paragraphs (a)(2) through (4), (6) and (7) of this section do not apply to activities necessary for valid law enforcement purposes.

(d)(1) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(i) Except as provided in paragraph (d)(2) of this section, the prohibitions in paragraphs (a) (2) through (7) of this section do not apply to the following military activities performed by the

Department of Defense in W–237A, W–237B, and Military Operating Areas Olympic A and B in the Sanctuary:

(A) Hull integrity tests and other deep water tests;

(B) Live firing of guns, missiles, torpedoes, and chaff;

(C) Activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and

(D) Anti-submarine warfare operations.

(ii) New activities may be exempted from the prohibitions in paragraphs (a)(2) through (7) 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 avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (d).

(2) The Department of Defense is prohibited from conducting bombing activities within the Sanctuary.

(3) 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 the Department of Defense, the Department of Defense 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.

(e) The prohibitions in paragraphs (a)(2) through (7) 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 §922.153 or a Special Use permit issued pursuant to section 310 of the Act.

(f) Members of a federally recognized Indian tribe may exercise aboriginal and treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this part. The Director may consult with the governing body of a tribe regarding ways the tribe may exercise such rights consistent with the purposes of the Sanctuary.

(g) The prohibitions in paragraphs (a)(2) through (7) of this section do not apply to any activity authorized by any lease, permit, license, or other authorization issued after July 22, 1994 and issued by any Federal, State or local authority of competent jurisdiction, 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. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under §922.48 and §922.153 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to §922.47, of valid authorizations in existence on July 22, 1994 and issued by other authorities of competent jurisdiction); the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after July 22, 1994 for any of these activities within the Sanctuary shall be invalid.

§922.153 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by paragraphs (a)(2) through (7) of §922.152 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 Ocean and Coastal Resource

Management; ATTN: Manager, Olympic Coast National Marine Sanctuary, 138 West First Street, Port Angeles, WA 98362.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or her deems appropriate, to conduct an activity prohibited by paragraphs (a) (2) through (7) of § 922.152, if the Director finds that the activity will not substantially injure Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; 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; assist in managing the Sanctuary; further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or promote the welfare of any Indian tribe adjacent to the Sanctuary. In deciding whether to issue a permit, the Director may 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; the end value of the activity; and the impacts of the activity on adjacent Indian tribes. Where the issuance or denial of a permit is requested by the governing body of an Indian tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the tribe. The Director may also deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of the regulations in this subpart. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia,* make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(f) The Director may, *inter alia,* make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

(g) The Director shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe.

(h) Removal, or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry onto a significant cultural site designated by a tribal governing body, the Director shall require the express written consent of the governing body of the tribe or tribes to which such cultural site pertains.

§ 922.154 Consultation with the State of Washington, affected Indian tribes, and adjacent county governments.

(a) The Director shall regularly consult with the State of Washington, the governing bodies of tribes with reservations adjacent to the Sanctuary, and adjacent county governments regarding areas of mutual concern, including Sanctuary programs, permitting, activities, development, and threats to Sanctuary resources.

(b) The Director shall, when requested by such governments, enter into a memorandum of understanding regarding such consultations.

APPENDIX A TO SUBPART O OF PART 922—OLYMPIC COAST NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Based on North American Datum of 1983]

Point	Latitude	Longitude
1	47°07′45″	124°11′02″
2	47°07′45″	124°58′12″
3	47°35′05″	125°00′00″
4	47°40′05″	125°04′44″
5	47°50′01″	125°05′42″
6	47°57′13″	125°29′13″
7	48°07′33″	125°38′20″
8	48°15′00″	125°40′54″
9	48°18′21.2″	125°30′02.9″
10	48°20′15.2″	125°22′52.9″
11	48°26′46.2″	125°09′16.9″
12	48°27′09.2″	125°08′29.9″
13	48°28′08.2″	125°05′51.9″
14	48°29′43.2″	125°00′10.9″
15	48°29′56.2″	124°59′19.9″
16	48°30′13.2″	124°54′56.9″
17	48°30′21.2″	124°50′25.9″
18	48°30′10.2″	124°47′17.9″
19	48°29′36.4″	124°43′38.1″
20	48°28′08″	124°38′13″
21	48°23′17″	124°38′13″

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923.134 Public participation.
923.135 Enforcement.

AUTHORITY: 16 U.S.C. 1452 *et seq.* Sections 923.92 and 923.94 are also issued under E.O. 12372, July 14, 1982, 3 CFR, 1982 Comp. p. 197, as amended by E.O. 12416, April 8, 1983, 3 CFR, 1983 Comp. p. 186; (31 U.S.C. 6506; 42 U.S.C. 3334).

SOURCE: 44 FR 18595, Mar. 28, 1979, unless otherwise noted.

Subpart A—General

SOURCE: 61 FR 33805, June 28, 1996, unless otherwise noted.

§ 923.1 Purpose and scope.

(a) The regulations in this part set forth the requirements for State coastal management program approval by the Assistant Administrator for Ocean Services and Coastal Zone Management pursuant to the Coastal Zone Management Act of 1972, as amended (hereafter, the Act); the grant application procedures for program funds; conditions under which grants may be terminated; and requirements for review of approved management programs.

(b) Sections 306 and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. The specifics of these requirements are set forth below under the following headings: General Requirements; Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; and Coordination, Public Involvement and National Interest. All relevant sections of the Act are dealt with under one of these groupings, but not necessarily in the order in which they appear in the Act.

(c) In summary, the requirements for program approval are that a State develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act as requiring management or protection by the State;

(2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable;

(3) Determines specific use and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements;

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it. In arriving at these elements of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate, and Federal agencies;

(7) Provides for public participation in permitting processes, consistency determinations, and other similar decisions;

(8) Provides a mechanism to ensure that all state agencies will adhere to the program; and

(9) Contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the state required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

§ 923.2 Definitions.

(a) The term *Act* means the Coastal Zone Management Act of 1972, as amended.

(b) The term *Secretary* means the Secretary of Commerce and his/her designee.

(c) The term *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), or designee.

(d)(1) The term *relevant Federal agencies* means those Federal agencies with programs, activities, projects, regulatory, financing, or other assistance responsibilities in the following fields which could impact or affect a State's coastal zone:

(i) Energy production or transmission,

(ii) Recreation of a more than local nature,

(iii) Transportation,

(iv) Production of food and fiber,

(v) Preservation of life and property,

(vi) National defense,

(vii) Historic, cultural, aesthetic, and conservation values,

(viii) Mineral resources and extraction, and

(ix) Pollution abatement and control.

(2) The following are defined as relevant Federal agencies: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Transportation; Environmental Protection Agency; Federal Energy Regulatory Commission; General Services Administration, Nuclear Regulatory Commission; Federal Emergency Management Agency.

(e) The term *Federal agencies* principally affected means the same as ''relevant Federal agencies.'' The Assistant Administrator may include other agencies for purposes of reviewing the management program and environmental impact statement.

(f) The term *Coastal State* means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. Pursuant to section 304(3) of the Act, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa. Pursuant to section 703 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the term also includes the Northern Marianas.

(g) The term *management program* includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, including an articulation of enforceable policies and citation of authorities providing this enforceability, prepared and adopted by the State in accordance with the provisions of this Act and this part, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(h) The following terms, as used in these regulations, have the same definition as provided in section 304 of the Act:

(1) Coastal zone;

(2) Coastal waters;

(3) Enforceable policy;

(4) Estuary;

(5) Land use; and

(6) Water use.

(i) The term *grant* means a financial assistance instrument and refers to both grants and cooperative agreements.

§923.3 General requirements.

(a) The management program must be developed and adopted in accordance with the requirements of the Act and this part, after notice, and the opportunity for full participation by relevant Federal and State agencies, local governments, regional organizations, port authorities, and other interested parties and persons, and be adequate to carry out the purposes of the Act and be consistent with the national policy set forth in section 303 of the Act.

(b) The management program must provide for the management of those land and water uses having a direct and significant impact on coastal waters and those geographic areas which are likely to be affected by or vulnerable to sea level rise. The program must include provisions to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the State's coastal zone a unique, vulnerable, or valuable area.

(c) The management program must contain a broad class of policies for each of the following areas: resource protection, management of coastal development, and simplification of governmental processes. These three broad classes must include specific policies that provide the framework for the exercise of various management techniques and authorities governing coastal resources, uses, and areas. The three classes must include policies that address uses of or impacts on wetlands and floodplains within the State's coastal zone, and that minimize the destruction, loss or degradation of wetlands and preserve and enhance their natural values in accordance with the purposes of Executive Order 11990, pertaining to wetlands. These policies also must reduce risks of flood loss, minimize the impact of floods on human safety, health and welfare, and preserve the natural, beneficial values served by floodplains, in accordance with the purposes of Executive Order 11988, pertaining to floodplains.

(d) The policies in the program must be appropriate to the nature and degree of management needed for uses, areas, and resources identified as subject to the program.

(e) The policies, standards, objectives, criteria, and procedures by which program decisions will be made must provide:

(1) A clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and

(2) A clear sense of direction and predictability for decisionmakers who must take actions pursuant to or consistent with the management program.

Subpart B—Uses Subject to Management

SOURCE: 61 FR 33806, June 28, 1996, unless otherwise noted.

§ 923.10 General.

This subpart sets forth the requirements for management program approvability with respect to land and water uses which, because of their direct and significant impacts on coastal waters or those geographic areas likely to be affected by or vulnerable to sea level rise, are subject to the terms of the management program. This subpart deals in full with the following subsections of the Act: 306(d)(1)(B), Uses Subject to the Management Program, 306(d)(2)(H), Energy Facility Planning, and 306(d)(12)(B), Uses of Regional Benefit.

§ 923.11 Uses subject to management.

(a) (1) The management program for each coastal state must include a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(2) The management program must identify those land and water uses that will be subject to the terms of the management program. These uses shall be those with direct and significant impacts on coastal waters or on geographic areas likely to be affected by or vulnerable to sea level rise.

(3) The management program must explain how those uses identified in paragraph (a)(2) of this section will be managed. The management program must also contain those enforceable policies, legal authorities, performance standards or other techniques or procedures that will govern whether and how uses will be allowed, conditioned, modified, encouraged or prohibited.

(b) In identifying uses and their appropriate management, a State should analyze the quality, location, distribution and demand for the natural and man-made resources of their coastal zone, and should consider potential individual and cumulative impacts of uses on coastal waters.

(c) States should utilize the following types of analyses:

(1) Capability and suitability of resources to support existing or projected uses;

(2) Environmental impacts on coastal resources;

(3) Compatibility of various uses with adjacent uses or resources;

(4) Evaluation of inland and other location alternatives; and

(5) Water dependency of various uses and other social and economic considerations.

(d) Examination of the following factors is suggested:

(1) Air and water quality;

(2) Historic, cultural and esthetic resources where coastal development is likely to affect these resources;

(3) Open space or recreational uses of the shoreline where increased access to the shorefront is a particularly important concern;

(4) Floral and faunal communities where loss of living marine resources or threats to endangered or threatened coastal species are particularly important concerns.

(5) Information on the impacts of global warming and resultant sea level rise on natural resources such as beaches, dunes, estuaries, and wetlands, on salinization of drinking water supplies, and on properties, infrastructure and public works.

§923.12 Uses of regional benefit.

The management program must contain a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit. To this end, the management program must:

(a) Identify what constitutes uses of regional benefit; and

(b) Identify and utilize any one or a combination of methods, consistent with the control techniques employed by the State, to assure local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

§923.13 Energy facility planning process.

The management program must contain a planning process for energy facilities likely to be located in or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities. (See subsection 304(5) of the Act.) This process must contain the following elements:

(a) Identification of energy facilities which are likely to locate in, or which may significantly affect, a State's coastal zone;

(b) Procedures for assessing the suitability of sites for such facilities designed to evaluate, to the extent practicable, the costs and benefits of proposed and alternative sites in terms of State and national interests as well as local concerns;

(c) Articulation and identification of enforceable State policies, authorities and techniques for managing energy facilities and their impacts; and

(d) Identification of how interested and affected public and private parties will be involved in the planning process.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

Subpart C—Special Management Areas

SOURCE: 61 FR 33806, June 28, 1996, unless otherwise noted.

§923.20 General.

(a) This subpart sets forth the requirements for management program approvability with respect to areas of particular concern because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system which is part of the management program. As a result, these areas require special management attention within the terms of the State's overall coastal program. This special management may include regulatory or permit requirements applicable only to the area of particular concern. It also may include increased intergovernmental coordination, technical, assistance, enhanced public expenditures, or additional public services and maintenance to a designated area. This subpart deals with the following subsections of the Act: 306(d)(2)(C)-Geographic Areas of Particular Concern; 306(d)(2)(E)-Guidelines on Priorities of Uses; 306(d)(2)(G)-Shorefront Access and protection Planning; 306(d)(2)(I)-Shoreline Erosion/Mitigation Planning; and 306(d)(9)-Areas for Preservation and Restoration.

(b) The importance of designating areas of particular concern for management purposes and the number and type of areas that should be designated

is directly related to the degree of comprehensive controls applied throughout a State's coastal zone. Where a State's general coastal management policies and authorities address state and national concerns comprehensively and are specific with respect to particular resources and uses, relatively less emphasis need be placed on designation of areas of particular concern. Where these policies are limited and non-specific, greater emphasis should be placed on areas of particular concern to assure effective management and an adequate degree of program specificity.

§ 923.21 Areas of particular concern.

(a) The management program must include an inventory and designation of areas of particular concern within the coastal zone, on a generic and/or site-specific basis, and broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(b) In developing criteria for inventorying and designating areas of particular concern. States must consider whether the following represent areas of concern requiring special management:

(1) Areas of unique, scarce, fragile or vulnerable natural habitat; unique or fragile, physical, figuration (as, for example, Niagara Falls); historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National Register of Historic Places.);

(2) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and endangered species and the various trophic levels in the food web critical to their well-being;

(3) Areas of substantial recreational value and/or opportunity;

(4) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(5) Areas of unique hydrologic, geologic or topographic significance for industrial or commercial development or for dredge spoil disposal;

(6) Areas or urban concentration where shoreline utilization and water uses are highly competitive;

(7) Areas where, if development were permitted, it might be subject to significant hazard due to storms, slides, floods, erosion, settlement, salt water intrusion, and sea level rise;

(8) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

(c) Where states will involve local governments, other state agencies, federal agencies and/or the public in the process of designating areas of particular concern, States must provide guidelines to those who will be involved in the designation process. These guidelines shall contain the purposes, criteria, and procedures for nominating areas of particular concern.

(d) In identifying areas of concern by location (if site specific) or category of coastal resources (if generic), the program must contain sufficient detail to enable affected landowners, governmental entities and the public to determine with reasonable certainty whether a given area is designated.

(e) In identifying areas of concern, the program must describe the nature of the concern and the basis on which designations were made.

(f) The management program must describe how the management program addresses and resolves the concerns for which areas are designated; and

(g) The management program must provide guidelines regarding priorities of uses in these areas, including guidelines on uses of lowest priority.

§ 923.22 Areas for preservation or restoration.

The management program must include procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical or esthetic values, and the criteria for such designations.

§ 923.23 Other areas of particular concern.

(a) The management program may, but is not required to, designate specific areas known to require additional or special management, but for which

additional management techniques have not been developed or necessary authorities have not been established at the time of program approval. If a management program includes such designations, the basis for designation must be clearly stated, and a reasonable time frame and procedures must be set forth for developing and implementing appropriate management techniques. These procedures must provide for the development of those items required in §923.21. The management program must identify an agency (or agencies) capable of formulating the necessary management policies and techniques.

(b) The management program must meet the requirements of §923.22 for containing procedures for designating areas for preservation or restoration. The management program may include procedures and criteria for designating areas of particular concern for other than preservation or restoration purposes after program approval.

§923.24 Shorefront access and protection planning.

(a) The management program must include a definition of the term ''beach'' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

(b) The basic purpose in focusing special planning attention on shorefront access and protection is to provide public beaches and other public coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value with special management attention within the purview of the State's management program. This special management attention may be achieved by designating public shorefront areas requiring additional access or protection as areas of particular concern pursuant to §923.21 or areas for preservation or restoration pursuant to §923.22.

(c) The management program must contain a procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.

(d) The management program must contain a definition of the term ''beach'' that is the broadest definition allowable under state law or constitutional provisions, and an identification of public areas meeting that definition.

(e) The management program must contain an identification and description of enforceable policies, legal authorities, funding program and other techniques that will be used to provide such shorefront access and protection that the State's planning process indicates is necessary.

§923.25 Shoreline erosion/mitigation planning.

(a) The management program must include a planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, including potential impacts of sea level rise, and to restore areas adversely affected by such erosion. This planning process may be within the broader context of coastal hazard mitigation planning.

(b) The basic purpose in developing this planning process is to give special attention to erosion issues. This special management attention may be achieved by designating erosion areas as areas of particular concern pursuant to §923.21 or as areas for preservation or restoration pursuant to §923.22.

(c) The management program must include an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion, including potential impacts of sea level rise, as the state's planning process indicates is necessary.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

Subpart D—Boundaries

SOURCE: 61 FR 33808, June 28, 1996, unless otherwise noted.

§923.30 General.

This subpart sets forth the requirements for management program approvability with respect to boundaries

of the coastal zone. There are four elements to a State's boundary: the inland boundary, the seaward boundary, areas excluded from the boundary, and, in most cases, interstate boundaries. Specific requirements with respect to procedures for determining and identifying these boundary elements are discussed in the sections of this subpart that follow.

§ 923.31 Inland boundary.

(a) The inland boundary of a State's coastal zone must include:

(1) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, or are likely to be affected by or vulnerable to sea level rise, pursuant to section 923.11 of these regulations.

(2) Those special management areas identified pursuant to § 923.21;

(3) Waters under saline influence-waters containing a significant quantity of seawater, as defined by and uniformly applied by the State;

(4) Salt marshes and wetlands-Areas subject to regular inundation of tidal salt (or Great Lakes) waters which contain marsh flora typical of the region;

(5) Beaches-The area affected by wave action directly from the sea. Examples are sandy beaches and rocky areas usually to the vegetation line;

(6) Transitional and intertidal areas-Areas subject to coastal storm surge, and areas containing vegetation that is salt tolerant and survives because of conditions associated with proximity to coastal waters. Transitional and intertidal areas also include dunes and rocky shores to the point of upland vegetation;

(7) Islands-Bodies of land surrounded by water on all sides. Islands must be included in their entirety, except when uses of interior portions of islands do not cause direct and significant impacts.

(8) The inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether property or an activity is located within the management area. States must be able to advise interested parties whether they are subject to the terms of the management program within, at a maximum, 30 days of receipt of an inquiry. An inland coastal zone boundary defined in terms of political jurisdiction (e.g., county, township or municipal lines) cultural features (e.g., highways, railroads), planning areas (e.g., regional agency jurisdictions, census enumeration districts), or a uniform setback line is acceptable so long as it includes the areas indentified.

(b) The inland boundary of a State's coastal zone may include:

(1) Watersheds-A state may determine some uses within entire watersheds which have direct and significant impact on coastal waters or are likely to be affected by or vulnerable to sea level rise. In such cases it may be appropriate to define the coastal zone as including these watersheds.

(2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters or areas that are likely to be affected by or vulnerable to sea level rise.

(3) Indian lands not held in trust by the Federal Government.

(c) In many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not, impossible, to define in terms of direct and significant impacts. Two activities that States should consider as causing direct and significant impacts on coastal waters in urban areas are sewage discharges and urban runoff. In addition, States should consider dependency of uses on water access and visual relationships as factors appropriate for the determination of the inland boundary in highly urbanized areas.

§ 923.32 Lakeward or seaward boundary.

(a)(1) For states adjoining the Great Lakes, the lakeward boundary of the State's coastal zone is the international boundary with Canada or the boundaries with adjacent states. For states adjacent to the Atlantic or Pacific Ocean, or the Gulf of Mexico, the seaward boundary is the outer limit of state title and ownership under the Submerged Lands Act (48 U.S.C. 1301 et

seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 10, 1963, (48 U.S.C. 1705, as applicable).

(2) The requirement for defining the seaward boundary of a State's coastal zone can be met by a simple restatement of the limits defined in this section, unless there are water areas which require a more exact delineation because of site specific policies associated with these areas. Where States have site specific policies for particular water areas, these shall be mapped, described or referenced so that their location can be determined reasonably easily by any party affected by the policies.

(b) The seaward limits, as defined in this section, are for purposes of this program only and represent the area within which the State's management program may be authorized and financed. These limits are irrespective of any other claims States may have by virtue of other laws.

§923.33 Excluded lands.

(a) The boundary of a State's coastal zone must exclude lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents. To meet this requirement, the program must describe, list or map lands or types of lands owned, leased, held in trust or otherwise used solely by Federal agencies.

(b) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a state's management program. In excluding Federal lands from a State's coastal zone for the purposes of this Act, a State does not impair any rights or authorities that it may have over Federal lands that exist separate from this program.

§923.34 Interstate boundary.

States must document that there has been consultation and coordination with adjoining coastal States regarding delineation of any adjacent inland and lateral seaward boundary.

Subpart E—Authorities and Organization

SOURCE: 61 FR 33809, June 28, 1996, unless otherwise noted.

§923.40 General.

(a) This subpart sets forth the requirements for management program approvability with respect to authorities and organization. The authorities and organizational structure on which a State will rely to administer its management program are the crucial underpinnings for enforcing the policies which guide the management of the uses and areas identified in its management program. There is a direct relationship between the adequacy of authorities and the adequacy of the overall program. The authorities need to be broad enough in both geographic scope and subject matter to ensure implementation of the State's enforceable policies. These enforceable policies must be sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses in order to assure wise use of the coastal zone. (Issues relating to the adequate scope of the program are dealt with in §923.3.)

(b) The entity or entities which will exercise the program's authorities is a matter of State determination. They may be the state agency designated pursuant to section 306(d)(6) of the Act, other state agencies, regional or interstate bodies, and local governments. The major approval criterion is a determination that such entity or entities are required to exercise their authorities in conformance with the policies of the management program. Accordingly, the essential requirement is that the State demonstrate that there is a means of ensuring such compliance. This demonstration will be in the context of one or a combination of the three control techniques specified in

section 306(d)(11) of the Act. The requirements related to section 306(d)(12) of the Act are described in §§923.42 through 923.44 of this subchapter.

(c) In determining the adequacy of the authorities and organization of a state's programs, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(h) of the Act.

(d) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 306(d)(2)(D)-Means of Control; 306(d)(10)-Authorities; 306(d)(10)(A)-Control Development and Resolve Conflicts; 306(d)(10)(B)-Powers of Acquisition; 306(d)(11)-Techniques of Control; and 307(f)-Air and Water Quality Control Requirements. The organization requirements of the Act dealt with in this subpart are those contained in sections 306(d)(2)(F)-Organizational Structure; 306(d)(6)-Designated State Agency; and 306(d)(7)-Organization.

§ 923.41 Identification of authorities.

(a) (1) The management program must identify the means by which the state proposes to exert control over the permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters, including a listing of relevant state constitutional provisions, laws, regulations, and judicial decisions. These are the means by which the state will enforce its coastal management policies. (See section 304(6a) of the Act.)

(2) The state chosen agency or agencies (including local governments, area-wide agencies, regional agencies, or interstate agencies) must have the authority for the management of the coastal zone. Such authority includes the following powers:

(i) To administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(ii) To acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(b) In order to meet these requirements, the program must identify relevant state constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the state's management program, including the authorities pursuant to sections 306(d)(10) and 306(d)(11) of the Act which require a state to have the ability to:

(1) Administer land and water use regulations in conformance with the policies of the management program;

(2) Control such development as is necessary to ensure compliance with the management program;

(3) Resolve conflicts among competing uses; and

(4) Acquire appropriate interest in lands, waters or other property as necessary to achieve management objectives. Where acquisition will be a necessary technique for accomplishing particular program policies and objectives, the management program must indicate for what purpose acquisition will be used (i.e., what policies or objectives will be accomplished); the type of acquisition (e.g., fee simple, purchase of easements, condemnation); and what agency (or agencies) of government have the authority for the specified type of acquisition.

§ 923.42 State establishment of criteria and standards for local implementation—Technique A.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land uses and water uses within the coastal zone. The first such control technique, at subsection 306(d)(11)(A) of the Act, is state establishment of criteria and standards for local implementation, subject to administrative review and enforcement (control technique A).

(b) There are 5 principal requirements that control technique A must embody in order to be approved:

(1) The State must have developed and have in effect at the time of program approval enforceable policies

that meet the requirements of §923.3. These policies must serve as the standards and criteria for local program development or the State must have separate standards and criteria, related to these enforceable policies, that will guide local program development.

(2) During the period while local programs are being developed, a State must have sufficient authority to assure that land and water use decisions subject to the management program will comply with the program's enforceable policies. The adequacy of these authorities will be judged on the same basis as specified for direct State controls or case-by-case reviews.

(3) A State must be able to ensure that coastal programs will be developed pursuant to the State's standards and criteria, or failing this, that the management program can be implemented directly by the State. This requirement can be met if a State can exercise any one of the following techniques:

(i) Direct State enforcement of its standards and criteria in which case a State would need to meet the requirements of this section which address the direct State control technique;

(ii) Preparation of a local program by a State agency which the local government then would implement. To use this technique the State must have statutory authority to prepare and adopt a program for a local government, and a mechanism by which the State can cause the local government to enforce the State-created program. Where the mechanism to assure local enforcement will be judicial relief, the program must include the authority under which judicial relief can be sought;

(iii) State preparation and enforcement of a program on behalf of a local government. Here the State must have the authority to:

(A) Prepare and adopt a plan, regulations, and ordinances for the local government and

(B) Enforce such plans, regulations and ordinances;

(iv) State review of local government actions on a case-by-case basis or on appeal, and prevention of actions inconsistent with the standards and criteria. Under this technique, when a local government fails to adopt an approvable program, the State must have the ability to review activities in the coastal zone subject to the management program and the power to prohibit, modify or condition those activities based on the policies, standards and criteria of the management program; or

(v) If a locality fails to adopt a management program, the State may utilize a procedure whereby the responsibility for preparing a program shifts to an intermediate level government, such as a county. If this intermediate level of government fails to produce a program, then the State must have the ability to take one of the actions described above. This alternative cannot be used where the intermediate level of government lacks the legal authority to adopt and implement regulations necessary to implement State policies, standards and criteria.

(4) A State must have a procedure whereby it reviews and certifies the local program's compliance with State standards and criteria. This procedure must include provisions for:

(i) Opportunity for the public and governmental entities (including Federal agencies) to participate in the development of local programs; and

(ii) Opportunity for the public and governmental entities (including Federal agencies) to make their views known (through public hearings or other means) to the State agency prior to approval of local programs; and

(iii) Review by the State of the adequacy of local programs consideration of facilities identified in a State's management program in which there is a national interest.

(5) A State must be able to assure implementation and enforcement of a local program once approved. To accomplish this a State must:

(i) Establish a monitoring system which defines what constitutes and detects patterns of non-compliance. In the case of uses of regional benefit and facilities in which there is a national interest, the monitoring system must be capable of detecting single instances of local actions affecting such uses or facilities in a manner contrary to the management program.

(ii) Be capable of assuring compliance when a pattern of deviation is detected or when a facility involving identified national interests or a use of regional benefit is affected in a manner contrary to the program's policies. When State action is required because of failure by a local government to enforce its program, the State must be able to do one or a combination of the following:

(A) Directly enforce the entire local program;

(B) Directly enforce that portion of the local program that is being enforced improperly. State intervention would be necessary only in those local government activities that are violating the policies, standards or criteria.

(C) Seek judicial relief against local government for failure to properly enforce;

(D) Review local government actions on a case-by-case basis or on appeal and have the power to prevent those actions inconsistent with the policies and standards.

(E) Provide a procedure whereby the responsibility for enforcing a program shifts to an intermediate level of government, assuming statutory authority exists to enable the immediate of government to assume this responsibility.

§ 923.43 Direct State land and water use planning and regulation—Technique B.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The second such control technique, at subsection 306(d)(11)(B) of the Act, is direct state land and water use planning and regulation (control technique B).

(b) To have control technique B approved, the State must have the requisite direct authority to plan and regulate land and water uses subject to the management program. This authority can take the form of:

(1) Comprehensive legislation—A single piece of comprehensive legislation specific to coastal management and the requirements of this Act.

(2) Networking—The utilization of authorities which are compatible with and applied on the basis of coastal management policies developed pursuant to § 923.3.

(c) In order to apply the networking concept, the State must:

(1) Demonstrate that, taken together, existing authorities can and will be used to implement the full range of policies and management techniques identified as necessary for coastal management purposes; and

(2) Bind each party which exercises statutory authority that is part of the management program to conformance with relevant enforceable policies and management techniques. Parties may be bound to conformance through an executive order, administrative directive or a memorandum of understanding provided that:

(i) The management program authorities provide grounds for taking action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can act to ensure compliance: The state agency designated pursuant to subsection 306(d)(6) of the Act, the state's Attorney General, another state agency, a local government, or a citizen.

(ii) The executive order, administrative directive or memorandum of understanding establishes conformance requirements of other State agency activities or authorities to management program policies. A gubernatorial executive order will be acceptable if networked State agency heads are directly responsible to the Governor.

(3) Where networked State agencies can enforce the management program policies at the time of section 306 approval without first having to revise their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. Where State agencies cannot enforce coastal policies without first revising their rules and regulations, then these revisions must be made prior to approval of the State's program by the Assistant Administrator.

§923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The third such control technique, at subsection 306(d)(11)(C) of the Act, is state administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings (control technique C).

(b) Under case-by-case review, States have the power to review individual development plans, projects or land and water use regulations (including variances and exceptions thereto) proposed by any State or local authority or private developer which have been identified in the management program as being subject to review for consistency with the management program. This control technique requires the greatest degree of policy specificity because compliance with the program will not require any prior actions on the part of anyone affected by the program. Specificity also is needed to avoid challenges that decisions (made pursuant to the management program) are unfounded, arbitrary or capricious.

(c) To have control technique C approved, a State must:

(1) Identify the plans, projects or regulations subject to review, based on their significance in terms of impacts on coastal resources, potential for incompatibility with the State's coastal management program, and having greater than local significance;

(2) Identify the State agency that will conduct this review;

(3) Include the criteria by which identified plans, projects and regulations will be approved or disapproved;

(4) Have the power to approve or disapprove identified plans, projects or regulations that are inconsistent with the management program, or the power to seek court review thereof; and

(5) Provide public notice of reviews and the opportunity for public hearing prior to rendering a decision on each case-by-case review.

§923.45 Air and water pollution control requirements.

The program must incorporate, by reference or otherwise, all requirements established by the Federal Water Pollution Control Act, as amended (Clean Water Act or CWA), or the Clean Air Act, as amended (CAA), or established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements must be the water pollution control and air pollution control requirements applicable to such program. Incorporation of the air and water quality requirements pursuant to the CWA and CAA should involve their consideration during program development, especially with respect to use determinations and designation of areas for special management. In addition, this incorporation will prove to be more meaningful if close coordination and working relationships between the State agency and the air and water quality agencies are developed and maintained throughout the program development process and after program approval.

§923.46 Organizational structure.

The State must be organized to implement the management program. The management program must describe the organizational structure that will be used to implement and administer the management program including a discussion of those state and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(d)(3)(B); 306(d)(10); 306(d)(10) (A) and (B); 306(d)(11) and (12); and 307(f). The management program must also describe the relationship of these administering agencies to the state agency designated pursuant to subsection 306(d)(6) of the Act.

§ 923.47 Designated State agency.

(a) For program approval, the Governor of the state must designate a single state agency to receive and administer the grants for implementing the management program.

(1) This entity must have the fiscal and legal capability to accept and administer grant funds, to make contracts or other arrangements (such as passthrough grants) with participating agencies for the purpose of carrying out specific management tasks and to account for the expenditure of the implementation funds of any recipient of such monies, and

(2) This entity must have the administrative capability to monitor and evaluate the management of the State's coastal resources by the various agencies and/or local governments with specified responsibilities under the management program (irrespective of whether such entities receive section 306 funds); to make periodic reports to the Office of Ocean and Coastal Resource Management (OCRM), the Governor, or the State legislature, as appropriate, regarding the performance of all agencies involved in the program. The entity also must be capable of presenting evidence of adherence to the management program or justification for deviation as part of the review by OCRM of State performance required by section 312 of the Act.

(b) (1) The 306 agency designation is designed to establish a single point of accountability for prudent use of administrative funds in the furtherance of the management and for monitoring of management activities. Designation does not imply that this single agency need be a ''super agency'' or the principal implementation vehicle. It is, however, the focal point for proper administration and evaluation of the State's program and the entity to which OCRM will look when monitoring and reevaluating a State's program during program implementation.

(2) The requirement for the single designated agency should not be viewed as confining or otherwise limiting the role and responsibilities which may be assigned to this agency. It is up to the State to decide in what manner and to what extent the designated State agency will be involved in actual program implementation or enforcement. In determining the extent to which this agency should be involved in program implementation or enforcement, specific factors should be considered, such as the manner in which local and regional authorities are involved in program implementation, the administrative structure of the State, the authorities to be relied upon and the agencies administering such authorities. Because the designated State agency may be viewed as the best vehicle for increasing the unity and efficiency of a management program, the State may want to consider the following in selecting which agency to designate:

(i) Whether the designated State entity has a legislative mandate to coordinate other State or local programs, plans and/or policies within the coastal zone;

(ii) To what extent linkages already exist between the entity, other agencies, and local governments;

(iii) To what extent management or regulatory authorities affecting the coastal zone presently are administered by the agency; and

(iv) Whether the agency is equipped to handle monitoring, evaluation and enforcement responsibilities.

§ 923.48 Documentation.

A transmittal letter signed by the Governor is required for the submission of a management program for federal approval. The letter must state that the Governor:

(a) Has reviewed and approved as State policy, the management program, and any changes thereto, submitted for the approval of the Assistant Administrator.

(b) Has designated a single State agency to receive and administer implementation grants;

(c) Attests to the fact that the State has the authorities necessary to implement the management program; and

(d) Attests to the fact that the State is organized to implement the management program.

Subpart F—Coordination, Public Involvement and National Interest

SOURCE: 61 FR 33812, June 28, 1996, unless otherwise noted.

§923.50 General.

(a) Coordination with governmental agencies having interests and responsibilities affecting the coastal zone, and involvement of interest groups as well as the general public is essential to the development and administration of State coastal management programs. The coordination requirements of this subpart are intended to achieve a proper balancing of diverse interests in the coastal zone. The policies of section 303 of the Act require that there be a balancing of variety, sometimes conflicting, interests, including:

(1) The preservation, protection, development and, where possible, the restoration or enhancement of coastal resources;

(2) The achievement of wise use of coastal land and water resources with full consideration for ecological, cultural, historic, and aesthetic values and needs for compatible economic development;

(3) The involvement of the public, of Federal, state and local governments and of regional agencies in the development and implementation of coastal management programs;

(4) The management of coastal development to improve, safeguard, and restore coastal water quality; and

(5) The study and development of plans for addressing the adverse effects of coastal hazards, including erosion, flooding, land subsidence and sea level rise.

(b) In order to be meaningful, coordination with and participation by various units and levels of government including regional commissions, interest groups, and the general public should begin early in the process of program development and should continue throughout on a timely basis to assure that such efforts will result in substantive inputs into a State's management program. State efforts should be devoted not only to obtaining information necessary for developing the management program but also to obtaining reactions and recommendations regarding the content of the management program and to responding to concerns by interested parties. The requirements for intergovernmental cooperation and public participation continue after program approval.

(c) This subpart deals with requirements for coordination with governmental entities, interest groups and the general public to assure that their interests are fully expressed and considered during the program development process and that procedures are created to insure continued consideration of their views during program implementation. In addition, this subpart deals with mediation procedures for serious disagreements between States and Federal agencies that occur during program development and implementation. This subpart addresses the requirements of the following subsections of the Act: 306(d)(1)—Opportunity for Full Participation; 306(d)(3)(A)—Plan Coordination; 306(d)(3)(B)—Continued State-Local Consultation; 306(d)(4)—Public Hearings; 306(d)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

§923.51 Federal-State consultation.

(a) The management program must be developed and adopted with the opportunity of full participation by relevant Federal agencies and with adequate consideration of the views of Federal agencies principally affected by such program.

(b) By providing relevant Federal agencies with the opportunity for full participation during program development and for adequately considering the views of such agencies, States can effectuate the Federal consistency provisions of subsections 307 (c) and (d) of the Act once their programs are approved. (See 15 CFR part 930 for a full discussion of the Federal consistency provisions of the Act.)

(c) In addition to the consideration of relevant Federal agency views required during program development, Federal agencies have the opportunity to provide further comment during the program review and approval process. (See subpart G for details on this process.)

Moreover, in the event of a serious disagreement between a relevant Federal agency and designated State agency during program development or during program implementation, the mediation provisions of subsection 307(h) of the Act are available. (See § 923.54 for details on mediation.)

(d) In order to provide an opportunity for participation by relevant Federal agencies and give adequate consideration to their views, each state must:

(1) Contact each relevant Federal Agency listed in § 923.2(d) and such other Federal agencies as may be relevant, owing to a State's particular circumstances, early in the development of its management program. The purpose of such contact is to develop mutual arrangements or understandings regarding that agency's participation during program development;

(2) Provide for Federal agency input on a timely basis as the program is developed. Such input shall be related both to information required to develop the management program and to evaluation of and recommendations concerning various elements of the management program;

(3) Solicit statements from the head of Federal agencies identified in Table 1 of § 923.52(c)(1) as to their interpretation of the national interest in the planning for and siting of facilities which are more than local in nature;

(4) Summarize the nature, frequency, and timing of contacts with relevant Federal agencies;

(5) Evaluate Federal comments received during the program development process and, where appropriate in the opinion of the State, accommodate the substance of pertinent comments in the management program. States must consider and evaluate relevant Federal agency views or comments about the following:

(i) Management of coastal resources for preservation, conservation, development, enhancement or restoration purposes;

(ii) Statements of the national interest in the planning for or siting of facilities which are more than local in nature;

(iii) Uses which are subject to the management program;

(iv) Areas which are of particular concern to the management program;

(v) Boundary determinations;

(vi) Shorefront access and protecting planning, energy facility planning and erosion planning processes; and

(vii) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(d)(3) of the Act.

(6) Indicate the nature of major comments by Federal agencies provided during program development (either by including copies of comments or by summarizing comments) and discuss any major differences or conflicts between the management program and Federal views that have not been resolved at the time of program submission.

§ 923.52 Consideration of the national interest in facilities.

(a) The management program must provide for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the State must have considered any applicable national or interstate energy plan or program.

(b) The primary purpose of this requirement is to assure adequate consideration by States of the national interest involved in the planning for and siting of facilities (which are necessary to meet other than local requirements) during:

(1) The development of the State's management program,

(2) The review and approval of the program by the Assistant Administrator, and

(3) The implementation of the program as such facilities are proposed.

(c) In order to fulfill this requirement, States must:

(1) Describe the national interest in the planning for and siting of facilities considered during program development.

(2) Indicate the sources relied upon for a description of the national interest in the planning for and siting of the facilities.

(3) Indicate how and where the consideration of the national interest is reflected in the substance of the management program. In the case of energy facilities in which there is a national interest, the program must indicate the consideration given any national or interstate energy plans or programs which are applicable to or affect a state's coastal zone.

(4) Describe the process for continued consideration of the national interest in the planning for and siting of facilities during program implementation, including a clear and detailed description of the administrative procedures and decisions points where such interest will be considered.

§923.53 Federal consistency procedures.

(a) A State must include in its management program submission, as part of the body of the submission an appendix or an attachment, the procedures it will use to implement the Federal consistency requirements of subsections 307 (c) and (d) of the Act. At a minimum, the following must be included:

(1) An indication of whether the state agency designated pursuant to subsection 306(d)(6) of the Act or a single other agency will handle consistency review (see 15 CFR 930.18);

(2) A list of Federal license and permit activities that will be subject to review (see 15 CFR 930.53);

(3) For States anticipating coastal zone effects from Outer Continental Shelf (OCS) activities, the license and permit list also must include OCS plans which describe in detail Federal license and permit activities (see 15 CFR 930.74); and

(4) The public notice procedures to be used for certifications submitted for Federal License and permit activities and, where appropriate, for OCS plans (see 15 CFR 930.61 through 930.62 and 930.78).

(b) Beyond the minimum requirements contained in paragraph (a) of this section, States have the option of including:

(1) A list of Federal activities, including development projects, which in the opinion of the State agency are likely to significantly affect the coastal zone and thereby will require a Federal agency consistency determination (see 15 CFR 930.35); and

(2) A description of the types of information and data necessary to assess the consistency of Federal license and permit activities and, where appropriate, those described in detail in OCS plans (see 15 CFR 930.56 and 930.75).

§923.54 Mediation.

(a) Section 307(h) of the Act provides for mediation of serious disagreement between any Federal agency and a coastal state in the development and implementation of a management program. In certain cases, mediation by the Secretary, with the assistance of the Executive Office of the President, may be an appropriate forum for conflict resolution.

(b) State-Federal differences should be addressed initially by the parties involved. Whenever a serious disagreement cannot be resolved between the parties concerned, either party may request the informal assistance of the Assistant Administrator in resolving the disagreement. This request shall be in writing, stating the points of disagreement and the reason therefore. A copy of the request shall be sent to the other party to the disagreement.

(c) If a serious disagreement persists, the Secretary or other head of a relevant Federal agency, or the Governor or the head of the state agency designated by the Governor as administratively responsible for program development (if a state still is receiving section 305 program development grants) or for program implementation (if a state is receiving section 306 program implementation grants) may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees and to the Assistant Administrator.

(d) Secretarial mediation efforts shall last only so long as the parties agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

(e) Mediation shall terminate:

(1) At any time the parties agree to a resolution of the serious disagreement,

(2) If one of the parties withdraws from mediation,

(3) In the event the parties fail to reach a resolution of the serious disagreement within 15 days following Secretarial mediation efforts, and the parties do not agree to extend mediation beyond that period, or

(4) For other good cause.

(f) The availability of the mediation services provided in this section is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided herein.

§ 923.55 Full participation by State and local governments, interested parties, and the general public.

The management program must be developed and adopted with the opportunity of full participation by state agencies, local governments, regional commissions and organizations, port authorities, and other interested public and private parties. To meet this requirement, a State must:

(a) Develop and make available general information regarding the program design, its content and its status throughout program development;

(b) Provide a listing, as comprehensive as possible, of all governmental agencies, regional organizations, port authorities and public and private organizations likely to be affected by or to have a direct interest in the development and implementation of the management program;

(c) Indicate the nature of major comments received from interested or affected parties, identified in paragraph (b)(2) of this section, and the nature of the State's response to these comments; and

(d) Hold public meetings, workshops, etc., during the course of program development at accessible locations and convenient times, with reasonable notice and availability of materials.

§ 923.56 Plan coordination.

(a) The management program must be coordinated with local, areawide, and interstate plans applicable to areas within the coastal zone—

(1) Existing on January 1 of the year in which the state's management program is submitted to the Secretary; and

(2) Which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency.

(b) A State must insure that the contents of its management program has been coordinated with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Assistant Administrator for approval. To document this coordination, the management program must:

(1) Identify local governments, areawide agencies and regional or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted;

(2) List or provide a summary of contacts with these entities for the purpose of coordinating the management program with plans adopted by a governmental entity as of January 1 of the year in which the management program is submitted. At a minimum, the following plans, affecting a State coastal zone, shall be reviewed: Land use plans prepared pursuant to section 701 of the Housing and Urban Development Act of 1968, as amended; State and areawide waste treatment facility or management plans prepared pursuant to sections 201 and 208 of the Clean Water Act, as amended; plans and designations made pursuant to the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended; hazard mitigation plans prepared pursuant to section 409 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; any applicable interstate energy plans or programs developed pursuant to section 309 of the Act; regional and interstate highway plans; plans developed by Regional Action Planning Commission; and fishery

management plans developed pursuant to the Fisheries Conservation and Management Act.

(3) Identify conflicts with those plans of a regulatory nature that are unresolved at the time of program submission and the means that can be used to resolve these conflicts.

§923.57 Continuing consultation.

(a) As required by subsection 306(d)(3)(B) of the Act, a State must establish an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) of section 306(d) of the Act and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this Act.

(b) The management program must establish a procedure whereby local governments with zoning authority are notified of State management program decisions which would conflict with any local zoning ordinance decision.

(1) ''Management program decision'' refers to any major, discretionary policy decisions on the part of a management agency, such as the determination of permissible land and water uses, the designation of areas or particular concern or areas for preservation or restoration, or the decision to acquire property for public uses. Regulatory actions which are taken pursuant to these major decisions are not subject to the State-local consultation mechanisms. A State management program decision is in conflict with a local zoning ordinance if the decision is contradictory to that ordinance. A State management program decision that consists of additional but not contradictory requirements is not in conflict with a local zoning ordinance, decision or other action;

(2) ''Local government'' refers to these defined in section 304(11) of the Act which have some form of zoning authority.

(3) ''Local zoning ordinance, decision or other action'' refers to any local government land or water use action which regulates or restricts the construction, alteration of use of land, water or structures thereon or thereunder. These actions include zoning ordinances, master plans and official maps. A local government has the right to comment on a State management program decision when such decision conflicts with the above specified actions;

(4) Notification must be in writing and must inform the local government of its right to submit comments to the State management agency in the event the proposed State management program decision conflicts with a local zoning ordinance, decision or other action. The effect of providing such notice is to stay State action to implement its management decision for at least a 30-day period unless the local government waives its right to comment.

(5) ''Waiver'' of the right of local government to comment (thereby permitting a State agency to proceed immediately with implementation of the management program decision) shall result:

(i) Following State agency receipt of a written statement from a local government indicating that it either:

(A) Waives its right to comment; or

(B) Concurs with the management program decision; or

(C) Intends to take action which conflicts or interferes with the management program decision; or

(ii) Following a public statement by a local government to the same effect as paragraph (b)(5)(i) of this section; or

(iii) Following an action by a local government that conflicts or interferes with the management program decision.

(6) The management program shall include procedures to be followed by a management agency in considering a local government's comments. These procedures shall include, at a minimum, circumstances under which the agency will exercise its discretion to hold a public hearing. Where public hearings will be held, the program must set forth notice and other hearing procedures that will be followed. Following State agency consideration of local comments (when a discretionary public hearing is not held) or following public hearing, the management agency shall provide a written response to

the affected local government, affected local government, within a reasonable period of time and prior to implementation of the management program decision, on the results of the agency's consideration of public comments.

§ 923.58 Public hearings.

The management program must be developed and adopted after the holding of public hearings. A State must:

(a) Hold a minimum of two public hearings during the course of program development, at least one of which will be on the total scope of the coastal management program. Hearings on the total management program do not have to be held on the actual document submitted to the Assistant Administrator for section 306 approval. However, such hearing(s) must cover the substance and content of the proposed management program in such a manner that the general public, and particularly affected parties, have a reasonable opportunity to understand the impacts of the management program. If the hearing(s) are not on the management document per se, all requests for such document must be honored and comments on the document received prior to submission of the document to the Assistant Administrator must be considered;

(b) Provide a minimum of 30 days public notice of hearing dates and locations;

(c) Make available for public review, at the time of public notice, all agency materials pertinent to the hearings; and

(d) Include a transcript or summary of the public hearing(s) with the State's program document or submit same within thirty (30) days following submittal of the program to the Assistant Administrator. At the same time this transcript or summary is submitted to the Assistant Administrator, it must be made available, upon request, to the public.

Subpart G—Review/Approval Procedures

SOURCE: 61 FR 33815, June 28, 1996, unless otherwise noted.

§ 923.60 Review/approval procedures.

(a) All state management program submissions must contain an environmental assessment at the time of submission of the management program to OCRM for threshold review. In accordance with regulations implementing the National Environmental Policy Act of 1969, as amended, OCRM will assist the State by outlining the types of information required. (See 40 CFR § 1506.5 (a) and (b).)

(b) Upon submission by a State of its draft management program, OCRM will determine if it adequately meets the requirements of the Act and this part. Assuming positive findings are made and major revisions to the State's draft management program are not required, OCRM will prepare draft and final environmental impact statements, in accordance with National Environmental Policy Act requirements. Because the review process involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review; states should anticipate that it will take at least 7 months between the time a state first submits a draft management program to OCRM for threshold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this time table; these factors are discussed in OCRM guidance on the review/approval process. The OCRM guidance also recommends a format for the program document submitted to the Assistant Administrator for review and approval.

Subpart H—Amendments to and Termination of Approved Management Programs

SOURCE: 61 FR 33815, June 28, 1996, unless otherwise noted.

§ 923.80 General.

(a) This subpart establishes the criteria and procedures by which amendments, modifications or other changes to approved management programs may be made. This subpart also establishes the conditions and procedures by

which administrative funding may be terminated for programmatic reasons.

(b) Any coastal state may amend or modify a management program which it has submitted and which has been approved by the Assistant Administrator under this subsection, subject to the conditions provided for subsection 306(e) of the Act.

(c) As required by subsection 312(d) of the Act, the Assistant Administrator shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that state under this title as well as any unexpended portion of such assistance, it the Assistant Administrator determines that the coastal state has failed to take the actions referred to in subsection 312(c)(2)(A) of the Act.

(d) For purposes of this subpart, amendments are defined as substantial changes in one or more of the following coastal management program areas:

(1) Uses subject to management;

(2) Special management areas;

(3) Boundaries;

(4) Authorities and organization; and

(5) Coordination, public involvement and the national interest.

(e) OCRM will provide guidance on program changes. The five program management areas identified in §923.80(d) are also discussed in subpart B through F of this part.

§923.81 Requests for amendments.

(a) Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal state with an approved management program or by the head of the state agency (designated pursuant to subsection 306(d)(6) of the Act) if the Governor had delegated this responsibility and such delegation is part of the approved management program. Whenever possible, requests should be submitted prior to final State action to implement the amendment. At least one public hearing must be held on the proposed amendment, pursuant to subsection 306(d)(4) of the Act. Pursuant to section 311 of the Act, notice of such public hearing(s) must be announced at least 30 days prior to the hearing date. At the time of the announcement, relevant agency materials pertinent to the hearing must be made available to the public.

(b) Amendment requests must contain the following:

(1) A description of the proposed change, including specific pages and text of the management program that will be changed if the amendment is approved by the Assistant Administrator. This description shall also identify any enforceable policies to be added to the management program;

(2) An explanation of why the change is necessary and appropriate, including a discussion of the following factors, as relevant; changes in coastal zone needs, problems, issues, or priorities. This discussion also shall identify which findings, if any made by the Assistant Administrator in approving the management program may need to be modified if the amendment is approved;

(3) A copy of public notice(s) announcing the public hearing(s) on the proposed amendments;

(4) A summary of the hearing(s) comments:

(i) Where OCRM is providing Federal agency review concurrent with the notice period for the State's public hearing, this summary of hearing(s) comments may be submitted to the Assistant Administrator within 60 days after the hearing;

(ii) Where hearing(s) summaries are submitted as a supplement to the amendment request (as in the case described in paragraph (b)(1) of this section), the Assistant Administrator will not take final action to approve or disapprove an amendment request until the hearing(s) summaries have been received and reviewed; and

(5) Documentation of opportunities provided relevant Federal, State, regional and local agencies, port authorities and other interested public and private parties to participate in the development and approval at the State level of the proposed amendment.

[61 FR 33815, June 28, 1996; 61 FR 36965, July 15, 1996]

§923.82 Amendment review/approval procedures.

(a) Upon submission by a State of its amendment request, OCRM will review the request to determine preliminarily if the management program, if changed

according to the amendment request, still will constitute an approvable program. In making this determination, OCRM will determine whether the state has satisfied the applicable program approvability criteria of subsection 306(d) of the Act.

(b) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would no longer constitute an approvable program, or if any of the procedural requirements of section 306(d) of the Act have not been met, the Assistant Administrator shall advise the state in writing of the reasons why the amendment request cannot be considered.

(c) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would still constitute an approvable program and that the procedural requirements of section 306(d) of the Act have been met, the Assistant Administrator will then determine, pursuant to the National Environmental Policy Act of 1969, as amended, whether an environmental impact statement (EIS) is required.

§ 923.83 Mediation of amendments.

(a) Section 307(h)(2) of the Act provides for mediation of ''serious disagreements'' between a Federal agency and a coastal State during administration of an approved management program. Accordingly mediation is available to states or federal agencies when a serious disagreement regarding a proposed amendment arises.

(b) Mediation may be requested by a Governor or head of a state agency designated pursuant to subsection 306(d)(6) or by the head of a relevant federal agency. Mediation is a voluntary process in which the Secretary of Commerce attempts to mediate between disagreeing parties over major problems. (See § 923.54).

§ 923.84 Routine program changes.

(a) Further detailing of a State's program that is the result of implementing provisions approved as part of a State's approved management program, that does not result in the type of action described in § 923.80(d), will be considered a routine program change. While a routine change is not subject to the amendment procedures contained in §§ 923.81 through 923.82, it is subject to mediation provisions of § 923.83.

(b) (1) States must notify OCRM of routine program change actions in order that OCRM may review the action to ensure it does not constitute an amendment. The state notification shall identify any enforceable policies to be added to the management program, and explain why the program change will not result in the type of action described in § 923.80(d).

(i) States have the option of notifying OCRM of routine changes on a case-by-case basis, periodically throughout the year, or annually.

(ii) In determining when and how often to notify OCRM of such actions, States should be aware that Federal consistency will apply only after the notice required by paragraph (b)(4) of this section has been provided.

(2) Concurrent with notifying OCRM, States must provide notice to the general public and affected parties, including local governments, other State agencies and regional offices of relevant federal agencies of the notification given OCRM.

(i) This notice must:

(A) Describe the nature of the routine program change and identify any enforceable policies to be added to the management program if the State's request is approved;

(B) Indicate that the State considers it to be a routine program change and has requested OCRM's concurrence in that determination; and

(C) Indicate that any comments on whether or not the action does or does not constitute a routine program change may be submitted to OCRM within 3 weeks of the date of issuance of the notice.

(ii) Where relevant Federal agencies do not maintain regional offices, notice must be provided to the headquarters office.

(3) Within 4 weeks of receipt of notice from a State, OCRM will inform the State whether it concurs that the action constitutes a routine program change. Failure to notify a State in writing within 4 weeks of receipt of notice shall be considered concurrence.

(4) Where OCRM concurs, a State then must provide notice of this fact to the general public and affected parties, including local governments, other State agencies and relevant Federal agencies.

(i) This notice must:

(A) Indicate the date on which the State received concurrence from OCRM that the action constitutes a routine program change;

(B) Reference the earlier notice (required in paragraph (b)(2) of this section) for a description of the content of the action; and

(C) Indicate if Federal consistency applies as of the date of the notice called for in this paragraph.

(ii) Federal consistency shall not be required until this notice has been provided.

(5) Where OCRM does not concur, a State will be advised to:

(i) submit the action as an amendment, subject to the provisions of §§923.81 through 923.82; or

(ii) resubmit the routine program change with additional information requested by OCRM concerning how the program will be changed as a result of the action.

[61 FR 33815, June 28, 1996; 61 FR 36965, July 15, 1996]

Subpart I—Applications for Program Development or Implementation Grants

SOURCE: 61 FR 33816, June 28, 1996, unless otherwise noted.

§923.90 General.

(a) The primary purpose of development grants made pursuant to section 305 of the Act is to assist coastal States in the development of comprehensive coastal management programs that can be approved by the Assistant Administrator. The primary purpose of implementation grants made pursuant to section 306 of the Act is to assist coastal States in implementing coastal management programs following their approval, including especially administrative actions to implement enforceable program policies, authorities and other management techniques. The purpose of the guidelines in this subpart is to define the procedures by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with applicable Federal laws and policies, Department of Commerce grants management regulations, policies and procedures, and any other applicable directives from the NOAA Grants Management Division and OCRM program offices.

(b) Grants awarded to a State must be expended for the development or administration, as appropriate, of a management program that meets the requirements of the Act, and in accordance with the terms of the award.

(c) All applications for funding under section 305 or 306 of the Act, including proposed work programs, funding priorities and allocations are subject to the discretion of the Assistant Administrator.

(d) For purposes of this subpart, the term ''development grant'' means a grant awarded pursuant to subsection 305(a) of the Act. ''Administrative grant'' and ''implementation grant'' are used interchangeably and mean grants awarded pursuant to subsection 306(a) of the Act.

(e) All application and preapplication forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

§923.91 State responsibility.

(a) Applications for program grants are required to be submitted by the Governor of a participating state or by the head of the state entity designated by the Governor pursuant to subsection 306(d)(6) of the Act.

(b) In the case of a section 305 grant, the application must designate a single state agency or entity to receive development grants and to be responsible for development of the State's coastal management program. The designee need not be that entity designated by the Governor pursuant to subsection 306(d)(6) of the Act as a single agency to receive and administer implementation grants.

(c) One State application will cover all program activities for which program development or implementation funds under this Act and matching State funds are provided, irrespective of whether these activities will be carried out by State agencies, areawide or regional agencies, local governments, or interstate entities.

(d) The designated state entity shall be fiscally responsible for all expenditures made under the grant, including expenditures by subgrantees and contractors.

§ 923.92 Allocation.

(a) Subsections 303(4), 306(d)(3)(B) and 306(d)(10) of the Act foster intergovernmental cooperation in that a state, in accordance with its coastal zone management program, may allocate some of its coastal zone management responsibilities to several agencies, including local governments, areawide agencies, regional agencies and interstate agencies. Such allocations provide for continuing consultation and more effective participation and cooperation among state and local governments, interstate, regional and areawide agencies.

(b) A State may allocate a portion or portions of its grant to other State agencies, local governments, areawide or regional agencies, interstate entities, or Indian tribes, if the work to result from such allocation(s) will contribute to the effective development or implementation of the State's management program.

(1) Local governments. Should a State desire to allocate a portion of its grant to a local government, units of general-purpose local government are preferred over special-purpose units of local government. Where a State will be relying on direct State controls as provided for in subsection 306(d)(11)(B) of the Act, pass-throughs to local governments for local planning, regulatory or administrative efforts under a section 306 grant cannot be made, unless they are subject to adequate State overview and are part of the approved management program. Where the approved management program provides for other specified local activities or one-time projects, again subject to adequate State overview, then a portion of administrative grant funds may be allocated to local governments.

(2) Indian Tribes. Tribal participation in coastal management efforts may be supported and encouraged through a State's program. Individual tribes or groups of tribes may be considered regional agencies and may be allocated a portion of a State's grant for the development of independent tribal coastal management programs or the implementation of specific management projects provided that:

(i) The State certifies that such tribal programs or projects are compatible with its approved coastal management policies; and

(ii) On excluded tribal lands, the State demonstrates that the tribal program or project would or could directly affect the State's coastal zone.

§ 923.93 Eligible implementation costs.

(a) Costs claimed must be beneficial and necessary to the objectives of the grant project. As used herein the terms cost and grant project pertain to both the Federal and the matching share. Allowability of costs will be determined in accordance with the provisions of OMB Circular A–87: Cost Principles for State, Local and Indian Tribal Governments.

(b) Federal funds awarded pursuant to section 306 of the Act may not be used for land acquisition purposes and may not be used for construction purposes. These costs may be eligible, however, pursuant to section 306A of the Act.

(c) The primary purpose for which implementation funds, pursuant to section 306 of the Act, are to be used is to assure effective implementation and administration of the management program, including especially administrative actions to implement enforceable program policies, authorities and other management techniques. Implementation activities should focus on achieving the policies of the Act.

(d) Section 306 funding in support of any of these purposes may be used to fund, among other things:

(1) Personnel costs,

(2) Supplies and overhead,

(3) Equipment, and

(4) Feasibility studies and preliminary engineering reports.

(e) States are encouraged to coordinate administrative funding requests with funding possibilities pursuant to sections 306A, 308, 309, 310 and 315 of the Act, as well as with funding possibilities pursuant to section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990. When in doubt as to the appropriate section of the Act under which to request funding, States should consult with OCRM. States should consult with OCRM on technical aspects of consolidating requests into a single application.

§923.94 Application for program development or implementation grants.

(a) OMB Standard Form 424 (4–92) and the NOAA Application Kit for Federal Assistance constitute the formal application. An original and two (2) copies must be submitted 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with E.O. 12372 requirements including the resolution of any problems raised by the proposed project. The administrative requirements for grants and subawards, under this program, to state, local and Indian tribal governments are set out in 15 CFR Part 24. The administrative requirements for other entities are prescribed under OMB Circular A–110: Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

(b) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein, the terms ''cost'' and ''grant project'' pertain to both the Federal amount awarded and the non-federal matching share. Allowability of costs will be determined in accordance with the provisions of OMB Circular A–87: Cost Principles for State, Local and Indian Tribal Governments. Eligible implementation costs also shall be determined in accordance with §923.93 of these regulations. Allowability of costs for non-profit organizations will be determined in accordance with OMB Circular A–122: Cost Principles for Non-Profit Organizations. Allowability of costs for institutions of higher education will be determined in accordance with OMB Circular A–21: Cost Principles for Educational Institutions.

(c) In the grant application, the applicant must describe clearly and briefly the activities that will be undertaken with grant funds in support of implementation and administration of the management program. This description must include:

(1) An identification of those elements of the approved management program that are to be supported in whole or in part by the Federal and the matching share,

(2) A clear statement of the major tasks required to implement each element,

(3) For each task the application must:

(i) Specify how it will be accomplished and by whom;

(ii) Identify any sub-awardees (other State agencies, local governments, individuals, etc.) that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of the sub-awards for each allocation; and

(iii) Indicate the estimated total cost.

(4) The sum of all task costs in paragraph (c)(3) of this section should equal the total estimated grant project cost.

(d) For program development grants, when evaluating whether a State is making satisfactory progress toward completion of an approvable management program which is necessary to establish eligibility for subsequent grants, the Assistant Administrator will consider:

(1) The progress made toward meeting management program goals and objectives;

(2) The progress demonstrated in completing the past year's work program;

(3) The cumulative progress toward meeting the requirements for preliminary or final approval of a coastal management program;

(4) The applicability of the proposed work program to fulfillment of the requirements for final approval; and

(5) The effectiveness of mechanisms for insuring public participation and consultation with affected Federal,

State, regional and local agencies in program development.

§ 923.95 Approval of applications.

(a) The application for a grant by any coastal State which complies with the policies and requirements of the Act and these guidelines shall be approved by the NOAA Grants Officer, upon recommendation by the Assistant Administrator, assuming available funding.

(b) Should an application be found deficient, the Assistant Administrator will notify the applicant in detail of any deficiency when an application fails to conform to the requirements of the Act or these regulations. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The NOAA Grants Officer, upon recommendation by the Assistant Administrator, may waive appropriate administrative requirements contained in this subpart, upon finding of extenuating circumstances relating to applications for assistance.

§ 923.96 Grant amendments.

(a) Actions that require an amendment to a grant award such as a request for additional Federal funds, changes in the amount of the non-Federal share, changes in the approved project budget as specified in 15 CFR Part 24, or extension of the grant period must be submitted to the Assistant Administrator and approved in writing by the NOAA Grants Officer prior to initiation of the contemplated change. Such requests should be submitted at least 30 days prior to the proposed effective date of the change and, if appropriate, accompanied by evidence of compliance with E.O. 12372 requirements.

(b) NOAA shall acknowledge receipt of the grantee's request within the ten (10) working days of receipt of the correspondence. This notification shall indicate NOAA's decision regarding the request; or indicate a time-frame within which a decision will be made.

Subpart J—Allocation of Section 306 Program Administration Grants

§ 923.110 Allocation formula.

(a) As required by subsection 306(a), the Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal-to-state contributions for the applicable fiscal year:

(1) For those states for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 1 to 1 for any fiscal year.

(2) For programs approved after enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each fiscal year thereafter.

(3) As required by subsection 306(b), the Secretary may make a grant to a coastal state under subsection 306(a) only if the Secretary finds that the management program of the coastal state meets all applicable requirements of this title and has been approved in accordance with subsection 306(d).

(4) As required by subsection 306(c), grants under this section shall be allocated to coastal states under approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal states, maximum and minimum grants for any fiscal year to promote equity between coastal states and effective coastal management.

(b) Minimum/maximum allocations. The Assistant Administrator shall establish minimum and maximum state allocations annually, after consultation with the coastal states.

(c) *Allocation formula factors and weighting.* Each State eligible to receive a financial assistance award shall be allocated an amount of the total available Federal funding based on:

(1) A minimum share (established by the Assistant Administrator) of the total funding available for allocation to eligible State coastal management programs, plus

(2) A proportionate share of the remainder to be divided as follows:

(i) Sixty percent will be allocated based on each eligible State's proportionate share of the length of tidal shoreline and/or Great Lake shoreline mileage of all participating States based on the most recently available data from or accepted by the National Ocean Survey, and

(ii) Forty percent will be allocated on each eligible State's proportionate share of the aggregate population of all coastal counties contained in whole or in part within the designated coastal boundary of all eligible State coastal programs based on official data or the most recent U.S. census.

(3) Should any State's base allocation exceed the maximum established by the Assistant Administrator, the excess amount shall be subtracted from the established maximum and redistributed proportionately among those eligible States with allocations not exceeding the established maximum.

(d) *Use of the allocation formula.* The allocation formula shall be used to establish base level allocations for each State coastal management program eligible to receive Federal funding.

(e) *Adjustment for phase down of Federal funding.* The Assistant Administrator may adjust base level allocations as necessary to implement a phase down of Federal financial support. Any such adjustment shall be implemented in a manner which gives some priority to recently approved State coastal management programs. Options for implementation of a phase down will be submitted to the States for review and comment.

(f) Calculation of financial assistance award levels. Actual financial assistance award levels will be set from base level allocations, any adjustments under paragraph (e) above, and in accordance with the provisions of Section 312(c) and (d).

(Secs. 306 and 317 of the Coastal Zone Management Act)

[47 FR 21021, May 17, 1982, as amended at 59 FR 27985, May 31, 1994. Redesignated at 61 FR 33818, June 28, 1996]

Subpart K—Coastal Zone Enhancement Grants Program

AUTHORITY: Section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456).

SOURCE: 57 FR 31116, July 14, 1992. Redesignated at 61 FR 33818, June 28, 1996.

§923.121 General.

(a) The purpose of this subpart is to set forth the criteria and procedures for awarding coastal zone enhancement grants under section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456). This subpart describes the criteria States must address in developing and implementing coastal zone enhancement objectives, the procedures for allocating section 309 funds between weighted formula and individual review of proposals of special merit, how the amount of section 309 weighted formula grants will be determined, the criteria NOAA will use to evaluate and rank individual proposals of special merit, and the procedures for applying for financial assistance under section 309.

(b) A coastal State with an approved program under section 306 of the Coastal Zone Management Act (CZMA), as amended (16 U.S.C. 1455), is eligible for grants under this subpart if the State meets the following requirements:

(1) The State must have a NOAA approved Assessment and Strategy, submitted in accordance with NOAA guidance and 923.128;

(2) The State must be found to be adhering to its approved program and must be making satisfactory progress in performing grant tasks under section 306, as indicated by not being under interim or final sanctions; and

(3) The State must be making satisfactory progress in carrying out its

previous year's award under section 309.

(c) If the Assistant Administrator finds that a State is not undertaking the actions committed to under the terms of a section 309 grant, the Assistant Administrator shall suspend the State's eligibility for future funding under this section for at least one year.

(d) A State's eligibility for future funding under this section will be restored after the State demonstrates, to the satisfaction of the Assistant Administrator, that it will conform with the requirements under this part.

(e) Funds awarded to States under section 309 are for the enhancement of existing coastal zone management programs. A State which reduces overall State financial support for its CZM program as a result of having been awarded section 309 funding may lose eligibility for funding under section 309 in subsequent years.

(f) All applications for funding under section 309 of the CZMA, as amended, including proposed work programs, funding priorities and funding awards, are subject to the administrative discretion of the Assistant Administrator and any additional NOAA guidance.

(g) Grants awarded under section 309 may be used to support up to 100 percent of the allowable costs of approved projects under section 309 of the CZMA, as amended.

(h) All application forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

§ 923.122 Objectives.

(a) The objective of assistance provided under this part is to encourage each State with a federally-approved coastal management program to continually improve its program in specified areas of national importance. The Secretary is authorized to make grants to a coastal State for the development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

(b) As required by section 309(a) of the Act, for purposes of this part, the term ''coastal zone enhancement objective'' means any of the following objectives:

(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.

(3) Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

(6) Preparing and implementing special area management plans for important coastal areas.

(7) Planning for the use of ocean resources.

(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

§ 923.123 Definitions.

(a) *Program change* means ''routine program change'' as defined in 15 CFR 923.84 and ''amendment'' as defined in 15 CFR 923.80, and includes the following:

(1) A change to coastal zone boundaries that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(2) New or revised authorities, including statutes, regulations, enforceable policies, administrative decisions, executive orders, and memoranda of agreement/understanding, that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(3) New or revised local coastal programs and implementing ordinances that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(4) New or revised coastal land acquisition, management and restoration programs that improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(5) New or revised Special Area Management Plans or plans for Areas of Particular Concern (APC), including enforceable policies and other necessary implementing mechanisms or criteria and procedures for designating and managing APCs that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(6) New or revised guidelines, procedures and policy documents which are formally adopted by a State and provide specific interpretations of enforceable CZM policies to applicants, local governments and other agencies that will result in meaningful improvements in coastal resource management and that will improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(b) *Assessment* means a public document, prepared by a State and approved by NOAA in accordance with guidance on Assessments and Strategies issued by NOAA (hereafter referred to as the guidance[1]), that identifies the State's priority needs for improvement with regard to the coastal zone enhancement objectives. The Assessment determines the extent to which problems and opportunities exist with regard to each of the coastal zone enhancement objectives and the effectiveness of efforts to address those problems. The Assessment includes the factual basis for NOAA and the States to determine the priority needs for improvement of management programs in accordance with this part.

(c) *Strategy* means a comprehensive, multi-year statement of goals and the methods for their attainment, prepared by a State in accordance with NOAA guidance and these regulations and approved by NOAA, that sets forth the specific program changes the State will seek to achieve in one or more of the coastal zone enhancement objectives. The Strategy will address only the priority needs for improvement identified by the Assistant Administrator, after careful consultation with the State. The strategy will include specific task descriptions, cost estimates and milestones, as appropriate.

(d) *Weighted Formula Project* means a project or task for which NOAA awards funding based on the criteria at §923.125(a). Such tasks are essential to meeting the milestones and objectives of each state's strategy. As funding for weighted formula tasks is more predictable than for projects of special merit, basic functions necessary to achieve the objectives of the strategy, such as hiring of full time staff should be included in weighted formula tasks.

(e) *Projects of Special Merit (PSM)* means a project or task that NOAA will rank and evaluate based on criteria at §923.125(b). As PSM funds will be awarded competitively on an annual basis, these projects should further the objectives of the strategy but may not be essential to meeting specific benchmarks in the strategy. PSM projects should not be dependent on long term levels of funding to succeed.

(f) *Fiscal needs* means the extent to which a State must rely solely on Federal funds to complete a project under section 309 because State funds are not otherwise available.

(g) *Technical needs* means the extent to which a State lacks trained personnel or equipment or access to trained personnel or equipment to complete a project under section 309.

[1] NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

(h) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§ 923.124 Allocation of section 309 funds.

(a)(1) As required by section 309(e) of the Act, a State will not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

(2) As required by section 309(f) of the Act, beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of the Act shall be retained by the Secretary for use in implementing this section, up to a maximum of $10,000,000 annually.

(b) The Assistant Administrator will annually determine the amount of funds to be devoted to section 309, which shall be not less than 10 percent nor more than 20 percent of the total amount appropriated under section 318(a)(2) of the Coastal Zone Management Act, as amended (16 U.S.C. 1464), taking into account the total amount appropriated under section 318(a)(2). The total amount of funds to be devoted to section 309 shall not exceed $10,000,000 annually.

(c) Of the total amount determined in paragraph (b) of this section, the Assistant Administrator will annually determine the proportion to be awarded to eligible coastal States by weighted formula and the proportion to be awarded to eligible coastal States for projects of special merit. This determination will take into account the total amount appropriated under section 318(a)(2) of the CZMA, as amended.

(d) *Weighted formula funding.* (1)(i) A weighted formula funding target will be determined for each State that meets the eligibility requirements at § 923.121(b). The weighted formula funding target will be the State base allocation determined by the application of the formula at § 923.110(c), multiplied by a weighting factor derived from the Assistant Administrator's evaluation and ranking of the quality of the State's Strategy (as described in (d)(1) of this section), as supported by the State's Assessment.

(ii) The application of the weighting factor may result in a weighted formula funding target that is higher or lower than the State's base allocation. Each State's weighted formula funding target will be adjusted to reflect the funds available.

(iii) The Assistant Administrator may establish minimum and maximum weighted formula funding targets under § 923.124(d).

(2) The Assistant Administrator will determine each State's weighting factor based on an evaluation and ranking of the State's Strategy that takes into consideration the following:

(i) The scope and value of the proposed program change(s) contained in the Strategy in terms of improved coastal resource management;

(ii) The technical merits of the Strategy in terms of project design and cost effectiveness;

(iii) The likelihood of success that the State will have in attaining the proposed program change(s), including an evaluation of the State's past performance and support for the Strategy; and,

(iv) The fiscal and technical needs of the State.

(3) Each State will be notified individually of its weighting factor, the reasons for assigning this weighting factor, and any changes thereto. In consultation with the Assistant Administrator, a State may choose to make substantive changes to its approved Assessment and Strategy to improve its weighting factor, in accordance with the procedures at § 923.128.

(e) *Funding for projects of special merit.* The Assistant Administrator will award the remaining section 309 funds, which are not awarded under § 923.124(d), to States based on an annual evaluation and ranking of projects of special merit, as defined in § 923.123(d). Funding of projects of special merit will be limited to the highest ranked projects based on the criteria at § 923.125(b).

(f) The Assistant Administrator will notify each State annually of the total

amount of funds to be devoted to section 309 pursuant to §923.124(b), the proportion to be awarded by weighted formula pursuant to §923.124(c), the State's weighted formula funding target pursuant to §923.124(d), and the total amount of funds available for funding for projects of special merit pursuant to §923.124(e).

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§923.125 Criteria for section 309 project selection.

(a) *Section 309 criteria for weighted formula funding.* (1) For those projects that will be funded by weighted formula, the Assistant Administrator will determine that:

(i) The project is consistent with the State's approved Assessment and Strategy and advances the attainment of the objectives of the Strategy;

(ii) Costs are reasonable and necessary to achieve the objectives of both the project and the Strategy. Allowability of costs will be determined in accordance with the provisions of OMB Circular A–87: Cost Principles for State and Local Governments

(iii) The project is technically sound;

(iv) The State has an effective plan to ensure proper and efficient administration of the project; and

(v) The State has submitted the required project information as specified in §923.126(b)(1).

(2) In reviewing projects that will be considered under the weighted formula, the Assistant Administrator will take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

(b) *Section 309 criteria for evaluation and ranking of projects of special merit.* (1) After determining those projects that will be funded under weighted formula funding, the Assistant Administrator will evaluate and rank State funding proposals of special merit which may be funded under 15 CFR 932.4(e).

(2) In addition to meeting the criteria in paragraph (a)(1) of this section, proposals will be evaluated and ranked under this subsection using the following criteria:

(i) *Merit.* (90 points) The Assistant Administrator will review each application to determine the following:

(A) Degree to which the project significantly advances the program improvements and leads to a program change identified in the State's Strategy. In making this determination, the Assistant Administrator shall consider the weighting factor derived from the evaluation of the quality of the State's Strategy, as supported by the State's Assessment, relative to the weighting factors assigned to other eligible States;

(B) Overall benefit of the project to the public relative to the project's cost;

(C) Innovativeness of the proposal;

(D) Transferability of the results to problems in other coastal States; and

(E) The State's past performance under section 309.

(ii) *Fiscal needs.* (5 points) The Assistant Administrator will review each application to determine the ''fiscal needs'' of a State as defined in §923.123(e).

(iii) *Technical needs.* (5 points) The Assistant Administrator will review each application to determine the ''technical needs'' of a State as defined in §923.123(f).

(c) Section 309 funds not awarded to States under §923.125(a) will be awarded to States under §923.125(b).

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§923.126 Pre-application procedures.

(a) *Pre-submission consultation.* Each State is strongly encouraged to consult with the Assistant Administrator prior to the submission of its draft proposal (see §923.126(b)) and formal application for section 309 funding. The purpose of the consultation will be to determine whether the proposed projects are consistent with the purposes and objectives of section 309 and with the State's approved Strategy, to resolve any questions concerning eligibility for funding under section 309 (see §923.121(b)), and to discuss preliminarily the State's recommendations regarding which projects should be funded by weighted formula and which projects should be individually evaluated and ranked as projects of special merit.

(b) *Draft proposals.* States shall submit draft proposals for section 309 funding annually on a schedule to be determined by the Assistant Administrator. These draft proposals shall contain all of the information needed for final application, including the following:

(1) A clear and concise description of the projects that the State proposes to be funded under section 309. This description shall explain the relationship of each proposed project to the State's approved Assessment and Strategy and how each proposed project will accomplish all or part of a program change that the State has identified in its Strategy. In addition, each project description shall include:

(i) A specific timetable for completion of each project;

(ii) A description of the activities that will be undertaken to complete each project and by whom;

(iii) The identification of any subawardees, pursuant to §923.94(d)(3)(ii); and

(iv) The estimated total cost for each project.

(2) Section 309 funds may be used for any of the following allowable uses which support the attainment of a program change:

(i) Personnel costs;

(ii) Supplies and overhead;

(iii) Travel;

(iv) Equipment (pursuant to 15 CFR part 24);

(v) Projects, studies and reports; and

(vi) Contractual costs including subcontracts, subawards, personal service contracts with individuals, memoranda of agreement/understanding, and other forms of passthrough funding for the purpose of carrying out the provisions of section 309.

(3) Funds may not be used for land acquisition or low cost construction projects.

(4) The State may recommend which projects should be funded by weighted formula under §923.125(a) and which projects should be funded as projects of special merit under §923.125(b).

(5) The draft proposal shall contain documentation of fiscal needs and technical needs, if any. This documentation shall include:

(i) For fiscal needs, information on the current State budget (surplus or deficit), the budget of the applying agency (increase or decrease over previous fiscal year), future budget projections, and what efforts have been made by the applying agency, if any, to secure additional State funds from the Legislature and/or from off-budget sources such as user fees; and

(ii) For technical needs, identification of the technical knowledge, skills and equipment that are needed to carry out proposed projects and that are not available to the applying agency, and what efforts the applying agency has made, if any, to obtain the trained personnel and equipment it needs (for example, through agreements with other State agencies).

(6) The Assistant Administrator may request additional documentation of fiscal and technical needs.

(7) Following the first year of funding under section 309, the draft proposal shall describe how the past year's work contributed to the attainment of a program change as defined in §923.123(a) in one or more of the coastal zone enhancement objectives.

(8) If the sum of estimated project costs for projects the State recommends be funded under §923.125(a) exceeds the State's weighted formula funding target pursuant to §923.124(d), NOAA shall determine, in consultation with the State, which projects are appropriate for funding with weighted formula funds.

(c) *Review of draft proposals.* (1) The Assistant Administrator will make the final determination of which projects should be funded by weighted formula and which projects should be funded as projects of special merit, taking into account the State's recommendations.

(2) The Assistant Administrator may seek advice from technical experts in the fields of the coastal zone enhancement objectives as to the technical soundness and overall merit of section 309 project proposals.

(3) The Assistant Administrator will make the final determinations on project selection using the criteria at §923.125(a) and evaluate and rank projects of special merit based on the criteria at §923.125(b).

(4) If the Assistant Administrator determines that a State's project proposal(s) for weighted formula funding fails to meet the criteria at §923.125(a), the Assistant Administrator may either reduce or deny the amount available to the State under §923.124(d).

(5) Each state will be notified of the results of the review of draft proposals, as described in paragraphs (c) (3) and (4) of this section, in time to include approved section 309 projects in their applications for financial assistance pursuant to subpart I of 15 CFR part 923.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§923.127 Formal application for financial assistance and application review and approval procedures.

(a) Applications for financial assistance under this part must be developed and submitted on the same schedule as applications for financial assistance under subpart I of 15 CFR part 923.

(b) Applications for financial assistance under this part must be in a separate section of the application and must contain the information specified at §923.126(b)(1) for each approved section 309 project.

(c) Applications will be reviewed for conformance with the regulations at subpart I of 15 CFR part 923.

(d) States will be notified of their section 309 awards at the time they are notified of their section 306/306A awards.

(e) If the Assistant Administrator seeks technical advice pursuant to §923.126(c)(2), anonymous copies of the project reviews provided to the Assistant Administrator on projects proposed by a State will be made available to the State upon request after October 1 of each year.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§923.128 Revisions to assessments and strategies.

(a) A State, in consultation with the Assistant Administrator, may propose to revise its approved Strategy. Revision(s) to an approved Strategy must be submitted to and approved by the Assistant Administrator prior to the initiation of the contemplated change.

(b) The Assistant Administrator will review such proposed revision(s) and determine if public review and comment is required. This determination will be based on the extent to which the proposed revision(s) changes the original scope of the State's Strategy.

(c) If the Assistant Administrator determines that public review and comment is necessary, he/she will notify the State of his/her determination. The State will be required to provide public review and comment in accordance with NOAA guidance.

(d) A State that wants to revise substantively the program changes identified in its approved Strategy or to address new enhancement objectives not identified as a priority in the original Assessment, also must revise the Assessment through a public process as described in NOAA's guidance.

(e) The Assistant Administrator, in consultation with the State, may reduce a state's weighting factor assigned to its Strategy as a result of failure to meet the milestones in its Strategy.

(f) The Assistant Administrator will notify the State of his/her decision to approve or deny the proposed revision(s) to the Strategy, and any change in the weighting factor assigned to its Strategy.

Subpart L—Review of Performance

AUTHORITY: Section 312 of the Coastal Zone Management Act, as amended (16 U.S.C. 1458).

§923.131 General.

This subpart sets forth the requirements for review of approved State coastal zone management (CZM) programs pursuant to section 312 of the Act (16 U.S.C. 1458). This subpart defines ''continuing review'' and other important terms, and sets forth the procedures for:

(a) Conducting continuing reviews of approved State CZM programs;

(b) Providing for public participation;

(c) Invoking interim sanctions for non-adherence to an approved coastal

zone management program or a portion of such program; and

(d) Withdrawing program approval and financial assistance.

[57 FR 31113, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

§ 923.132 Definitions.

(a) *Continuing review* means monitoring State performance on an ongoing basis. As part of the continuing review, evaluations of approved CZM programs will be conducted and written findings will be produced at least once every three years.

(b) *Adherence* means to comply with the approved CZM program and financial assistance award or work program.

(c) *Interim sanction* means suspension and redirection of any portion of financial assistance extended to any coastal State under this title, if the Secretary determines that the coastal State is failing to adhere to the management program or a State plan developed to manage a national estuarine reserve, or a portion of the program or plan approved by the Secretary, or the terms of any grant or cooperative agreement funded under this title.

(d) *Approved CZM program* means those elements of the program approved by the Secretary, under 15 CFR part 923 (Development and Approval Provisions), including any changes to those elements made by approved amendments and routine program implementation.

(e) *Financial assistance award* means a legal instrument that creates a relationship between the Federal government and another entity (recipient). The principal purpose of the award is the transfer of money or services in order to accomplish a public purpose authorized by Federal statute. The term ''financial assistance award'' encompasses grants, loans, and cooperative agreements. The following elements constitute the award:

(1) The work program described in the approved application;

(2) The budget;

(3) The standard terms and conditions of the award;

(4) Any special award conditions included with the award;

(5) The statutes and regulations under which the award is authorized; and

(6) Applicable OMB cost principles and administrative requirements.

(f) *Work program* means a description of the tasks to be undertaken by a State for a given time period for the purpose of implementing and enforcing an approved CZM program. The work program is submitted as a part of a Federal financial assistance application, or separately in the absence of Federal financial assistance.

(g) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

[47 FR 21021, May 17, 1982, as amended at 57 FR 31113, July 14, 1992. Redesignated at 61 FR 33818, June 28, 1996]

§ 923.133 Procedure for conducting continuing reviews of approved State CZM programs.

(a) As required by section 312(a), the Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) through (K), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title (16 U.S.C. 1451–1464).

(b) *Continuing review procedures.* (1) Each State will submit a financial assistance application or work program, whichever is applicable, on a timetable negotiated with the Assistant Administrator, describing the tasks to be undertaken by the State for the purpose of implementing and enforcing its approved CZM program.

(2) For the purpose of evaluation, the States will submit performance reports as specified in the Special Award Conditions, or, if the State is not receiving an award, as negotiated with the Assistant Administrator. The reports will address all areas identified in each

State's Performance Report Guidelines.

(3) The Assistant Administrator will collect information on the State CZM programs on a continuing basis. At the beginning of each evaluation, the Assistant Administrator will analyze available information, identify information gaps, and formulate any additional information needs that will be the subject of a supplemental information request to the State.

(4) The Assistant Administrator may conduct a site visit as a part of the evaluation.

(5) Draft findings of the evaluation will be transmitted to the State. The State will have a minimum of two weeks from receipt of the draft findings to review them and provide comments to the Assistant Administrator. This review time may be extended upon request from the State.

(6) Within two weeks from receipt of the draft findings, a State may request a meeting with the Assistant Administrator to discuss the draft findings and the State's comments.

(7) The Assistant Administrator will issue final findings to the State CZM program manager and the head of the State CZM agency within 120 days of the last public meeting in the State. Copies of the final findings will be sent to all persons and organizations who participated in the evaluation. Participants may be asked to complete a card or sign-in sheet provided by the evaluation team indicating that they wish to receive the final findings. Notice of the availability of the final findings will also be published in the FEDERAL REGISTER.

(8) The final findings will contain a section entitled ''Response to Written Comments.'' This section will include a summary of all written comments received during the evaluation and NOAA's response to the comments. If appropriate, NOAA's response will indicate whether NOAA agrees or disagrees with the comment and how the comment has been addressed in the final findings.

(9) The Assistant Administrator may conduct issue or problem-specific evaluations between scheduled evaluations of approved State CZM programs. Such issue or problem-specific evaluations will be conducted to follow-up on potentially serious problems or issues identified in the most recent scheduled evaluation or to evaluate evidence of potentially serious problems or issues that may arise during day-to-day monitoring of State performance of grants tasks or other program implementation activities in the interim between scheduled evaluations. If the Assistant Administrator conducts an issue or problem specific evaluation, he/she will comply with the procedures and public participation requirements of §§923.133 and 923.134.

(c) Requirements for continuing review of approved State CZM programs.

(1) *Scope of continuing reviews.* The continuing review of a State's approved CZM program will include an evaluation of the extent to which the State has:

(i) Implemented and enforced the program approved by the Secretary;

(ii) Addressed the coastal management needs identified in section 303(2)(A)–(K) (16 U.S.C. 1452); and

(iii) Adhered to the terms of financial assistance awards.

(2) *Procedure for assessing adherence to the approved CZM program.* (i) In reviewing adherence of a State to its approved CZM program, the Assistant Administrator will evaluate all aspects of the ''approved CZM program'' as defined in §923.132(d). The evaluation will examine the extent to which:

(A) The State is implementing and enforcing its approved CZM program;

(B) The management agency is effectively playing a leadership role in coastal issues, monitoring the actions of appropriate State and local agencies for compliance with the approved CZM program, and assuring the opportunity for full participation of all interested entities in CZM program implementation; and

(C) The management agency is effectively carrying out the provisions of Federal consistency.

(ii) The findings concerning the State's adherence to its approved CZM program will be used in negotiating the next financial assistance award or work program, whichever is applicable.

(3) Procedure for assessing how the State has addressed the coastal management needs identified in section

303(2) (A)–(K). The assessment of the extent to which the State has addressed the coastal management needs identified in section 303(2) (A)–(K) will occur as follows:

(i) The State, in its performance report, will provide the Assistant Administrator with a listing of all actions it is taking during the performance report period to address the national coastal management needs and how these actions relate to conditions in the State and the objectives and priorities in the State CZM program.

(ii) The Assistant Administrator, in the evaluation findings, will assess the extent to which the State's actions are targeted to meeting identified ''needs'' and the effectiveness of the actions in addressing those needs. Based on this assessment, the Assistant Administrator will make findings and recommendations of the extent to which each State is addressing the coastal management needs identified in section 303.

(iii) The findings concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award.

(4) *Procedure for assessing adherence to the terms of financial assistance awards.* (i) Adherence to financial and administrative terms of each financial assistance award will be determined by the NOAA Grants Office and the Department of Commerce Inspector General. Adherence to programmatic terms of each financial assistance award will be determined by the Assistant Administrator and the NOAA Grants Office. These determinations will be made in accordance with the requirements outlined in these regulations, the findings of a financial audit of the award, and the following criteria:

(A) Compliance with the statute, regulations, and applicable OMB circulars;

(B) Submission of required reports and satisfactory completion of work products as described in the approved application and within the timeframe specified;

(C) Compliance with Standard Terms and Conditions and Special Award Conditions within the specified timeframes;

(D) Use of award funds only for approved projects; and

(E) Substantive modification of approved projects only with the prior agreement of NOAA.

(ii) The findings concerning adherence to the terms of financial assistance awards will be used in negotiating the next financial assistance award, if any.

(d) Requirements for continuing review of State coastal energy impact programs.

(1) *Scope of continuing reviews.* The continuing review of State coastal energy impact programs will include the following elements:

(i) An evaluation of the State's adherence to the terms of financial assistance awards;

(ii) An evaluation of the relationship between coastal energy impact projects and the approved CZM program;

(iii) A description of energy activities in coastal areas and the impact resulting from these activities; and

(iv) An evaluation of the effectiveness of the coastal energy impact program in dealing with these consequences.

(2) *Procedure for assessing adherence to the terms of financial assistance awards.* See § 923.133(c)(4).

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

§ 923.134 Public participation.

(a) As required by section 312(b) of the Act, in evaluating a coastal State's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days notice of such public meetings by placing a notice in the FEDERAL REGISTER, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be

prepared in report form and shall include written responses to the written comments received during the evaluation process.

(b) *Requirements.* (1) The Assistant Administrator will publish a Notice of Intent to Evaluate in the FEDERAL REGISTER at least 45 days before the public meeting(s). The notice will include a Statement of the availability of the State's performance report and the supplemental information request.

(2) Each State will issue a notice of the public meeting(s) in its evaluation by placing a notice in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held and by taking other reasonable action to communicate with persons and organizations known to be interested in the evaluation, such as sending a notice of the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 45 days before the date of the public meeting(s). The State will provide a copy of such notice to the Assistant Administrator. States are encouraged to republish the newspaper notice at least 15 days before the date of the public meeting(s). The State will inform the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings will be published in the FEDERAL REGISTER. The notice will state that copies of the final findings will be available to the public upon written request. Copies of the final findings will be sent to persons and organizations who participated in the evaluation, in accordance with 923.133(b)(7).

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

§923.135 Enforcement.

(a) *Procedures and criteria for invoking and lifting interim sanctions.* (1) As required by section 312(c) of the Act:

(i) The Secretary may suspend payment of any portion of financial assistance extended to any coastal State, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal State is failing to adhere to—

(A) The management program or a State plan developed to manage a national estuarine reserve established under section 315 of the Act (16 U.S.C. 1461), or a portion of the program or plan approved by the Secretary; or

(B) The terms of any grant or cooperative agreement funded under this title (16 U.S.C. 1451–1464).

(ii) Financial assistance may not be suspended under paragraph (a)(1)(i) of this section unless the Secretary provides the Governor of the coastal State with—

(A) Written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

(B) Written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal State to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(iii) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.

(2) *Requirements.* (i) The Assistant Administrator will identify the need for interim sanctions through the continuing review process. The Assistant Administrator will use the criteria at §923.135(a)(3) in determining when to invoke interim sanctions.

(ii) The Assistant Administrator will issue the State a preliminary finding of non-adherence with the approved CZM program, or a portion thereof, and/or with a term or terms of a grant or cooperative agreement. This preliminary finding of non-adherence may be contained in the draft evaluation findings, or in a preliminary notification letter to the State CZM program manager. If the preliminary finding is contained in a preliminary notification letter, the Assistant Administrator will comply with the applicable public participation requirements of section 312(b) and NOAA's regulations at §923.134. The draft evaluation findings or preliminary notification letter containing a preliminary finding of non-adherence will explain that if the finding of non-adherence is issued, the State is subject to suspension of financial assistance and, if the State fails to take the

actions specified pursuant to section 312(c) and this part, to withdrawal of program approval and financial assistance.

(iii) The State will be given 30 days from receipt of the draft evaluation findings or preliminary notification letter to comment on and rebut the preliminary finding of non-adherence. During this 30-day period, the State may request up to 15 additional days to respond, for a maximum of 45 days from receipt of the draft evaluation findings or preliminary notification letter.

(iv) After considering the State's comments, the Assistant Administrator will decide whether or not to issue a final finding of non-adherence. If the Assistant Administrator decides to issue a final finding of non-adherence, he/she will do so in the final evaluation findings issued pursuant to section 312(b) or in a final notification letter as provided by paragraph (a)(2)(ii) of this section. The Assistant Administrator may invoke interim sanctions provided by section 312(c) immediately or at any time after issuing the final evaluation findings or final notification letter containing the finding of non-adherence, but not later than the next regularly scheduled evaluation.

(v) If the Assistant Administrator decides to invoke interim sanctions, he/she will do so by sending the final evaluation findings or final notification letter to the Governor of the State and the State CZM program manager. The final evaluation findings or final notification letter will contain the information required in section 312(c)(2) (A) and (B). This information will include the amount of financial assistance to be suspended and redirected, the actions the State should take in order to have the suspension withdrawn, how the suspended funds shall be expended to take the required actions, and a schedule for taking the required actions. The final evaluation findings or final notification letter will also contain the length of the suspension, which may not last for less than 6 months or more than 36 months. The Assistant Administrator will establish the length of the suspension based on the amount of time that is reasonably necessary for the State to take the required actions. If the State can take the required actions faster than expected, the suspension can be withdrawn early (but not in less than six months).

(vi) The State must respond to the final evaluation findings or final notification letter by developing a proposed work program to accomplish the required actions on the schedule set forth in the final evaluation findings or final notification letter. The State may propose an alternative approach to accomplishing the required actions and/or an alternative schedule. The Assistant Administrator's approval of the State's work program will signify his/her agreement with the approach and schedule for accomplishing the actions necessary to withdraw the suspension.

(vii) The Assistant Administrator will monitor State performance under the work program. This may involve additional direction to the State through the grant administration process and/or a visit to the State by appropriate NOAA program staff, evaluation staff and/or other experts to work with the State on a specific problem or issue. The Assistant Administrator will consider proposals to revise the work program on a case-by-case basis, providing that the State will still be able to accomplish the necessary actions within a maximum of 36 months.

(viii) The State must document that it has taken the required actions on the schedule established under this section. The State must provide its documentation in writing to the Assistant Administrator. The Assistant Administrator may conduct a follow-up evaluation or otherwise revisit the State at his/her discretion.

(ix) If the Assistant Administrator determines that the required actions have been taken, the Assistant Administrator will promptly notify the Governor and the State program manager, in writing, that NOAA has withdrawn the suspension of financial assistance. If, however, the State does not take the required actions, then the Assistant Administrator will invoke the final sanction provisions of section 312(d) on program termination and withdrawal of all financial assistance.

(3) *Criteria for invoking interim sanctions.* (i) The Assistant Administrator

may consider the following indicators of non-adherence to an approved State CZM program in determining whether to invoke interim sanctions.

(A) Ineffective or inconsistent implementation of legally enforceable policies included in the CZM program. Indicators of ineffective or inconsistent implementation could include: evidence of non-compliance with core authorities by the regulated community; insufficient monitoring and inspecting of coastal development to ensure that it conforms to program requirements and applicable conditions; or inadequate enforcement action when development is found not to be in compliance with the program or permit under which it is authorized or is found to be an unpermitted activity. In applying this indicator, NOAA will consider any available evidence of the impacts of ineffective or inconsistent implementation on coastal resources.

(B) Inadequate monitoring of the actions of State and local agencies for compliance with the program. Indicators of inadequate monitoring of these agencies could include: evidence of non-compliance of networked agencies with the CZM program, unresolved conflicts between agencies regarding what constitutes compliance with the program, or lack of a mechanism to ensure that all State agencies will adhere to the program or to approved local coastal programs pursuant to NOAA's regulations at 15 CFR 923.40 (and pursuant to new section 306(d)(15), after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance).

(C) Non-compliance of local coastal programs with the approved State program. Indicators of non-compliance could include: Local permitting or zoning decisions that are inconsistent with State standards or criteria, widespread granting of variances such as to render a zoning program ineffective in meeting State standards or criteria, changes to local comprehensive plans or zoning maps that are inconsistent with State standards or criteria, or inadequate monitoring and enforcement, as described in paragraph (a)(3)(i)(A) of this section.

(D) Ineffective implementation of Federal consistency authority. Indicators of ineffective implementation could include: Not reviewing Federal activities, Federal licenses and permits, including offshore oil and gas exploration and development, and Federal financial assistance to State and local governments for consistency with the approved CZM program or employing review procedures that are not in accordance with State and NOAA regulations.

(E) Inadequate opportunity for intergovernmental cooperation and public participation in management program implementation. Indicators of inadequate opportunity could include: not carrying out procedures necessary to insure adequate consideration of the national interest in facilities which are necessary to meet requirements which are other than local in nature, not implementing effectively mechanisms for continuing consultation and coordination, not providing required notice that a management program decision would conflict with a local zoning ordinance, decision or other action pursuant to section 306(d)(3)(B)(i) and 15 CFR 923.57, or not providing opportunities for public participation in permitting processes, consistency determinations and other similar decisions pursuant to new section 306(d)(14) after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance.

(F) Non-adherence to the terms of a grant or cooperative agreement, including the schedule for funded activities. The Assistant Administrator will also consider the extent to which priorities for expenditure of Federal funds reflect an appropriate priority for activities necessary to implement and enforce core program authorities effectively.

(G) Not submitting changes to the approved program for Federal approval on a schedule developed pursuant to 15 CFR 923.81(a) and 923.84(b)(1)(i) or developing and implementing changes to the approved program without Federal approval which are inconsistent with the Act or the approved program or which result in a reduced level of protection of coastal resources.

(ii) The Assistant Administrator may consider whether an indication of nonadherence is of recent origin (in which case the State may be given a reasonable opportunity to correct it) or has been repeatedly brought to the State's attention without corrective action in determining whether to invoke interim sanctions.

(b) *Withdrawal of program approval and financial assistance.* (1) As required by sections 312(d) and 312(e) of the Act:

(i) The Secretary shall withdraw approval of the management program of any coastal State and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State has failed to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(ii) Management program approval and financial assistance may not be withdrawn under paragraph (b)(1)(i) of this section, unless the Secretary gives the coastal State notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under paragraph (b)(1)(i) of this section, the Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Secretary.

(2) *Requirements.* (i) If the Assistant Administrator determines that the State has not taken the actions required in § 923.135(a)(2), the Assistant Administrator will provide the Governor and the State CZM program manager with written notice of this finding and NOAA's obligation to withdraw program approval and financial assistance under this title. The State will be given 30 days from receipt of this notice to respond with evidence that it has taken the actions specified pursuant to § 923.135(a)(2). During this 30-day period, the State may request up to 30 additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) If the State does not respond satisfactorily within the time allowed, the agency will notify the State of intent to take the proposed action. This notice will be published in the FEDERAL REGISTER and will inform the State of its right to a public hearing.

(iii) If the State does not request a public hearing or submit satisfactory evidence that it has taken the actions specified pursuant to § 923.135(a)(2) within 30 days of publication of this notice, and the Assistant Administrator determines that the State has failed to take the actions specified pursuant to § 923.135(a)(2), the Assistant Administrator will withdraw program approval and financial assistance and will notify the State in writing of the decision and the reasons for it. The notification will set forth actions that must be taken by the State which would cause the Assistant Administrator to cancel the withdrawal.

(iv) If the State requests a public hearing within 30 days of publication of the notice of intent to withdraw program approval and financial assistance, the Assistant Administrator will publish 30 days advance notice of the hearing in the FEDERAL REGISTER and the newspaper(s) of largest circulation in the State's coastal zone. The hearing will be held in a location convenient to the citizens of the State's coastal zone and a record of the hearing will be maintained. Within 30 days of the completion of the hearing, the agency will make the determination as set forth in paragraph (b)(2)(iii) of this section.

(3) If program approval and financial assistance are withdrawn pursuant to this section, a notice will be placed in the FEDERAL REGISTER and Federal consistency under section 307 of the Act will cease to apply to the State's CZM program.

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

PART 929—KEY LARGO NATIONAL MARINE SANCTUARY FINAL REGULATIONS

Sec.

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AUTHORITY: Title III of Pub. L. 92–532, 86 Stat. 1061, 1062 (16 U.S.C. 1431–1434).

SOURCE: 48 FR 55118, Dec. 9, 1983, unless otherwise noted.

§929.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of the Marine Protection, Research and Sanctuaries Act of 1972 as amended (the Act). The following regulations are issued pursuant to title III of the Act.

§929.2 Purpose.

The purpose of designating the Key Largo National Marine Sanctuary is to protect and preserve the coral reef ecosystem in its natural state and to regulate uses within the Sanctuary to ensure the health and well-being of the coral and associated flora and fauna.

§929.3 Boundaries.

The Sanctuary consists of a portion of the Atlantic Ocean beginning at approximately three miles east of Key Largo, Florida, adjacent to the John Pennekamp Coral Reef State Park. The coordinates for the Sanctuary are: The point of beginning (POB) is at geographic coordinates 25° (degrees), 19.45′ (minutes) north latitude, 80°, 12.0′ west longitude, said point being the northeast boundary corner of John Pennekamp Coral Reef State Park. From said POB run thence southeasterly to geographic coordinates 25°, 16.2′ north latitude 80°, 8.7′ west longitude, said point also being on the 300 foot isobath, thence in a southwesterly direction to geographic coordinates 25°, 07.5′ north latitude, 80°, 12.5′ west longitude, thence again run in a southwesterly direction to geographic coordinates 24°, 58.3′ north latitude, 80°, 19.8′ west longitude, thence leaving said 300 foot isobath run northwesterly to geographic coordinates 25°, 2.2′ north latitude, 80°, 25.25′ west longitude, said point being the southeast boundary corner of John Pennekamp Coral Reef State Park, thence in a northeasterly direction along said easterly boundary of said State Park to the POB.

§929.4 Definitions.

(a) *Administrator* means the Administrator of the National Oceanic and Atmospheric Administration (NOAA).

(b) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, or his/her successor, or designee.

(c) *Persons* means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, or any State or local unit of the government.

(d) *The Sanctuary* means the Key Largo National Marine Sanctuary.

(e) *Tropical fish* means fish and invertebrates of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which live in a close interrelationship with corals and coral reef substrates.

§929.5 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the Sanctuary pursuant to the Act. NOAA's responsibilities under the Act require that the Sanctuary Programs Division review, consider, and approve any activities that take place in the Sanctuary in accordance with these rules and regulations. The U.S. Coast Guard and the Florida Department of Natural Resources, Division of Recreation and Parks (FDNR) shall conduct surveillance and enforcement of these regulations pursuant to 14 U.S.C. 89, 16 U.S.C. 1432 (f)(4), 16 U.S.C. 7421 (b), 16 U.S.C. 3375 (a), or other appropriate legal authority.

§929.6 Allowed activities.

All activities except those specifically prohibited by §929.7 or other applicable authority may be undertaken within the Sanctuary subject to the restrictions and conditions imposed by other authorities.

§ 929.7 Activities prohibited or controlled.

(a) Unless permitted by the Assistant Administrator in accordance with § 929.10, or as may be necessary for the national defense, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited or controlled within the Sanctuary. All prohibitions and controls must be applied consistently with international law. Refer to § 929.9 for penalties for commission of prohibited acts.

(1) *Removal or damage of natural features, marine life and archaeological and historical resources.* (i) No person shall destroy, injure, harmfully disturb, break, cut or similarly damage or remove any coral or other marine invertebrate, or any plant, soil, rock, or other material, except that commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand which is consistent with both the applicable regulations under the appropriate Fishery Management Plan and these regulations is allowed. Divers are prohibited from handling coral formations, standing on coral formations, or otherwise disturbing the corals.

(ii) No person shall catch or collect any tropical fish.

(iii) No person shall remove, deface, damage, or tamper with archaeological or historical resources or the cargo of any submerged wrecks or other historircal resources within the boundaries of the Sanctuary.

(iv) There shall be a rebuttable presumption that any items listed in these paragraphs found in the possession of a person within the Sanctuary have been collected or removed from within the Sanctuary.

(2) *Dredging, filling, excavating and building activities.* No person shall dredge, excavate, fill or otherwise alter the seabed in any way nor construct any structure of any kind, whether permanent or temporary, with the exception of navigation aids.

(3) *Discharges.* No person shall deposit or discharge any materials or substance of any kind into the waters of the Sanctuary. The only exceptions are:

(i) Fish or fish parts and chumming materials;

(ii) Cooling waters from vessels; and

(iii) Effluent from marine sanitation devices approved by the United States Coast Guard.

(4) *Tampering with markers.* No person shall mark, deface or damage in any way whatsoever, or displace, remove or tamper with any signs, notices or placards, whether temporary of permanent, or with any navigational aids, monuments, stakes, posts, mooring buoys, scientific equipment or other boundary markers installed by the Sanctuary Manager, or trap floats placed for the purpose of lobster fishing.

(5) *Use of harmful fishing methods.* No person shall use within the Sanctuary, or shall carry or possess, except while passing without interruption through the Sanctuary or for law enforcement purposes, the following firearms or weapons: Pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring loaded guns, explosive powered guns or similar devices known as spearguns. No person shall use within the Sanctuary:

(i) Wire fish traps;

(ii) Bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or net; or

(iii) Poisons, electric charges, explosives or similar devices.

(6) *Operation of watercraft and anchoring.* All watercraft shall be operated in accordance with applicable Federal rules and regulations. The following additional regulations apply within the boundaries of the Sanctuary.

(i) Watercraft shall be operated to avoid striking or otherwise causing damage to the natural features of the Sanctuary.

(ii) Watercraft must use mooring buoys, stations or anchoring arms when such facilities have been provided.

(iii) No anchor shall be cast or dragged in such a way as to damage any coral reef formations. Anchors shall be dropped only on sand flats off the reefs and be placed to avoid dragging into the coral formations.

(iv) Within 100 yards of divers, sightseeing boats or fishermen, no watercraft shall be operated at a speed

greater than 4 knots or in any manner to create a wake, except by law enforcement officials while in the performance of their official duties.

(v) All watercraft from which diving operations are being conducted shall fly in a conspicuous manner the red and white ''divers down'' flag. Divers shall stay within 100 yards of their diving flag.

(7) *Use of dangerous weapons.* Except for law enforcement purposes, no person shall use or discharge explosives or weapons of any description within the Sanctuary boundaries. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers are not considered weapons for purposes of this subsection.

(b) The Sanctuary may be closed to public use in the event of emergency conditions endangering life or property. The Assistant Administrator or his/her designee may also close certain areas in order to permit recovery of the living resources from overuse, or provide for scientific research relating to protection and management. However, the total closed area shall not exceed a size necessary to accomplish these purposes. Public notice of closures will be provided through the local news media and posting of placards at the John Pennekamp Coral Reef State Park, if deemed necessary.

(c) The regulation of activities within the Sanctuary shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be conducted consistently with all regulations to the maximum extent possible.

(d) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions and other international agreements to which the United States is signatory.

§929.8 Other authorities.

No license, permit or other authorization issued pursuant to any other authority may validly authorize any activity prohibited by §929.7 unless such activity meets the criteria stated in §929.10 (a), (c) and (d), and is specifically authorized by the Assistant Administrator.

§929.9 Penalties.

(a) Each violation of the act, any regulation, in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

[58 FR 60783, Nov. 18, 1993]

§929.10 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct in the Sanctuary activities specified in the permit including any activity specifically prohibited under §929.7, if such activity is: (1) Research related to the resources of the Sanctuary; (2) to further the educational value of the Sanctuary; or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator, Attn: Sanctuary Programs Division, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, DC 20235. An application shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit, the Assistant Administrator shall evaluate such matters as: (1) The general professional and financial responsibility of the applicant; (2) the appropriateness of the methods being proposed to the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary

as a source of recreation, education, or scientific information; and (4) the end value of the activity.

(d) In addition to meeting the criteria in § 929.10 (a) and (c), the applicant must also satisfactorily demonstrate to the Assistant Administrator:

(1) That adequate safeguards shall be provided to protect the environment; and (2) that the environment shall be returned to the condition which existed before the activity occurred.

Permits shall be appropriately conditioned, and monitored by NOAA to ensure compliance.

(e) In considering an application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of Regional Fishery Management Councils and any other person or entity, within or outside of the Federal government, and may hold a public hearing, as he/she deems appropriate.

(f) The Assistant Administrator may grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed necessary, and may attach to any permit granted for research related to the Sanctuary stipulations requiring that: (1) The Assistant Administrator or a designated representative may observe and monitor any activity permitted by this section; (2) any information obtained in the research site shall be made available to the public; (3) periodic reports of the status of progress of such activity be submitted; and (4) the permittee shall fly the Sanctuary research flag while working in the Sanctuary.

(g) A permit granted pursuant to this section is nontransferrable.

(h) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or Permittee has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or Permittee, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

(Information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0648–0141 for use through October 31, 1986)

[48 FR 55118, Dec. 9, 1983, as amended at 49 FR 1041, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 929.11 Appeals of administrative action.

(a) Except as provided in subpart D of 15 CFR part 904, the applicant for a permit or the Permittee, or any other interested person (hereafter Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 929.10 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator may request the appellant, and the permit applicant or permittee if other than the appellant, to submit such additional information and in such form as will allow action upon the appeal. The Administrator shall decide the appeal using the criteria set out in § 929.10 (a), (c) and (d) and any information relative to the aplication on file, any information provided by the appellant, and such other consideration as is deemed appropriate. The Administrator shall notify the appellant of the final decision and the reason(s) therefor, in writing, normally within 30 days of the date of the receipt of adequate information required to make the decision.

(c) If a hearing is requested or, if the Administrator determines that one is appropriate, the Administrator may grant an informal hearing before a hearing officer designated for that purpose, after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such hearing shall normally be held no later than 30 days following publication of the notice in the FEDERAL REGISTER unless the hearing officer extends

the time for reasons deemed equitable. The appellant, the applicant or permittee if different, and, other interested persons may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify the interested persons of his/her decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's decision shall constitute final action for the Agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended by the Administrator for good cause for a period not to exceed 30 days, either upon his/her own motion or upon written request from the appellant, permit applicant or permittee, stating the reason(s) therefor.

[48 FR 55118, Dec. 9, 1983, as amended at 49 FR 1041, Jan. 6, 1984]

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

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AUTHORITY: Secs. 307, 316 and 317, Coastal Zone Management Act of 1972, Pub. L. 92–583, 86 Stat. 1280 (16 U.S.C. 1451 et seq.), as amended by Pub. L. 94–370, 90 Stat. 1013.

SOURCE: 44 FR 37143, June 25, 1979, unless otherwise noted.

Subpart A—Objectives

§ 930.1 Overall objectives.

The objectives of these regulations are:

(a) To describe the obligations of all agencies, individuals and other parties who are required to comply with the Federal consistency provisions of the Coastal Zone Management Act;

(b) To implement the Federal consistency provisions in a manner which strikes a balance between the need to ensure consistency for Federal actions affecting the coastal zone with approved coastal management and the need to promote Federal programs;

(c) To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the

Federal consistency provisions of the Act are satisfied;

(d) To interpret significant terms in the Federal consistency provisions so that they can be uniformly understood and adhered to by all agencies, individuals and other affected parties;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the objectives, policies, standards and other criteria set forth in, or referenced as part of, approved coastal management programs;

(f) To provide procedures which the Secretary, in cooperation with the Executive Office of the President, may use to mediate serious disagreements which arise between Federal and State agencies during the administration of approved coastal management programs;

(g) To provide procedures which permit the Secretary to review Federal license or permit activities, or Federal assistance activities, to determine whether they are consistent with the objectives or purposes of the Act, or are necessary in the interest of national security;

(h) To provide procedures which permit interested parties to notify the Assistant Administrator for Coastal Zone Management of Federal actions believed to be inconsistent with approved coastal management programs, or believed to have been incorrectly determined to be inconsistent with an approved management program; and

(i) To provide procedures for the reporting of any Federal actions found by the Assistant Administrator for Coastal Zone Management to be inconsistent with an approved coastal zone management program, and for the performance review of State implementation of the Federal consistency provisions.

Subpart B—General Definitions

§930.10 Index to definitions.

The following list includes all terms defined in part 930 of this title keyed to the section or paragraph in which they are defined.

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Executive Office of the President	930.14
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§930.11 Act.

The term *Act* means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*).

§930.12 Section.

The term *Section* means a section of the Coastal Zone Management Act of 1972, as amended.

§930.13 Secretary.

The term *Secretary* means the Secretary of the U.S. Department of Commerce.

§930.14 Executive Office of the President.

The term *Executive Office of the President* means the office, council, board, or other entity within the Executive Office of the President which shall participate with the Secretary in seeking to mediate serious disagreements which may arise between a Federal agency and a coastal State.

§930.15 OCZM.

The term *OCZM* means the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

§930.16 Assistant Administrator.

The term *Assistant Administrator* means the Assistant Administrator for

Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

§ 930.17 Federal agency.

The term *Federal agency* means any department, agency, board, commission, council, independent office or similar entity within the executive branch of the Federal government, or any wholly owned Federal government corporation.

§ 930.18 State agency.

(a) The term *State agency* means the agency of the State government designated pursuant to section 306(c)(5) of the Act to receive and administer grants for an approved coastal management program, or a single designee State agency appointed by the 306(c)(5) State agency. Any appointment by the 306(c)(5) State agency of a designee agency must be described in the State's management program. In the absence of such description, all consistency determinations, consistency certifications and Federal assistance proposals shall be sent to and reviewed by the 306(c)(5) State agency.

(b) The State agency is responsible for commenting on Federal agency consistency determinations (see subpart C of this part), concurring with or objecting to consistency certifications for Federal licenses, permits, and Outer Continental Shelf plans (see subparts D and E of this part), and reviewing the consistency of Federal assistance activities proposed by State or local government agencies (see subpart F of this part). The State agency shall be responsible for securing necessary review and comment from other State, regional, or local government agencies. Thereafter, only the State agency is authorized to comment officially on a Federal consistency determination, concur with or object to a consistency certification, or determine the consistency of a proposed Federal assistance activity.

§ 930.19 Management program.

The term *management program* has the same definition as provided in section 304(11) of the Act, except that for the purposes of this part the term is limited to those management programs adopted by a coastal State in accordance with the provisions of section 306 of the Act, and approved by the Assistant Administrator.

§ 930.20 Coastal zone.

The term *coastal zone* has the same definition as provided in section 304(1) of the Act.

§ 930.21 Associated facilities.

The term *associated facilities* describes all proposed facilities:

(a) Which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a Federal action (e.g., activity, development project, license, permit, or assistance), and

(b) Without which the Federal action, as proposed, could not be conducted.

All further requirements in this part related to the review of and consistency for Federal activities including development projects (see subpart C of this part), Federal license and permit activities (see subparts D and E of this part) and Federal assistance activities (see subpart F of this part) also apply to associated facilities related to those Federal actions. Therefore, the proponent of a Federal action must consider whether the Federal action and its associated facilities affect the coastal zone and, if so, whether these interrelated activities satisfy the relevant consistency requirement of the Act.

Subpart C—Consistency for Federal Activities

§ 930.30 Objectives.

The provisions of this subpart are provided to assure that all federally conducted or supported activities including development projects directly affecting the coastal zone are undertaken in a manner consistent to the maximum extent practicable with approved State coastal management programs.

§930.31 Federal activity.

(a) The term *Federal activity* means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities.

(b) A Federal development project is a Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.

(c) The term ''Federal activity'' does not include the issuance of a Federal license or permit to an applicant or person (see subparts D and E of this part) or the granting of Federal assistance to an applicant agency (see subpart F of this part).

§930.32 Consistent to the maximum extent practicable.

(a) The term ''consistent to the maximum extent practicable'' describes the requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations. If a Federal agency asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to comply with the provisions of the management program.

The duty the Act imposes upon Federal agencies is not set aside by virtue of section 307(e). The Act was intended to cause substantive changes in Federal agency decisionmaking within the context of the discretionary powers residing within such agencies. Accordingly, when read together, sections 307(c) (1) and (2) and 307(e) require Federal agencies, whenever legally permissible, to consider State-management programs as supplemental requirements to be adhered to in addition to existing agency mandates.

(b) A Federal agency may deviate from full consistency with an approved management program when such deviation is justified because of some unforeseen circumstances arising after the approval of the management program which present the Federal agency with a substantial obstacle that prevents complete adherence to the approved program.

§930.33 Identifying Federal activities directly affecting the coastal zone.

(a) Federal agencies shall determine which of their activities directly affect the coastal zone of States with approved management programs.

(b) Federal agencies shall consider all development projects within the coastal zone to be activities directly affecting the coastal zone. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they directly affect the coastal zone.

(c)(1) Federal activities outside of the coastal zone, as defined in section 304(1) of the Act, are subject to Federal agency review to determine whether they directly affect the coastal zone.

(2) OCS oil and gas lease sale activities conducted pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*) are not Federal activities which directly affect the coastal zone within the meaning of section 307(c)(1) of the Act, and, therefore, are not subject to review under this subpart.

[44 FR 37143, June 25, 1979, as amended at 50 FR 35213, Aug. 30, 1985]

§930.34 Federal agency consistency determinations.

(a) Federal agencies shall provide State agencies with consistency determinations for all Federal activities directly affecting the coastal zone. The Federal agency may provide the State agency with this information in any manner it chooses so long as the requirements of this subpart are satisfied.

(b) Federal agencies shall provide State agencies with a consistency determination at the earliest practicable time in the planning or reassessment of the activity. A consistency determination should be prepared following development of sufficient information to determine reasonably the consistency of the activity with the State's management program, but before the Federal agency reaches a significant point

of decisionmaking in its review process. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

§ 930.35 Federal and State agency coordination.

(a) State agencies should list in their management programs Federal activities which, in the opinion of the State agency, are likely to directly affect the coastal zone and require a Federal agency consistency determination. Listed Federal activities must be described in terms of the specific type of activity involved (e.g., Federal reclamation projects). In the event the State agency chooses to describe Federal activities outside of the coastal zone but likely to directly affect the coastal zone, it must also describe the geographic location of such activities (e.g., reclamation projects in coastal floodplains).

(b) State agencies should monitor unlisted Federal activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review, review of National Environmental Policy Act (NEPA) environmental impact statements, etc.) and should notify Federal agencies of unlisted Federal activities which Federal agencies have not subjected to a consistency review but which, in the opinion of the State agency, directly affect the coastal zone and require a Federal agency consistency determination. State agencies must notify Federal agencies within 45 days from receipt of notice of the unlisted Federal activity, otherwise the State agency waives its right to request a consistency determination. The waiver does not apply in cases where the State agency does not receive notice of the Federal activity (e.g., for those Federal activities which are not processed through Intergovernmental Review Process established pursuant to E.O. 12372, NEPA review or a similar procedure which permits State agency monitoring).

(c) The recommended listing and monitoring procedures described in paragraphs (a) and (b) of this section are neither a substitute for nor eliminate Federal agency responsibility under §§ 930.33(b) and 930.34 to provide State agencies with consistency determinations for all development projects in the coastal zone and for all other Federal activities which the Federal agency finds directly affect the coastal zone.

(d) If a Federal agency decides that a consistency determination is not required for a Federal activity (1) identified by a State agency on its list or through case-by-case monitoring, (2) which is the same as or similar to activities for which consistency determinations have been prepared in the past, or (3) for which the Federal agency undertook a thorough consistency assessment and developed initial findings on the effects of the activity on the coastal zone, the Federal agency shall provide the State agency with a notification, at the earliest practicable time in the planning of the activity, briefly setting forth the reasons for its negative determination. A negative determination shall be provided to the State agency at least 90 days before final approval of the activity, unless both the Federal agency and the State agency agree to an alternative notification schedule.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 930.36 Availability of mediation for negative determination disputes.

In the event of a serious disagreement between a Federal agency and a State agency regarding a determination related to whether a proposed activity directly affects the coastal zone, either party may seek the Secretarial mediation services provided for in subpart G.

§ 930.37 Consistency determinations for proposed activities.

(a) Federal agencies shall review their proposed Federal activities which directly affect the coastal zone in order

to develop consistency determinations which indicate whether such activities will be undertaken in a manner consistent to the maximum extent practicable with approved State management programs. Federal agencies are encouraged to consult with State agencies during their efforts to assess whether such activities will be consistent to the maximum extent practicable with such programs.

(b) In cases where Federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal, etc.) which cumulatively has a direct effect upon the coastal zone, the agency may develop a general consistency determination thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A general consistency determination may only be used in situations where the incremental actions are repetitive or periodic, substantially similar in nature, and do not directly affect the coastal zone when performed separately. If a Federal agency issues a general consistency determination, it must thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

(c) In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project from planning to completion, only one consistency determination will be required. However, in cases where major Federal decisions related to a proposed development project will be made in phases based upon developing information, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (e.g., planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project continues to be consistent to the maximum extent practicable with the State's management program.

§930.38 Consistency determinations for activities initiated prior to management program approval.

(a) A consistency determination will be required for ongoing Federal activities other than development projects (e.g., waste disposal practices) initiated prior to management program approval, which are governed by statutory authority under which the Federal agency retains discretion to reassess and modify the activity. In these cases the consistency determination must be made by the Federal agency at the earliest practicable time following management program approval, and the State agency must be provided with a consistency determination no later than 120 days after management program approval for ongoing activities which the State agency lists or identifies through monitoring as subject to consistency with the management program.

(b) A consistency determination shall be required for major, phased Federal development project decisions described in §930.37(c) which are made following management program approval and are related to development projects initiated prior to program approval. In making these new decisions, Federal agencies shall consider coastal zone effects not fully evaluated at the outset of the project. This provision shall not apply to phased Federal decisions which were specifically described, considered and approved prior to management program approval (e.g., in a final environmental impact statement issued pursuant to the National Environmental Policy Act).

§930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the management program. The statement must be based upon an evaluation of the relevant provisions of the management program. The consistency determination shall also include a detailed description of the activity, its associated facilities,

and their coastal zone effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the statement evaluation, activity description and supporting information shall be commensurate with the expected effects of the activity on the coastal zone.

(b) Federal agencies shall be guided by the following in making their consistency determinations. The activity (e.g., project siting and constuction), its direct effects (e.g., air, water, waste discharges, etc.), and associated facilities (e.g., proposed siting and construction of access road, connecting pipeline, support buildings, etc.) and the direct effects of the associated facilities (e.g., erosion, wetlands, beach access impacts, etc.) must all be consistent to the maximum extent practicable with the management program. Although nonassociated facilities (e.g., recreational housing which is induced by but not necessarily related to a Federal harbor dredging project—see § 930.21) must be included within the consistency determination's description of the direct effects of the activity, Federal agencies are not responsible for evaluating the consistency of such facilities.

(c) In making their consistency determinations, Federal agencies shall give appropriate weight to the various types of provisions within the management program. Federal agencies must ensure that their activities are consistent to the maximum extent practicable with the enforceable, mandatory policies of the management program. However, Federal agencies need only give adequate consideration to management program provisions which are in the nature of recommendations. Finally, Federal agencies do not have to evaluate coastal zone effects for which the management program does not contain mandatory or recommended policies because, in the absence of such provisions, there is no basis for making a consistency determination with respect to such effects.

(d) When Federal agency standards are more restrictive than standards or requirements contained in the State's management program, the Federal agency may continue to apply its stricter standards (e.g., restrict project development or design alternatives notwithstanding permissive management program policies). In such cases the Federal agency should inform the State agency in the consistency determination of the statutory, regulatory or other basis for the application of the stricter standards.

§ 930.40 Multiple Federal agency participation.

Whenever more than one Federal agency is involved in conducting or supporting a Federal activity or its associated facilities directly affecting the coastal zone, or is involved in a group of Federal activities related to each other because of their geographic proximity, consideration should be given to the preparation of one consistency determination for all the Federal activities involved. In such cases, Federal agencies should consider joint preparation or lead agency development of the consistency determination. In either case, the consistency determination (a) must be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies, (b) must indicate whether or not each of the proposed activities is consistent to the maximum extent practicable with the management program, and (c) must include information on each proposed activity sufficient to support the consistency determination.

§ 930.41 State agency response.

(a) A State agency shall inform the Federal agency of its agreement or disagreement with the Federal agency's consistency determination at the earliest practicable time. If a final response has not been developed and issued within 45 days from receipt of the Federal agency notification, the State agency should at that time inform the Federal agency of the status of the matter and the basis for further delay. The Federal agency may presume State agency agreement if the State agency fails to provide a response within 45 days from receipt of the Federal agency notification.

(b) State agency agreement shall not be presumed in cases where the State agency, with the 45 day period, requests an extension of time to review

the matter. Federal agencies shall approve one request for an extension period of 15 days or less. In considering whether a longer or additional extension period is appropriate, the Federal agency should consider the magnitude and complexity of the information contained in the consistency determination.

(c) Final Federal agency action may not be taken sooner than 90 days from the issuance of the consistency determination to the State agency unless both the Federal agency and the State agency agree to an alternative period (see §930.34(b)).

§930.42 State agency disagreement.

(a) In the event the State agency disagrees with the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the disagreement and supporting information. The State agency response must describe (1) how the proposed activity will be inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the management program.

(b) If the State agency's disagreement is based upon a finding that the Federal agency has failed to supply sufficient information (see §930.39(a)), the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal activity with the management program.

(c) State agencies shall send to the Assistant Administrator a copy of responses which describe disagreements with Federal agency consistency determinations.

§930.43 Availability of mediation for disputes concerning proposed activities.

(a) In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed Federal activity directly affecting the coastal zone, either party may request the Secretarial mediation services provided for in subpart G.

§930.44 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent, to the maximum extent practicable, with the State's management program.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency's objection to a Federal activity which was: (1) Previously determined to be consistent to the maximum extent practicable with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent to the maximum extent practicable with the State's management program, or (2) previously determined not to be a Federal activity directly affecting the coastal zone, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, the activity directly affects the coastal zone and is not consistent to the maximum extent practicable with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation services provided for in subpart G.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

§930.50 Objectives.

The provisions of this subpart are provided to assure that Federally licensed or permitted activities affecting the coastal zone are conducted in a

manner consistent with approved management programs.

§ 930.51 Federal license or permit.

(a) The term *Federal license or permit* means any authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant.

(b) The term also includes the following types of renewals and major amendments which affect the coastal zone:

(1) Renewals and major amendments of Federal license and permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which are filed after and are subject to management program amendments not in existence at the time of original State agency review; and

(3) Renewals and major amendments of Federal license and permit activities previously reviewed by the State agency which will cause coastal zone effects substantially different than those originally reviewed by the State agency.

§ 930.52 Applicant.

The term *applicant* means any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any State, or any State, regional, or local government, who, following management program approval, files an application for a Federal license or permit to conduct an activity affecting the coastal zone. The term ''applicant'' does not include Federal agencies applying for Federal licenses or permits. Federal agency ''activities'' requiring Federal licenses or permits are subject to the consistency requirements of subpart C of this part.

§ 930.53 Management program license and permit listing.

(a) During management program development, Federal agencies should assist State agencies in identifying Federal license and permit activities which reasonably can be expected to affect the coastal zone.

(b) State agencies shall develop a list of Federal license and permit activities which are likely to affect the coastal zone and which the State agency wishes to review for consistency with the management program. The list shall be included as part of the management program, and the Federal license and permit activities shall be described in terms of the specific licenses or permits involved (e.g., Corps of Engineers 404 permits, Coast Guard bridge permits, etc.). In the event the State agency chooses to review Federal licenses and permits for activities outside of the coastal zone but likely to affect the coastal zone, it must generally describe the geographic location of such activities.

(c) If a State agency wishes to avoid repeated review of minor Federally permitted activities which, while individually inconsequential, cumulatively cause effects on the coastal zone, the State agency, after developing conditions allowing concurrence for such activities, may issue a general public notice (see § 930.61) and general concurrence allowing similar minor work in the same geographic area to proceed without prior State agency review. In such cases, the State agency must set forth in the management program license and permit list the minor Federal license and permit activities and the relevent conditions which are covered by the general concurrence. Minor Federal license or permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification requirement of this subpart. Except in cases where the State agency indicates otherwise, copies of Federal license or permit applications for activities subject to a general concurrence must be sent by the applicant to the State agency to allow the State agency to monitor adherence to the conditions required by such concurrence. Confidential and proprietary material within such applications may be deleted.

(d) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval of additions or deletions by the Assistant Administrator. The State agency shall provide copies of the list and any

amendments to Federal agencies and shall make the information available to the public.

(e) No Federal license or permit described on an approved list shall be issued by a Federal agency until the requirements of this subpart have been satisfied. Federal agencies shall inform applicants for listed licenses and permits of the requirements of this subpart.

§930.54 Unlisted Federal license and permit activities.

(a) With the assistance of Federal agencies, State agencies should monitor unlisted Federal license and permit activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA environmental impact statements, etc.) and shall immediately notify Federal agencies and applicants of unlisted activities affecting the coastal zone which require State agency review. State agencies must inform the Federal agency and applicant within 30 days from notice of the license or permit application, otherwise the State agency waives its right to review the unlisted activity. The waiver does not apply in cases where the State agency does not receive notice of the Federal license or permit activity.

(b) The State agency must also notify the Assistant Administrator of unlisted Federal license or permit activities which the State agency believes should be subject to State agency review. Following State agency notification to the Federal agency, applicant and the Assistant Administrator, the Federal agency may not issue the license or permit until the requirements of this subpart have been satisfied, unless the Assistant Administrator disapproves the State agency decision to review the activity.

(c) The Federal agency and the applicant have 15 days from receipt of the State agency notice to provide comments to the Assistant Administrator regarding the State agency's decision to review the activity. The sole basis for the Assistant Administrator's approval or disapproval of the State agency's decision will relate to whether the proposed activity can be reasonably expected to affect the coastal zone of the State. The Assistant Administrator shall issue a decision, with supporting comments, to the State agency, Federal agency and applicant within 30 days from receipt of the State agency notice.

(d) In the event of disapproval by the Assistant Administrator, the Federal agency may approve the license or permit application and the applicant need not comply with the requirements of this subpart. If the Assistant Administrator approves the State agency's decision, the Federal agency and applicant must comply with the consistency certification procedures of this subpart.

(e) Following an approval by the Assistant Administrator, the applicant shall amend the Federal application by including a consistency certification and shall provide the State agency with a copy of the certification along with necessary supporting data and information (see §§930.63 and 930.64). For the purposes of this section, concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months from the original Federal agency notice to the State agency (see paragraph (a) of this section) or within three months from receipt of the applicant's consistency certification and accompanying information, whichever period terminates last.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§930.55 Availability of mediation for license or permit disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a listed or unlisted Federal license or permit activity is subject to consistency review, either party may request the Secretarial mediation services provided for in subpart G; notice shall be provided to the applicant. The existence of a serious disagreement will not relieve the Federal agency from the responsibility

for withholding approval of a license or permit application for an activity on an approved management program list (see § 930.53) or individually approved by the Assistant Administrator (see § 930.54) pending satisfaction of the requirements of this subpart. Similarly, the existence of a serious disagreement will not prevent the Federal agency from approving a license or permit activity which has not received Assistant Administrator approval.

§ 930.56 State agency guidance and assistance to applicants; information requirements.

(a) As a preliminary matter, any applicant for a Federal license or permit selected for review by a State agency should obtain the views and assistance of that agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the State's management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document.

(b) The management program as originally approved or amended may describe requirements regarding the data and information necessary to assess the consistency of Federal license and permit activities. Required data and information may not include confidential and proprietary material. In the case of approved amendments, State agencies shall send copies to relevant Federal agencies who shall, in turn, provide the information requirements to applicants. If a State does not choose to develop or amend its management program to include information requirements, the applicant must, at a minimum, supply the State agency with the information required by § 930.58.

§ 930.57 Consistency certifications.

(a) When satisfied that the proposed activity meets the Federal Consistency requirements of this subpart, all applicants for Federal licenses or permits subject to State agency review shall provide in the application to the Federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the State's approved management program. At the same time, the applicant shall furnish to the State agency a copy of the certification.

(b) The applicant's consistency certification shall be in the following form: ''The proposed activity complies with (name of State) approved coastal management program and will be conducted in a manner consistent with such program.''

§ 930.58 Necessary data and information.

(a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

(1) A detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable coastal zone effects. Maps, diagrams, technical data and other relevant material must be submitted when a written description alone will not adequately describe the proposal (a copy of the Federal application and all supporting material provided to the Federal agency should also be submitted to the State agency).

(2) Information required by the State agency pursuant to § 930.56(b).

(3) A brief assessment relating the probable coastal zone effects of the proposal and its associated facilities to the relevant elements of the management program.

(4) A brief set of findings, derived from the assessment, indicating that the proposed activity (e.g., project siting and construction), its associated facilities (e.g., access road, support buildings), and their effects (e.g., air, water, waste discharges, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. In developing findings, the applicant shall give appropriate weight to the various types of provisions within the management program. While applicants must be consistent with the enforceable, mandatory policies of the management program, they need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal zone effects for

which the management program does not contain mandatory or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by subparagraphs (a) (1) and (2) of this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by paragraphs (a) (3) and (4) of this section.

(c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposal.

§930.59 Multiple permit review.

(a) Applicants shall, to the extent practicable, consolidate related Federal license and permit activities affecting the coastal zone for State agency review. State agencies shall, to the extent practicable, provide applicants with a ''one-stop'' multiple permit review for consolidated permits to minimize duplication of effort and to avoid unnecessary delays.

(b) A State agency objection to one or more of the license or permit activities submitted for consolidated review shall not prevent the applicant from receiving Federal agency approval for those license and permit activities found to be consistent with the management program.

§930.60 Commencement of State agency review.

(a) Except as provided in §930.54(e), State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to §930.58.

(b) A State agency request for information or data in addition to that required by §930.58 shall not extend the date of commencement of State agency review.

§930.61 Public notice.

(a) Following receipt of the material described in §930.60 the State agency shall ensure timely public notice of the proposed activity. At a minimum the provision of public notice must be in accordance with State law. In addition, public notice must be provided in the immediate area of the coastal zone which is likely to be affected by the proposed activity. Public notice shall be expanded in proportion to the degree of likely public interest resulting from the unique geographic area involved, the substantial commitment of or impact on coastal resources, the complexity or controversy of the proposal, or for other good cause.

(b) Public notice shall facilitate public comment by providing a summary of the proposed activity, by announcing the availability for inspection of the consistency certification and accompanying public information and data, and by requesting that comments be submitted to the State agency.

(c) A number of procedural options, if permitted by State law, are available to State agencies to satisfy the public notice requirements of this subpart. They include, but are not limited to:

(1) The State agency providing the public notice;

(2) The State agency requiring the applicant to provide the public notice; or

(3) The State agency relying upon the public notice provided by the Federal agency reviewing the application for the Federal license or permit (e.g., notice of availability of NEPA environmental impact statements) if such notice satisfies the minimum requirements set forth in paragraphs (a) and (b) of this section.

(d) Federal and State agencies are encouraged to issue joint public notices

whenever possible to minimize duplication of effort and to avoid unnecessary delays.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29136, June 24, 1983]

§ 930.62 Public hearings.

(a) At the discretion of the State agency, public notice may include the announcement of one or more public hearings. Public hearings shall be scheduled with a view towards (1) allowing access to the consistency certification and accompanying public information within a reasonable time prior to the hearing, (2) facilitating broad public attendance and participation at the hearing, and (3) affording the applicant expeditious consideration of the proposed activity.

(b) Federal and State agencies are encouraged to hold joint public hearings in the event both agencies determine that a hearing on the action is necessary.

§ 930.63 State agency concurrence with a consistency certification.

(a) At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification. Concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months following commencement of State agency review.

(b) State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the applicant and the Federal agency of the status of the matter and the basis for further delay.

(c) If the State agency issues a concurrence or is conclusively presumed to concur with the applicant's consistency certification, the Federal agency may approve the Federal license or permit application. Notwithstanding State agency concurrence with a consistency certification, the Federal permitting agency may deny approval of the Federal license or permit application. Federal agencies should not delay processing applications pending receipt of a State agency's concurrence. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant and the State agency.

§ 930.64 State agency objection to a consistency certification.

(a) If the State agency objects to the applicant's consistency certification within six months following commencement of review, it shall notify the applicant, Federal agency and Assistant Administrator of the objection.

(b) State agency objections must describe (1) how the proposed activity is inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the management program.

(c) During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt to agree upon conditions, which, if met by the applicant, would permit State agency concurrence. The parties shall also consult with the Federal agency responsible for approving the Federal license or permit to ensure that proposed conditions satisfy Federal as well as State management program requirements.

(d) A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § 903.58. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of

the activity with the management program.

(e) A State agency objection shall include a statement informing the applicant of a right of appeal to the Secretary on the grounds described in Subpart H.

§930.65 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification, the Federal agency shall not issue the Federal license or permit except as provided in subpart H of this part.

§930.66 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally licensed and permitted activities in order to make certain that such activities continue to conform to both Federal and State requirements.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency objection to a Federally licensed or permitted activity which was: (1) Previously determined to be consistent with the State's management program, but which the State agency later maintains is being conducted or is having coastal zone effects substantially different than originally proposed and, as a result, is no longer consistent with the State's management program; or (2) previously determined not to be an activity affecting the coastal zone, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally proposed and, as a result, the activity affects the coastal zone in a manner inconsistent with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action; a copy of the request must be sent to the applicant.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists with the Federal agency, either party may seek the Secretarial mediation services provided for in subpart G of this part.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

§930.70 Objectives.

The provisions of this subpart are provided to assure that all Federal license and permit activities described in detail in OCS plans and which affect the coastal zone are conducted in a manner consistent with approved coastal zone management programs.

§930.71 Federal license or permit activity described in detail.

The term *Federal license or permit activity described in detail* means any activity requiring a Federal license or permit, as defined in §930.51, which the Secretary of the Interior determines must be described in detail within an OCS plan.

§930.72 Person.

The term *person* means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State, the Federal government, any State, regional, or local government, or any entity of such Federal, State, regional or local government, who submits to the Secretary of the Interior, or designee following management program approval, an OCS plan which describes in detail Federal license or permit activities.

§930.73 OCS plan.

(a) The term *OCS plan* means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), and the regulations under that Act, which is submitted to the Secretary of the Interior or designee following management program approval and which describes in detail Federal license or permit activities.

(b) The requirements of this subpart do not apply to Federal license and permit applications filed after management program approval for activities

described in detail in OCS plans approved by the Secretary of the Interior or designee prior to management program approval.

§ 930.74 OCS activities subject to State agency review.

Except for States which do not anticipate coastal zone effects resulting from OCS activities, management program lists required pursuant to § 930.53 shall include a reference to OCS plans which describe in detail Federal license and permit activities affecting the coastal zone.

§ 930.75 State agency assistance to persons; information requirements.

(a) As a preliminary matter, any person intending to submit to the Secretary of the Interior and OCS plan which describes in detail Federal license or permit activities affecting the coastal zone should obtain the views and assistance of the State agency regarding the means for ensuring that such activities will be conducted in a manner consistent with the State's management program. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document.

(b) In accordance with the provisions in § 930.56(b), the management program as originally approved or amended may describe requirements regarding data and information which will be necessary for the State agency to assess the consistency of the Federal license and permit activities described in detail in OCS plans.

§ 930.76 Submission of an OCS plan and consistency certification.

Any person submitting to the Secretary of the Interior or designee any OCS plan shall:

(a) Identify all activities described in detail in the plan which are subject to State agency review;

(b) When satisfied that the proposed activities meet the Federal consistency requirements of this subpart, provide the Secretary of the Interior or designee with a consistency certification, attached to the OCS plan, and the Secretary of the Interior or designee shall furnish the State agency a copy of the OCS plan (excluding proprietary information) and consistency certification.

(c) The person's consistency certification shall be in the following form:

> The proposed activities described in detail in this plan comply with (name of State(s)) approved coastal management program(s) and will be conducted in a manner consistent with such program(s).

§ 930.77 Necessary data and information.

(a) The State agency shall use the information received pursuant to the Department of the Interior's operating regulations governing exploration, development and production operations on the OCS (see 30 CFR 250.34) and regulations pertaining to the OCS information program (see 30 CFR part 252) to determine the consistency of proposed Federal license and permit activities described in detail in OCS plans.

(b) The person shall supplement the information provided by paragraph (a) of this section by supplying the State agency with:

(1) Information required by the State agency pursuant to § 930.75(b).

(2) A brief assessment relating the probable coastal zone effects of the activities and their associated facilities to the relevant elements of the management program, and

(3) A brief set of findings, derived from the assessment, indicating that each of the proposed activities (e.g., drilling, platform placement) and their associated facilities (e.g., onshore support structures, offshore pipelines), and their effects (e.g., air, water, waste discharge, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. In developing findings, the person shall give appropriate weight to the various provisions within the management program in accordance with the guidance provided in § 930.58(a)(4).

(c) At the request of the person, interested parties who have access to information required by paragraphs (a) and (b)(1) of this section may provide the State agency with all or part of the material required. Furthermore, upon

request by the person, the State agency shall provide assistance for developing the assessment and findings required by paragraphs (b) (2) and (3) of this section.

(d) When satisfied that adequate protection against public disclosure exists, persons should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposed activities. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposed activities.

§930.78 Commencement of State agency review; public notice.

(a) State agency review of the person's consistency certification begins at the time the State agency receives a copy of the OCS plan, consistency certification, and required necessary data and information. A State agency request for information and data in addition to that required by §930.77 shall not extend the date of commencement of State agency review.

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with the directives within §§930.61 through 930.62.

§930.79 State agency concurrence or objection.

(a) At the earliest practicable time, the State agency shall notify the person, the Secretary of the Interior or designee and the Assistant Administrator of its concurrence with or objection to the consistency certification. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the person, the Secretary of the Interior or designee and the Assistant Administrator of the status of review and the basis for further delay in issuing a final decision. Notice shall be in written form and postmarked no later than three months following the State agency's receipt of the certification and supporting information. Concurrence by the State agency shall be conclusively presumed if the notification required by this subparagraph is not provided.

(b) Concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection to the consistency certification within six months following commencement of State agency review.

(c) If the State agency objects to one or more of the Federal license or permit activities described in detail in the OCS plan, it must provide a separate discussion for each objection in accordance with the directives within §930.64 (b) and (d). The objection shall also include a statement informing the person of a right of appeal to the Secretary on the grounds described in subpart H.

§930.80 Effect of State agency concurrence.

(a) If the State agency issues a concurrence or is conclusively presumed to concur with the person's consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time Federal applications are actually filed for the Federal licenses and permits to which such concurrence applies.

(b) Unless the State agency indicates otherwise, copies of Federal license and permit applications for activities described in detail in an OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§930.81 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification related to Federal license or permit activities described in detail in an OCS plan, the Federal agency shall not issue any of such licenses or permits

except as provided in subpart H of this part.

§ 930.82 Multiple permit review.

(a) A person submitting a consistency certification for Federal license or permit activities described in detail in an OCS plan is strongly encouraged to work with other Federal agencies in an effort to include, for consolidated State agency review, consistency certifications and supporting data and information applicable to OCS-related Federal license and permit activities affecting the coastal zone which are not required to be described in detail in OCS plans but which are subjected to State agency consistency review (e.g., Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities, etc.). In the event the person does not consolidate such OCS-related permit activities with the State agency's review of the OCS plan, such activities will remain subject to individual State agency review under the requirements of subpart D of this part.

(b) A State agency objection to one or more of the OCS-related Federal license or permit activities submitted for consolidated review shall not prevent the person from receiving Federal agency approval (1) for those OCS-related license or permit activities found by the State agency to be consistent with the management program, and (2) for the license and permit activities described in detail in the OCS plan provided the State agency concurs with the consistency certification for such plan. Similarly, a State agency objection to the consistency certification for an OCS plan shall not prevent the person from receiving Federal agency approval for those OCS-related license or permit activities determined by the State agency to be consistent with the management program.

§ 930.83 Amended or new OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and if, pursuant to Subpart H, the Secretary does not determine that each of the objected to Federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the person shall submit an amended or new plan to the Secretary of the Interior or designee and to the State agency along with a consistency certification and data and information necessary to support the new consistency determination. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed Federal license or permit activities described in detail in the amended or new plan will be conducted in a manner consistent with the State's management program.

§ 930.84 Review of amended or new OCS plans; public notice.

(a) After receipt of a copy of the amended or new OCS plan, consistency certification, and accompanying data and information, State agency review shall begin.

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with the directives within §§ 930.61 through 930.62.

(c) The State agency shall concur with or object to the person's consistency certification in accordance with the directives within § 930.79, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

(d) If the State agency issues a concurrence or is conclusively presumed to concur with the person's new consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time Federal applications are actually filed for the Federal licenses and permits to which such concurrence applies.

(e) Unless the State agency indicates otherwise, copies of Federal license and

permit applications for activities described in detail in an amended or new OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§930.85 Continuing State agency objections.

If the State agency objects to the consistency certification for an amended or new OCS plan, the prohibition in §930.81 against Federal agency approval of licenses or permits for activities described in detail in such a plan applies, further Secretarial review pursuant to subpart H may take place, and the development of an additional amended or new OCS plan and consistency certification may be required pursuant to §§930.83 through 930.84.

§930.86 Failure to comply substantially with an approved OCS plan.

(a) The Department of the Interior and State agencies shall cooperate in their efforts to monitor Federally licensed and permitted activities described in detail OCS plans to make certain that such activities continue to conform to both Federal and State requirements.

(b) If a State agency claims that a person is failing substantially to comply with an approved OCS plan subject to the requirements of this Subpart, and such failure allegedly involves the conduct of activities affecting the coastal zone in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the U.S. Geological Survey supervisor for the area involved. Such claim shall include: (1) A description of the specific activity involved and the alleged lack of compliance with the OCS plan, and (2) a request for appropriate remedial action. A copy of the claim shall be sent to the person and the Assistant Administrator.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that the person is failing to comply substantially with the OCS plan, the governor or section 306(c)(5) State agency (see §930.18) may file a written objection with the Secretary. If the Secretary finds that the person is failing to comply substantially with the OCS plan, the person shall submit an amended or new OCS plan along with a consistency certification and supporting information to the Secretary of the Interior or designee and to the State agency. Following such a finding by the Secretary, the person shall comply with the originally approved OCS plan, or with interim orders issued jointly by the Secretary and the U.S. Geological Survey, pending approval of the amended or new OCS plan. The directives within §§930.83 through 930.85 shall apply to further State agency review of the consistency certification for the amended or new plan.

(d) A person shall be found to have failed substantially to comply with an approved OCS plan if the State agency claims and the Secretary finds that one or more of the activities described in detail in the OCS plan which affects the coastal zone are being conducted or are having a coastal zone effect substantially different than originally described by the person in the plan or accompanying information and, as a result, the activities are no longer being conducted in a manner consistent with the State's management program. The Secretary may make a finding that a person has failed substantially to comply with an approved OCS plan only after providing a reasonable opportunity for the person and the Secretary of the Interior to review the State agency's objection and to submit comments for the Secretary's consideration.

Subpart F—Consistency for Federal Assistance to State and Local Governments

§930.90 Objectives.

The provisions of this subpart are provided to assure that Federal assistance to State and local governments for activities affecting the coastal zone is granted only when such activities are consistent with approved coastal zone managements programs.

§ 930.91 Federal assistance.

The term *Federal assistance* means assistance provided under a Federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

§ 930.92 Applicant agency.

The term *applicant agency* means any unit of State or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for Federal assistance.

§ 930.93 Intergovernmental review process.

The term ''intergovernmental review process'' describes the procedures established by states pursuant to E.O. 12372, ''Intergovernmental Review of Federal Programs,'' and implementing regulations of the review of Federal financial assistance to states and local governments.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[48 FR 29136, June 24, 1983]

§ 930.94 State intergovernmental review process for consistency.

The process by which states with approved coastal management programs may review applications from state agencies and local governments for Federal assistance should be developed by each state in accordance with Executive Order 12372 and implementing regulations. In accordance with the Executive Order and regulations, states may use this process to review such applications for consistency with their approved coastal management programs.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[48 FR 29137, June 24, 1983]

§ 930.95 Guidance provided by the State agency.

(a) State agencies should include within the management program a listing of specific types of Federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior 306(c)(5) state agency (see § 930.18) consultation with affected Federal agencies and approval by the Assistant Administrator.

(b) In the event the State agency chooses to review applications for Federal assistance activities outside of the coastal zone but likely to affect the coastal zone, the State agency must develop a Federal assistance provision within the management program generally describing the geographic area (e.g. coastal floodplains) within which Federal assistance activities will be subject to review. This provision, and any refinements, will require prior 306(c)(5) State agency consultation with affected Federal agencies and approval by the Assistant Administrator.

(c) The State agency shall provide copies of any Federal assistance list or geographic provision, and any refinements, to Federal agencies, units of State or local government empowered to undertake Federally assisted activities within the coastal zone or described geographic area.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979. Redesignated and amended at 48 FR 29136, June 24, 1983]

§ 930.96 Consistency review.

(a) If pursuant to the intergovernmental review process, the State agency does not object to the proposed activity, the Federal agency may grant the Federal assistance to the applicant agency. Notwithstanding State agency consistency approval for the proposed project, the Federal agency may deny assistance to the applicant agency. Federal agencies should not delay processing applications pending receipt of a State agency approval or objection. In the event a Federal agency determines

that an application will not be approved, it shall immediately notify the applicant agency and the State agency.

(b) If pursuant to the intergovernmental review process, the State agency objects to the proposed project, the state agency shall notify the applicant agency, Federal agency and the Assistant Administrator of the objection.

(c) State agency objections must describe: (1) How the proposed project is inconsistent with specific elements of the management program, and (2) alternative measures (if they exist) which, if adopted by the applicant agency, would permit the proposed project to be conducted in a manner consistent with the management program.

(d) A State agency objection may be based upon a determination that the applicant agency has failed, following a written State agency request, to supply necessary information. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program.

(e) State agency objections shall include a statement informing the applicant agency of a right of appeal to the Secretary on the grounds described in subpart H of this part.

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29137, June 24, 1983]

§930.97 Federal assisting agency responsibility.

Following receipt of a State agency objection, the Federal agency shall not approve assistance for the activity except as provided in Subpart H of this part.

§930.98 Federally assisted activities outside of the coastal zone or the described geographic area.

(a) State agencies should monitor proposed Federal assistance activities outside of the coastal zone or the described geographic area (e.g., by use of the intergovernmental review process, review of NEPA environmental impact statements, etc.) and shall immediately notify applicant agencies, Federal agencies, and any other agency or office which may be identified by the state in its intergovernmental review process pursuant to E.O. 12372 of proposed activities which can reasonably be expected to affect the coastal zone and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Assistant Administrator. State agencies must inform the parties of objections within the time period permitted under the intergovernmental review process, otherwise the State agency waives its right to object to the proposed activity.

(b) If within the permitted time period the State agency notifies the Federal agency of its objection to a proposed Federally assisted activity, the Federal agency shall not provide assistance to the applicant agency except as provided in Subpart H, unless the Assistant Administrator disapproves the State agency's decision to review the activity. The Assistant Administrator shall be guided by the provisions in §930.54 (c) and (d).

(Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15587); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec 204, Demonstration Cities and Metropolitan Development Act of 1966 as amended (42 U.S.C. 3334)).

[44 FR 37143, June 25, 1979, as amended at 48 FR 29137, June 24, 1983]

§930.99 Availability of mediation for Federal assistance disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a Federal assistance activity is subject to consistency review, either party may request the Secretarial mediation services provided for in subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding Federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases

where the Assistant Administrator has disapproved a State agency decision to review an activity.

§ 930.100 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor Federally assisted activities in order to make certain that such activities continue to conform to both Federal and State requirements.

(b) The State agency shall request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a State agency objection to a Federally assisted activity which was: (1) Previously determined to be consistent with the State's management program, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent with the State management program, or (2) previously determined not to be a project affecting the coastal zone, but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result the project affects the coastal zone in a manner inconsistent with the State's management program. The State agency's request must include supporting information and a proposal for recommended remedial action; a copy of the request must be sent to the applicant agency.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists with the Federal agency, either party may seek the Secretarial mediation services provided for in subpart G of this part.

Subpart G—Secretarial Mediation

§ 930.110 Objectives.

The purpose of this subpart is to describe mediation procedures which Federal and State agencies may use to attempt to resolve serious disagreements which arise during the administration of approved management programs.

§ 930.111 Informal negotiations.

The availability of mediation does not preclude use by the parties of alternative means for resolving their disagreement. In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally. OCZM shall be available to assist the parties in these efforts.

§ 930.112 Request for mediation.

(a) The Secretary or other head of a Federal agency, or the Governor or the section 306(c)(5) State agency (see § 930.18), may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, and to the Assistant Administrator.

(b) Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.

§ 930.113 Public hearings.

(a) If the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing and shall provide timely public notice of the hearing.

(b) At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to public data and information related to the serious disagreement.

(c) Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. Unduly repetitious oral presentation may be excluded at the discretion of the hearing officer; in the event of such exclusion the party may provide the hearing officer with a written submission of the proposed oral presentation. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

§930.114 Secretarial mediation efforts.

(a) Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

(b) Secretarial mediation efforts shall last only so long as the Federal and State agencies agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

§930.115 Termination of mediation.

Mediation shall terminate (a) at any time the Federal and State agencies agree to a resolution of the serious disagreement, (b) if one of the agencies withdraws from mediation, (c) in the event the agencies fail to reach a resolution of the serious disagreement within 15 days following Secretarial conference efforts, and the agencies do not agree to extend mediation beyond that period, or (d) for other good cause.

§930.116 Judicial review.

The availability of the mediation services provided in this subpart is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided for in this subpart.

Subpart H—Secretarial Review Related to the Objectives or Purposes of the Act and National Security Interests

§930.120 Objectives.

The provisions of this subpart provide procedures by which the Secretary may find that a Federal license or permit activity, including those described in detail in an OCS plan, or a Federal assistance activity, which is inconsistent with a management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

§930.121 Consistent with the objectives or purposes of the Act.

The term ''consistent with the objectives or purposes of the Act'' describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because it satisfies the following four requirements:

(a) The activity furthers one or more of the competing national objectives or purposes contained in section 302 or 303 of the Act,

(b) When performed separately or when its cumulative effects are considered, it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest,

(c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and

(d) There is no reasonable alternative available (e.g., location design, etc.) which would permit the activity to be conducted in a manner consistent with the management program.

§ 930.122 Necessary in the interest of national security.

The term ''necessary in the interest of national security'' describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

§ 930.123 Appellant.

The term ''appellant'' refers to an applicant, person or applicant agency submitting an appeal to the Secretary pursuant to the provisions of this subpart.

§ 930.124 Informal discussions.

In the event the State agency informs the applicant, person or applicant agency that it intends to object to the proposed activity, the parties should consult informally to attempt to resolve the matter in a manner which avoids the necessity of appealing the issue to the Secretary. OCZM shall be available to assist the parties in these discussions.

§ 930.125 Appeals to the Secretary.

(a) An appellant may file a notice of appeal with the Secretary with 30 days of the appellant's receipt of a State agency objection. The notice of appeal shall be accompanied by a statement in support of the appellant's position, along with supporting data and information. The appellant shall send a copy of the notice of appeal and accompanying documents to the Federal and State agencies involved.

(b) No extension of time will be permitted for the filing of a notice of appeal.

(c) The Secretary may approve a reasonable request for an extension of time to submit supporting information so long as the request is filed with the Secretary within the 30-day period. Normally, the Secretary shall limit an extension period to 15 days.

§ 930.126 Federal and State agency responses to appeals.

(a) Upon receipt of the notice of appeal and supporting information, the Federal and State agencies shall have 30 days to submit detailed comments to the Secretary. Copies of such comments shall be sent to the appellant and other agency within the same time period.

(b) Requests for extensions may be made pursuant to § 930.125(c).

§ 930.127 Public notice; receipt of comments.

(a) The Secretary shall provide timely public notice of the appeal within 15 days of receipt of the notice. At a minimum, public notice shall be provided in the immediate area of the coastal zone which is likely to be affected by the proposed activity. At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to copies of the appellant's notice of appeal and accompanying public information, and to the public information in the agencies' detailed comments.

(b) Interested persons may submit comments to the Secretary within 30 days from the date of public notice, with copies provided to the appellant and to the Federal and State agencies within the same time period.

(c) Requests for extensions may be made pursuant to § 930.125(c).

§ 930.128 Dismissal of appeals.

The Secretary may dismiss an appeal for good cause. Good cause shall include, but is not limited to:

(a) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(b) Failure of the appellant to submit the supporting information within the required period or approved extension period;

(c) Secretarial receipt of a detailed comment from the Federal agency stating that the agency has disapproved the Federal license, permit or assistance application;

(d) Failure of the appellant to base the appeal on grounds that the proposed activity either (1) is consistent with the objectives or purposes of the Act or (2) is necessary in the interest of national security.

§930.129 Public hearings.

The Secretary may order a hearing independently or in reponse to a request. If a hearing is ordered by the Secretary it shall be guided by the procedures described within §930.113.

§930.130 Secretarial review.

(a) In reviewing an appeal, the Secretary shall find that a proposed Federal license or permit activity, or a Federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information submitted supports this conclusion.

(b) The Secretary shall make all reasonable efforts to complete consideration of an appeal within 90 days from the date of public notice.

(c) Following consideration of the appeal, the Secretary shall issue a decision in writing to the appellant and to the Federal and State agencies indicating whether the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security; the decision shall include the basis for such finding. The Secretary shall provide public notice of the decision.

(d) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

§930.131 Federal agency responsibility.

(a) If the Secretary finds that the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the Federal agency may approve the activity.

(b) If the Secretary does not make either of these findings, the Federal agency shall not approve the activity.

§930.132 Review initiated by the Secretary.

(a) The Secretary may choose to consider whether a Federal license or permit activity, or a Federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security. Secretarial review may be initiated either before of after the completion of State agency review. The Secretary's decision to review the activity may result from an independent concern regarding the activity or a request from interested parties. If the Secretary decides to initiate review, notification shall be sent to the applicant, person or applicant agency, and to the Federal and State agencies. The notice shall include a statement describing the reasons for the review and shall contain a request for submission of detailed comments to be submitted within 30 days from receipt of the notification. Copies of comments shall be exchanged among the parties.

(b) Requests for extensions may be made pursuant to §930.125(c).

§930.133 Public notice; receipt of comments; public hearings.

(a) Upon receipt of detailed comments from the parties, the Secretary shall provide public notice and request public comments in accordance with the provisions in §930.127.

(b) The Secretary may order a hearing in accordance with the provisions in §930.129.

§930.134 Secretarial review; Federal agency responsibility.

(a) Secretarial review shall be undertaken in accordance with the provisions in §930.130.

(b) Federal agencies are responsible for adhering to the provisions in

§ 930.131 when deciding to approve or deny an application for an activity objected to by a State agency and independently reviewed by the Secretary.

Subpart I—Assistant Administrator Reporting and Continuing Review of Federal Actions Subject to the Federal Consistency Requirements

§ 930.140 Objectives.

The provisions of this subpart provide procedures to permit interested parties to notify the Assistant Administrator of Federal actions (a) believed to be inconsistent with an approved management program but which are not so found by the Federal or State reviewing agency, and (b) believed to have been incorrectly determined to be inconsistent with an approved management program. This subpart also provides for the reporting of any Federal actions found by the Assistant Administrator to be inconsistent with an approved management program and for the performance review of State implementation of the Federal consistency provisions of this part.

§ 930.141 Notification of Federal actions believed to be inconsistent with approved management programs.

(a) Interested parties are invited to submit to the Assistant Administrator detailed comments related to the alleged inconsistency of Federal activities including development projects, Federal license or permit activities, including those described in detail in OCS plans, and Federal assistance activities which are subject to the requirements of this part, and which have not been found by a Federal agency or State agency to be inconsistent with an approved management program. Copies of such comments should be sent to relevant Federal and State agencies, and to the applicant, person or applicant agency as appropriate.

(b) Comments need not conform to any particular form, but should be specific, substantive and factual, and must describe how the Federal action is or would be inconsistent with an approved management program.

(c) Commentators are encouraged to recommend modifications or alternatives to the existing or proposed action which would enable it to be consistent with the management program.

(d) The Assistant Administrator shall assure that public information within such comments is made available for public inspection.

§ 930.142 Notification of Federal actions believed to have been incorrectly determined to be inconsistent with an approved management program.

(a) Interested parties are invited to submit to the Assistant Administrator detailed comments related to Federal license and permit activities, including those described in detail in OCS plans, and Federal assistance activities which are believed to have been incorrectly determined by a State agency to be inconsistent with an approved management program. Copies of such comments should be sent to the relevant Federal and State agencies, and to the applicant, person, or applicant agency as appropriate.

(b) Comments need not conform to any particular form, but should be specific, substantive, and factual, and must clearly describe the basis for the belief that the State agency has incorrectly objected to the Federal action on the grounds of its inconsistency with the management program.

(c) The Assistant Administrator shall assure that public information within such comments is made available for public inspection.

§ 930.143 Assistant Administrator reporting.

After considering the views of interested parties, the relevant Federal agency, State agency, and the applicant, person, or applicant agency, as appropriate, the Assistant Administrator shall determine whether the Federal action will be included in the annual report listing of inconsistent Federal actions.

§ 930.144 Assistant Administrator advisory statements.

Upon request, the Assistant Administrator may issue as advisory statement

prior to the issuance of the annual report indicating whether a Federal action will be listed within the annual report as being inconsistent with an approved management program.

§930.145 Review of the implementation of Federal consistency provisions.

As part of the responsibility to conduct a continuing review of approved management programs, the Assistant Administrator shall review the performance of each State's implementation of the Federal consistency provisions in this part. The Assistant Administrator shall use information received pursuant to this subpart to evaluate instances where a State agency is believed to have either failed to object to inconsistent Federal actions, or improperly objected to consistent Federal actions. This evaluation shall be incorporated within the Assistant Administrator's general efforts to ascertain instances where a State has not adhered to its approved management program and such lack of adherence is not justified.

PARTS 932–933 [RESERVED]

PART 937—THE LOOE KEY NATIONAL MARINE SANCTUARY REGULATIONS

Sec.
937.1 Authority.
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AUTHORITY: Secs. 302(f), 302(g), 303, Pub. L. 92–532. 86 Stat. 1061, 1062 (16 U.S.C. 1431–1434).

SOURCE: 46 FR 7949, Jan. 26, 1981, unless otherwise noted.

§937.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 through 1434 (the Act). The following regulations are issued pursuant to the authorities of sections 302(f), 302(g), and 303 of the Act.

§937.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the coral reef ecosystem and other natural resources of the waters at Looe Key and to ensure the continued availability of the area for public educational purposes and as a commercial, ecological, research and recreational resource. This area supports a particularly rich and diverse marine biota. The area is easily accessible to the lower Florida Keys and is widely used by boaters, charter boat operators, dive boats, recreational divers and fishermen. Consequently, both present and potential levels of use may result in harm to Looe Key in the absence of long-term planning, research, monitoring and adquate protection.

§937.3 Boundaries.

The Sanctuary consists of an area of 5.32 square nautical miles of high sea waters off the coast of the lower Florida Keys, 6.7 nautical miles (12.5 km) southwest of Big Pine Key. The area includes the waters overlaying a section of the submerged Florida reef tract at Looe Key. The precise boundaries are:

LATITUDE AND LONGITUDE ARE FURNISHED TO .001 OF A SECOND

Pt. No.	Latitude	Longitude
2–1	24°31′37″	81°26′00″
2–2	24°33′34″	81°26′00″
2–3	24°34′09″	81°23′00″
2–4	24°32′12″	81°23′00″

§937.4 Definitions.

(a) *Administrator* means the Administrator of the National Oceanic and Atmospheric Administration.

(b) *Assistant Administrator* means the Assistant Admistrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(c) *Person* means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality

of the Federal government, or any State or local unit of the government.

(d) *Tropical fish* means fish and invertebrates of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which live in a close interrelationship with the coral.

(e) *The Fore Reef* means the area of the well defined ''spur and groove'' coral reef as delineated by Loran readings 1, 2, 3, 4 as follows:

1. NW 7980–W–13973.7, 7980–Y–43532.7
2. SW 7980–W–13975.4, 7980–Y–43543.4
3. NE 7980–W–13975.0, 7980–Y–43530.1
4. SE 7980–W–13975.4, 7980–Y–43527.7

§ 937.5 Allowed activities.

All activities except those specifically prohibited by § 937.6 may be carried on in the Sanctuary subject to all prohibitions, restrictions and conditions imposed by any other authority.

§ 937.6 Activities prohibited without a permit.

(a) Unless permitted by the Assistant Administrator in accordance with § 937.8, or as may be necessary for the national defense, in accordance with Article 5, Section 2 of the Designation, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited within the Sanctuary. All prohibitions must be applied consistently with international law.

(1) *Removing or damaging distinctive natural features.* (i) No person shall break, cut or similarly damage or take any coral or marine invertebrate except as an incidental result of anchoring outside the Fore Reef where sand anchoring is encouraged but not required. Divers are prohibited from handling coral or standing on coral formations.

(ii) No person shall take, except incidentally to allowed fishing activities, any tropical fish or marine invertebrate.

(iii) There shall be a rebuttable presumption that any items listed in this paragraph found in the possession of a person within the Sanctuary have been collected or removed from within the Sanctuary.

(2) *Operation of watercraft.* All watercraft shall be operated in accordance with Federal rules and regulations that would apply if there were no sanctuary. The following constraints also shall be imposed.

(i) No person shall place any anchor on coral within the Fore Reef of the Sanctuary nor allow any chain or rope to enter the Fore Reef in a way that injures any coral. When anchoring dive boats, the first diver down shall inspect the anchor to ensure that it is placed off the corals and will not shift in such a way as to damage corals. No further diving is permitted until the anchor is placed in accordance with these requirements.

(ii) Watercraft must use mooring buoys, stations or anchoring areas when such facilities and areas have been designated and are available.

(iii) Watercraft shall not be operated in such a manner as to strike or otherwise cause damage to the natural features of the Sanctuary.

(iv) All watercraft from which diving operations are being conducted shall fly in a conspicious manner, the red and white ''divers down'' flag.

(3) *Using harmful fishing methods.* (i) No person shall use or place wire fish traps within the Sanctuary.

(ii) No person shall place lobster traps within the Fore Reef area of the Sanctuary.

(iii) No person shall use pole spears, Hawaiian slings, rubber-powered arbalets, pneumatic and spring loaded guns or similar devices known as spearguns within the Sanctuary.

(iv) No person shall use poisons, electric charges, explosives or similar methods within the Sanctuary.

(4) *Removing or damaging distinctive historical or cultural resources.* No person shall remove, damage or tamper with any historical or cultural resources, including cargo pertaining to submerged wrecks.

(5) *Discharges.* No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts and chumming materials.

(ii) Cooling water from vessels.

(iii) Effluents from marine sanitation devices.

(6) *Markers.* (i) No person shall mark, deface or damage in any way or displace, remove or tamper with any

signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts or other boundary markers installed by the managers or markers placed for the purpose of lobster pot fishing.

(ii) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(iii) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with principles of international law, including treaties, conventions and other international agreements to which the United States is signatory.

§937.7 Penalties.

(a) Each violation of the act, any regulation, in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

[58 FR 60783, Nov. 18, 1993]

§937.8 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct the specific activity in the Sanctuary including any activity specifically prohibited under §937.6, if such activity is (1) research related to the resources of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, ATTN: Sanctuary Programs Office, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, DC 20235. An application shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit the Assistant Administrator shall evaluate such matters as (1) the general profession and financial responsibility of the applicant; (2) the appropriateness of the methods envisioned to the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreational, educational or scientific information; (4) the end value of the activity; and (5) such other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this section the Assistant Administrator shall seek the views of the Fishery Management Councils and may seek and consider the views of any person or entity, within or outside of the Federal government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained shall be made available to the public.

(f) The permit granted under paragraph (e) of this section may not be transferred without written permission of the Assistant Administrator.

(g) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown.

Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at subpart D of 15 CFR part 904.

(Information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0648–0141)

[46 FR 7949, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 937.9 Other permits.

All permits, licenses and other authorizations issued pursuant to any other authority remain valid if they do not authorize any activity prohibited by § 937.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

§ 937.10 Appeals from administrative action.

(a) Except as provided in subpart D of 15 CFR part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 937.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator shall notify the permit applicant, if other than the appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator shall decide the appeal in accordance with the criteria set in § 937.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (c) of this section and such other considerations as deemed appropriate. The Administrator shall notify all interested persons of the decision, and the reason(s) therefor in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such hearing shall normally be held no later than 30 days following publication of the notice in the FEDERAL REGISTER unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different) and, at the discretion of the hearing officer, other interested persons, may appear personally or by counsel at the hearing and submit material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision, and reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's action shall constitute final action for the Agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause, either upon his or her own motion or upon written request from the appellant or applicant stating the reason(s) therefor.

[46 FR 7949, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984]

SUBCHAPTER C—REGULATIONS OF THE NATIONAL WEATHER SERVICE

PART 946—MODERNIZATION OF THE NATIONAL WEATHER SERVICE

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APPENDIX A TO PART 946–NATIONAL WEATHER SERVICE MODERNIZATION CRITERIA

APPENDIX B TO PART 946—AIRPORT TABLES

AUTHORITY: Title VII of Pub. L. 102–567, 106 Stat. 4303 15 U.S.C. 313 note

SOURCE: 58 FR 64091, Dec. 3, 1993, unless otherwise noted.

§946.1 Purpose.

(a) This part sets forth the procedures for certification by the Secretary of Commerce that the closure, consolidation, automation or relocation of any field office of the National Weather Service (NWS) pursuant to the implementation of the Strategic Plan for the Modernization of the NWS will not result in any degradation of weather services. Section 706 of Pub. L. 102–567 requires that no such field office be closed, consolidated, automated, or relocated until such certification is made. This part distinguishes these modernization activities which require certification from those changes in operations at a field office which do not require certification.

(b) This part, including specifically these sections which specify when certifications are required, is intended to promote confidence that public safety is being adequately considered during the modernization process. While some of the terms used in these regulations may be identical to those used by the Office of Personnel Management, the General Services Administration, or by NOAA in personnel regulations, this part does not affect or supersede those regulations. In particular, a determination that the move of a field office is not a ''relocation'' for purposes of these regulations does not affect an employee's rights to relocation assistance, discontinued service retirement, severance pay, or grade and pay retention.

§946.2 Definitions.

Automate (or automation) means to replace employees performing surface observations at a field office with automated weather service observation equipment. For the purposes of this definition, an employee performing surface observations at a field office is replaced when that office, after installing such equipment, reduces or eliminates its responsibility for taking surface observations and removes the employee from that field office, or formally requests the employee to cease performing all observational responsibilities at that office. Automate does not include temporarily reducing the hours of operation during which a field office is responsible for surface observations or augmenting/backing up an ASOS when such reduction results from an unplanned decrease in staff.

Category 1 radar means an existing NWS radar which is to be replaced by a NEXRAD on the same site or on an adjacent site from which the two radars cannot operate concurrently. A Category 1 radar must be dismantled when the existing tower prevents building a replacement NEXRAD on the same site or operationally demonstrating and commissioning a replacement NEXRAD on an adjacent site by physically blocking its beam. A Category 1 radar must be turned off when it prevents operationally demonstrating and commissioning a replacement NEXRAD on an adjacent site by creating substantial electromagnetic interference.

Change operations at a field office means to transfer service responsibility, commission weather observation systems, decommission a NWS radar, move an entire field office to a new location inside the local commuting and service area, or significantly change the staffing level of a field office except where the staffing change constitutes a consolidation or automation or where there is an unplanned decrease in staff.

Close (or closure) means to remove all weather services, equipment, and personnel from a filed office. It does not include a consolidation, automation, or relocation or a move of a field office to another location within the current local commuting and service area.

Commission means to officially charge a new observational technology (e.g, NEXRAD and ASOS) with responsibility for providing weather data within a defined service area or to charge a new weather office support system (e.g, AWIPS) with responsibility for supporting office operations.

Committee means the Modernization Transition Committee established by sec. 707 of Pub. L. 102–567.

Consolidate (or consolidation) means to remove some positions from a field office (without closing that office) after those responsibilities have been reduced or eliminated by the commissioning of one or more NEXRADS, the decommissioning of the radar operated by that office, if any, and the combination of that office's responsibilities with those of another field office. Consolidate does not include temporarily reducing the hours during which a field office is responsible for operating a radar when such reduction results from an unplanned decrease in staff.

Decommission (or permanently decommission) means to permanently withdraw existing official responsibility for providing weather data or weather office support from an existing technology which includes turning off the technology. It does not include temporarily withdrawing responsibility for providing radar data where this action results from:

(1) System failure;

(2) The need to dismantle a Category 1 radar to allow the construction of or the operational demonstration and commissioning of a replacement NEXRAD; or

(3) The need to turn off a Category 1 radar to allow the operational demonstration and commissioning of a replacement NEXRAD.

Field office means a National Weather Service Office (WSO) or a National Weather Service Forecast Office (WSFO).

Inventory of services means all of those weather services from those listed on the menu of services that are provided to the public by a field office in its service area prior to a transition action.

Local Commuting Area means the population center (or two or more neighboring ones) served by an existing field office and includes those surrounding localities that can reasonably be considered part of this single area for transportation purposes. The Local Commuting Area for any field office located in a Metropolitan Area defined by the Office of Management and Budget for statistical purposes shall be the Metropolitan Statistical Area or Primary Metropolitan Statistical Area.

Menu of services means the basic weather services provided by NWS field offices as listed in § 946.4.

National Implementation Plan means the plan submitted to Congress as part of the budget justification documents for Fiscal Year 1994 and for each subsequent fiscal year until the modernization is complete.

Regional Director means the Director of one of the six geographical regions of the NWS.

Relocate (or relocation) means to move an entire field office, including all personnel positions, equipment and service responsibility to a location outside the current local commuting or service area of that field office.

Responsible Meteorologist means an employee of the NWS in charge of the office that will be responsible for providing weather services to the area affected by a closure, consolidation, automation, or relocation of a field office.

Restructure means to close, consolidate, automate, or relocate a field office.

Secretary means the Secretary of Commerce or his or her delegate.

Service area means the geographical area for which an existing field office provides weather services or conducts observations.

Strategic Plan means the 10 year strategic plan for the modernization of NWS which was submitted to the Congress by the Secretary on March 10, 1989.

Unplanned decrease in staff means a temporary reduction in the number of employees available for duty at a field office resulting from employee retirement, resignation, extended sick leave or emergency leave, or voluntary acceptance of training or of a position outside that field office.

Weather service means a service or product provided to a service area by a field office.

58 FR 64091, Dec. 3, 1993, as amended at 59 FR 44314, Aug. 29, 1994]

§946.3 Notification of changes in operations and restructuring.

(a) Beginning with the Fiscal Year 1994 budget submission to Congress and until the modernization is complete, the NWS will submit to Congress annually a National Implementation Plan. The NWS may amend a Plan prior to the submission of the next Plan to include modifications provided that notification of any additional proposed changes in operations or identification of any additional proposed restructuring actions shall be provided to Congress at least 90 days prior to the date of the action.

(b) The NWS will neither change operations at, nor restructure, any field office after September 30, 1993, pursuant to the implementation of the Strategic Plan unless it has provided notification of the relevant action in the most current edition of the National Implementation Plan, or an amendment thereof, and has complied with all requirements of these regulations.

§946.4 Menu of services.

The following are the basic weather services provided by NWS field offices:

(a) Surface Observations

(b) Upper Air Observations

(c) Radar Observations

(d) Public Forecasts, Statements, and Warnings

(e) Aviation Forecasts, Statements, and Warnings

(f) Marine Forecasts, Statements, and Warnings

(g) Hydrologic Forecasts and Warnings

(h) Fire Weather Forecasts and Warnings

(i) Agricultural Forecasts and Advisories

(j) NOAA Weather Radio Broadcasts

(k) Climatological Services

(l) Emergency Management Support

(m) Special Products and Service Programs

§946.5 Change in operations—commissioning and decommissioning.

(a) Before commissioning any new NEXRAD or ASOS weather observation system, the NWS shall prepare a Commissioning Report documenting that the system involved will perform to the Government's specifications; the system has been tested on site and performs reliably; satisfactory maintenance support is in place; sufficient staff with adequate training are available to operate the system; technical coordination with weather service users has been completed; and the system satisfactorily supports field office operations.

(b) The Report required by paragraph (a) of this section shall be based on the scientific and technical criteria set forth in the NWS' NEXRAD and ASOS Commissioning Plans, as appropriate, which criteria shall be published in the FEDERAL REGISTER as the final commissioning criteria in accordance with sec. 704(b)(1) of the Act. In the case of an ASOS commissioning, the Report shall also document that the NWS has consulted with the Federal Aviation Administration (FAA) and has determined that the weather services provided after commissioning will continue to be in full compliance with the applicable FAA flight aviation rules.

(c) Before decommissioning any NWS radar, the NWS shall prepare a Decommissioning Report documenting that all replacement radars needed to provide equal coverage have been commissioned; confirmation of services with users has been completed; and that the radar being decommissioned is no

longer needed to support field office operations. The Decommissioning Report shall be based on the scientific and technical criteria contained in the NWS' Radar Decommissioning Plan, which criteria shall be published in the FEDERAL REGISTER as the final decommissioning criteria in accordance with the requirements of sec. 704(b)(1) of the Act.

(d) If the final commissioning criteria significantly modify the criteria upon which the previous commissioning of a NEXRAD and/or ASOS were based, the NWS shall confirm that the relevant system conforms with the final criteria adopted. The NWS shall not decommission any NWS radar until the final criteria have been adopted.

§ 946.6 Change in operations—transferring responsibility and moving field offices.

(a) After providing any notification required by § 946.3(b), NWS may change operations at a field office to implement the Strategic Plan, including:

(1) Transferring official responsibility for taking radar observations to a NEXRAD Weather Service Forecast Office (NWSFO) or a NEXRAD Weather Service Office (NWSO) that is being established as a future Weather Forecast Office following commissioning of the NEXRAD at the new office;

(2) Transferring official responsibility for taking observations from a Category 1 radar to a backup radar or radars prior to constructing and/or operating a replacement NEXRAD. Before transferring responsibility, the Responsible Meteorologist shall document that technical coordination with users has been completed and that the transition to the replacement NEXRAD can be completed expeditiously;

(3) Transferring its service responsibility for issuing watches, warnings, forecasts and other products to a NWSFO or NWSO;

(4) Significantly reducing its staffing level by transferring or reassigning personnel to support the service responsibilities transferred under paragraph (a)(3) of this section provided that the field office continues to assign the appropriate number of positions established by the NWS Operations Manual to carry out its observation responsibilities; and

(5) Moving an entire field office to a location within the local commuting and service area of that office.

(b) A field office may not significantly reduce its staffing level assigned to support any observation responsibility, including those responsibilities transferred under paragraph (a)(2) of this section and those retained under paragraph (a)(4) of this section, until the Secretary has certified that the automation and/or consolidation will not degrade service in accordance with § 946.7.

§ 946.7 Preparation of proposed certification for restructuring.

(a) Whenever it becomes appropriate to restructure a field office identified in the National Implementation Plan, but prior to taking such action, the Responsible Meteorologist shall make a determination that there will be no degradation of service based on the final criteria published in the FEDERAL REGISTER in accordance with sec. 704 of the Act and recommend a proposed certification. The proposed certification may address all related restructuring actions that occur as part of a coordinated step described in the National Implementation Plan.

(b) The proposed certification shall include:

(1) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(2) A detailed comparison of the inventory of services provided within the service area prior to such action and the services to be provided after such action;

(3) Any recent or expected modernization of NWS operations which will enhance services to the affected area;

(4) An identification of any area within any state which will not receive NEXRAD coverage at an elevation of 10,000 feet;

(5) Evidence based upon operational demonstration of modernized NWS operations which support a determination that no degradation in service will result;

(6) Any report of the Committee issued under sec. 707(c) of the Act; and

(7) The Responsible Meteorologist's determination that there will be no degradation of service.

(c) If the restructuring proposed to be certified involves the commissioning of a NEXRAD, the Responsible Meteorologist shall also consider the following evidence from operational demonstration of modernized operations in reaching the conclusion that no degradation of service will result:

(1) The Commissioning Report containing the elements described in §946.5(a);

(2) The Decommissioning Report containing the elements described in §946.5(c); and

(3) The Confirmation of Services Report prepared by the NWS in accordance with paragraph (e) of this section.

(d) If the restructuring proposed to be certified involves the commissioning of an ASOS unit, the Responsible Meteorologist shall also consider the following evidence from operational demonstration of modernized operations in reaching the conclusion that no degradation of service will result:

(1) The Commissioning Report containing the elements described in §946.5(a);

(2) The NWS Surface Observation Modernization Report documenting that manual observations being discontinued are no longer needed to provide mission field services; based on the final scientific and technical criteria (including all requirements and procedures) published in the FEDERAL REGISTER in accordance with section 704(b)(2) of the act; and

(3) The Confirmation of Services Report prepared by the NWS in accordance with paragraph (e) of this section.

(e) The Confirmation of Services Report required by paragraphs (c) and (d) of this section shall include a list of those users who have been contacted during the confirmation process, to document that services have not been degraded. These users shall include the appropriate media and emergency managers in the service area and the appropriate federal and state agencies including specifically the FAA if the restructuring involves a field office located at an airport and consultation with the FAA has not been conducted in accordance with §946.5(b). This Report shall be based on the scientific and technical criteria set forth in the Internal and External Communication and Coordination Plan for the Modernization and Associated Restructuring of the National Weather Service, which criteria shall be included in the final certification criteria published in the FEDERAL REGISTER in accordance with sec. 704(b)(2) of the Act.

(f) If the restructuring proposed to be certified involves the relocation of a field office, the Responsible Meteorologist shall also consider the following evidence in reaching the conclusion that no degradation of service will result:

(1) Evidence based upon operational demonstration during earlier modernization actions in which an entire field office was moved from one location to another including specifically the impact of such moves on services;

(2) A checklist of all operational tests and inspections that will be performed at the new location to ensure that the relocated equipment is fully operational;

(3) A list of all users notified prior to the relocation, and a list of the contacts that will be made with the relevant users to confirm operational status after the relocation; and

(4) Comments received from notified users and those received during the public comment period.

§946.8 Review of proposed certification for restructuring.

The Responsible Meteorologist shall transmit the proposed certification and the accompanying documentation to the Regional Director for review. The Regional Director may amend or supplement the documentation provided subsequent readers can easily identify his or her amendments or supplements. If the Regional Director agrees with the proposed certification, he or she shall endorse the proposed certification, and transmit it along with all the accompanying documentation to the Secretary. A copy of any proposed certification shall be provided to the Committee upon request of the Committee.

§ 946.9 Certification of restructuring.

(a) The Secretary shall publish each proposed certification in the FEDERAL REGISTER at least 60 days prior to certification. If, after consideration of the public comments received, the Secretary agrees that the proposed restructuring will not result in any degradation of service to the service area, he or she shall so certify by submitting a certification report to Congress. Upon transmittal of the certification by the secretary, NWS shall promptly publish the certification in the FEDERAL REGISTER stating where copies of the certification and the accompanying documents may be obtained.

(b) The Responsible Meteorologist may restructure only after the certification has been submitted to Congress.

(c) Any field office for which restructuring has been certified under this section shall also be subject to additional certification if that office is closed during stage 2 of the modernization. No field office will close before January 1, 1996.

§ 946.10 Liaison officer.

Prior to restructuring a field office, the Responsible Meteorologist shall designate at least one person in the affected service area to act as a liaison officer for at least a 2-year period whose duties shall be:

(a) Provide timely information regarding the activities of the NWS which may affect service to the community including specifically modernization and restructuring activities; and

(b) Work with area users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

APPENDIX A TO PART 946—NATIONAL WEATHER SERVICE MODERNIZATION CRITERIA

I. Modernization Criteria for Actions Not Requiring Certification

(A) Commissioning of New Weather Observation Systems

(1) Automated Surface Observation Systems (ASOS)

Purpose: Successful commissioning for full operational use requires a demonstration, by tests and other means, that the ASOS equipment, as installed in the field office, meets its technical requirements; that the prescribed operating, maintenance, and logistic support elements are in place; that operations have been properly staffed with trained personnel and that the equipment can be operated with all other installed mating elements of the modernized NWS system.

NOTE: It may be necessary to incorporate work-arounds to complete some of the items listed below in a timely and cost-effective manner. A work-around provides for an alternative method of meeting a commissioning criteria through the application of a preapproved operational procedure implemented on a temporary basis, for example, by human augmentation of the observation for the occurrence of freezing rain, until such time as a freezing rain sensor has been accepted for operational use with ASOS. The ASOS Plan referenced below includes a process for recommending, approving, and documenting work arounds and requires that they be tracked as open items until they can be eliminated by implementation of the originally intended capability.

References: The criteria and evaluation elements for commissioning are set forth and further detailed in the NWS-Sponsored Automated Surface Observing System (ASOS) Site Component Commissioning Plan (the ASOS Plan), more specifically in Addendum I, Appendix D of the ASOS Site Component Commissioning Evaluation Package (the ASOS Package).

Criteria: a. ASOS Acceptance Test: The site component acceptance test, which includes objective tests to demonstrate that the ASOS, as installed at the given site, meets its technical specifications, has been successfully completed in accordance with item 1a, p. D–2 of Appendix D of the ASOS Package.

b. Sensor Siting: Sensor sitings provide representative observations in accordance with Appendix C of the ASOS Package, Guidance for Evaluating Representativeness of ASOS Observations and item 1b, p. D–2 of Appendix D of the ASOS Package.

c. Initialization Parameters: Initialization parameters are in agreement with source information provided by the ASOS Program Office, in accordance with item 1c, pp. D–2 & D–3 of Appendix D of the ASOS Package.

d. Sensor Performance Verification: Sensor performance has been verified in accordance with the requirements stated in the ASOS Site Technical Manual and item 1d, p. D–3 of the ASOS Package.

e. Field Modification Kits/Firmware Installed: All critical field modification kits and firmware for the site as required by attachments 3a & b (pp. D–45 & D–46) or memorandum issued to the regions, have been installed on the ASOS in accordance with item 1e, p. D–4 of Appendix of the ASOS Package.

f. Operations and Maintenance Documentation: A full set of operations and maintenance documentation is available in accordance with items 2a–h, pp. D–5 & D–6 of Appendix D of the ASOS Package.

g. Notification of and Technical Coordination with Users: All affected users have been notified of the initial date for ASOS operations and have received a technical coordination package in accordance with item 2i, pp. D–6 & D–7 of Appendix D of the ASOS Package.

h. Availability of Trained Operations Personnel: Adequate operations staff are available, training materials are available, and required training has been completed, per section 3.2.3.1 of the ASOS Plan, in accordance with items 3a–c, p. D–8 of Appendix D of the ASOS package.

i. Maintenance Capability: Proper maintenance personnel and support systems and arrangements are available in accordance with items 4a–e, pp. D–9 & D–10 of Appendix D of the ASOS Package.

j. Performance of Site Interfaces: The equipment can be operated in all of its required modes and in conjunction with all of its interfacing equipment per the detailed checklists of items 5a–b, pp. D–11 & D–19 of Appendix D of the ASOS Package.

k. Support of Associated NWS Forecasting and Warning Services: The equipment provides proper support of NWS forecasting and warning services and archiving, including operation of all specified automatic and manually augmented modes per the checklist, items 6a–e, pp. D–20 to D–29, of Appendix D of the ASOS Package.

l. Service Backup Capabilities: Personnel, equipment, and supporting services are available and capable of providing required backup readings and services in support of operations when primary equipment is inoperable in accordance with items 7a–g, pp. D–30 to D–32, of Appendix D of the ASOS Package.

m. Augmentation Capabilities: Personnel are available and trained to provide augmentation of ASOS observations in accordance with augmentation procedures, items 8a–c, p. D–33 of Appendix D of the ASOS Package.

n. Representativeness of Observations: Observations are representative of the hydrometeorological conditions of the observing location as determined by a period of observation of at least 60 days prior to commissioning in accordance with Appendix C and item 6e, pp. D–27 to D–29 of Appendix D of the ASOS Package.

(2) WSR–88D Radar System

Purpose: Successful commissioning for full operational use requires a demonstration, by tests and other means, that the WSR–88D radar system, as installed in the field office, meets its technical requirements; that the prescribed operating, maintenance, and logistic support elements are in place; that operations have been properly staffed with trained personnel; and that the equipment can be operated with all other installed mating elements of the modernized NWS system.

NOTE: It may be necessary to incorporate work-arounds to complete some of the items listed below in a timely and cost-effective manner. A work-around provides for an alternative method of meeting a commissioning criteria through the application for a pre-approved operational procedure implemented on a temporary basis. The WSR–88D Plan referenced below includes a process for recommending, approving, and documenting work arounds and requires that they be tracked as open items until they can be eliminated by implementation of the originally intended capability.

Reference: The criteria and evaluation elements for commissioning are set forth and further detailed in the NWS-Sponsored WSR–88D Site Component Commissioning Plan (the 88D Plan) and an Attachment to that Plan, called the WSR–88D Site Component Commissioning Evaluation Package (the WSR–88D Package).

Criteria: a. WSR–88D Radar Acceptance Test: The site component acceptance test, which includes objective tests to demonstrate that the WSR–88D radar, as installed at the given site, meets its technical specifications, has been successfully completed in accordance with items 1a–f, p. A–2 of Appendix A of the WSR–88D Package.

b. Availability of Trained Operations and Maintenance Personnel: Adequate operations and maintenance staffs are available, training materials are available, and required training has been completed in accordance with items 2a–h, pp. A–3 & A–4 of Appendix A of the WSR–88D Package.

c. Satisfactory Operation of System Interfaces: The system can be operated in all of its required modes and in conjunction with all of its interfacing equipment in accordance with items 3a–e, p. A–5 of Appendix A of the WSR–88D Package.

d. Satisfactory Support of Associated NWS Forecasting and Warning Services: The system provides proper support of NWS forecasting and warning services, including at least 96 percent availability of the radar coded message for a period of 30 consecutive days prior to commissioning in accordance with items 4a–kk, pp. A–6 to A–17 of Appendix A of the WSR–88D Package.

e. Service Backup Capabilities: Service backup capabilities function properly when the primary system is inoperable in accordance with items 5a–e, p. A–18 of Appendix A of the WSR–88D Package.

f. Documentation for Operations and Maintenance: A full set of operations and maintenance documentation is available in accordance with items 6a–n, pp. A–19 to A–25 of Appendix A of the WSR–88D Package.

g. Spare Parts and Test Equipment: A full complement of spare parts and test equipment is available on site in accordance with items 7a–e, p. A–26, of Appendix A of the WSR–88D Package.

(B) Decommissioning an Outdated NWS Radar

Purpose: Successful decomissioning of an old radar requires assurance that the existing radar is no longer needed to support delivery of services and products and local office operations.

References: The criteria and evaluation elements for decommissioning are set forth and further detailed in the NWS-Sponsored Network and Local Warning Radars (Including Adjunct Equipment) Site Component Decommissioning Plan (the Plan), more specifically in Appendix B to that Plan, called the Site Component Decommissioning Evaluating Package, and in Section 3.3 of the Internal and External Communication and Coordination Plan for the Modernization and Associated Restructuring of the Weather Service.

Criteria: a. Replacing WSR–88D(s) Commissioning/User Service Confirmation: The replacing WSR–88D(s) have been commissioned and user confirmation of services has been successfully completed, *i.e.*, all valid user complaints related to actual system performance have been satisfactorily resolved, in accordance with items 1a–c, p. B–10 of Appendix B of the Plan.

b. Operation Not Dependent on Existing Radar: The outdated radar is not required for service coverage, in accordance with items 2a–c, p. B–11 of Appendix B of the Plan.

c. Notification of Users: Adequate notification of users has been provided, in accordance with items 3a–f, pp. B–12 & B–13 of Appendix B of the Plan.

d. Disposal of Existing Radar: Preparations for disposal of the old existing radar have been completed, in accordance with items 4a–d, pp. B–14 & B–15 of Appendix B of the Plan.

(C) Evaluating Staffing Needs for Field Offices in Affected Areas

References: The criteria and evaluation elements are set forth and further detailed in the ASOS and WSR–88D Evaluation Packages and in the Human Resources and Position Management Plan for the National Weather Service Modernization and Associated Restructuring (the Human Resources Plan).

Criteria: 1. Availability of Trained Operations and Maintenance Personnel at a NEXRAD Weather Service Forecast Office or NEXRAD Weather Service Office: Adequate operations and maintenance staffs are available to commission a WSR–88D, specifically criterion b. set forth in section I.A.2. of this Appendix which includes meeting the Stage 1 staffing levels set forth in chapter 3 of the Human Resources Plan.

2. Availability of Trained Operations and Maintenance Personnel at any field office receiving an ASOS: Adequate operations and maintenance staff are available to meet the requirements for commissioning an ASOS, specifically criteria h and i set forth in section I.A.1 of this Appendix.

II. Criteria for Modernization Actions Requiring Certification

(A) Modernization Criteria Common to all Types of Certifications (Except as Noted)

1. Notification: Advanced notification and the expected date of the proposed certification have been provided in the National Implementation Plan.

2. Local Weather Characteristics and Weather Related Concerns: A description of local weather characteristics and weather related concerns which affect the weather services provided to the affected service area is provided.

3. Comparison of Services: A comparison of services before and after the proposed action demonstrates that all services currently provided to the affected service area will continue to be provided with no degradation of services.

4. Recent or Excepted Modernization of NWS Operations in the Affected Service Area: A description of recent or expected modernization of NWS operations in the affected service area is provided.

5. NEXRAD Network Coverage: NEXRAD network coverage or gaps in coverage at 10,000 feet over the affected service area are identified.

6. Air Safety Appraisal (applies only to relocation and closure of field offices at an airport): Verification that there will be no degradation of service that affects aircraft safety has been made by conducting an air safety appraisal in consultation with the Federal Aviation Administration.

7. Evaluation of Services to In-state Users (applies only to relocation and closure of the only field office in a state): Verification that there will be no degradation of weather services provided to the state has been made by evaluating the effect on weather services provided to in-State users.

8. Liaison Officer: Arrangements have been made to retain a Liaison Officer in the affected service area for at least two years to provide timely information regarding the activities of the NWS which may affect service to the community, including modernization and restructuring; and to work with area weather service users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

9. Meteorologist-In-Charge's (MIC) Recommendation to Certify: The MIC of the future WFO that will have responsibility for the affected service area has recommended certification in accordance with 15 CFR 946.7(a).

10. Regional Director's Certification: The cognizant Regional Director has approved the MIC's recommended certification of no degradation of service to the affected service area in accordance with 15 CFR 946.8.

(B) Modernization Criteria Unique to Consolidation Certifications

1. WSR–88D Commissioning: All necessary WSR–88D radars have been successfully commissioned in accordance with the criteria set forth in section I.A.2. of this Appendix.

2. User Confirmation of Services: All valid user complaints related to actual system performance have been satisfactorily resolved in accordance with section 3.3 of the Internal and External Communication and Coordination Plan for the Modernization and Associated Restructuring of the National Weather Service.

3. Decommissioning of Existing Radar: The existing radar, if any, has been successfully decommissioned in accordance with the criteria set forth in section I.B. of this Appendix.

(C) Modernization Criteria Unique to Relocation Certifications

1. Approval of Proposed Relocation Checklist: The cognizant regional director has approved a proposed relocation checklist setting forth the necessary elements in the relocation process to assure that all affected users will be given advanced notification of the relocation, that delivery of NWS services and products will not be interrupted during the office relocation, and that the office to be relocated will resume full operation at the new facility expeditiously so as to minimize the service backup period.

Specific Elements: a. Notification of and Technical Coordination with Users: The proposed relocation checklist provides for the notification of and technical coordination with all affected users.

b. Identification and Preparation of Backup Sites: The proposed relocation checklist identifies the necessary backup sites and the steps necessary to prepare to use backup sites to ensure service coverage during the move and checkout period.

c. Start of Service Backup: The proposed relocation checklist provides for invocation of service backup by designated sites prior to office relocation.

d. Systems, Furniture and Communications: The proposed relocation checklist identifies the steps necessary to move all systems and furniture to the new facility and to install communications at the new facility.

e. Installation and Checkout: The proposed relocation checklist identifies all steps to install and checkout systems and furniture and to connect to communications at the new facility.

f. Validation of Systems Operability and Service Delivery: The proposed relocation checklist provides for validation of system operability and service delivery from the new facility.

2. Publishing of the Proposed Relocation Checklist and Evidence form Completed Moves: The proposed relocation checklist and the evidence from other similar office moves that have been completed, have been published in the FEDERAL REGISTER for public comment. The evidence from the other office moves indicates that they have been successfully completed.

3. Resolution of Public Comments Received: All responsive public comments received from publication, in the FEDERAL REGISTER, of the checklists and of the evidence from completed moves are satisfactorily answered.

(D) Modernization Criteria Unique to Automation Certifications

1. Compliance with flight aviation rules (applies on airports only): Consultation with the Federal Aviation Administration (FAA) has verified that the weather services provided after the commissioning of the relevant ASOS unit(s) will be in full compliance with applicable Federal Aviation Regulations promulgated by the FAA.

2. ASOS Commissioning: The relevant ASOS unit(s) have been successfully commissioned in accordance with the criteria set

forth in section I.A.1 of Appendix A to the Weather Service Modernization Regulations, 15 CFR part 946.

3. User Confirmation of Services: Any valid user complaints related to actual system performance received since commissioning of the ASOS have been satisfactorily resolved and the issues addressed in the MIC's recommendation for certification.

4. Aviation Observation Requirement: At sites subject to automation certification, all surface observations and reports required for aviation services can be generated by an ASOS augmented as necessary by non-NWS personnel.

a. The ASOS observation will be augmented/backed-up to the level specified in Appendix B as described in the Summary Chart of the FAA's Weather Observation Service Standards.

b. The transition checklist has been signed by the appropriate Region Systems Operations Division Chief.

5. General Surface Observation Requirement: The total observations available are adequate to support the required inventory of services to users in the affected area. All necessary hydrometeorological data and information are available through ASOS as augmented in accordance with this section, through those elements reported as supplementary data by the relevant Weather Forecast Office(s), or through other complementary sources. The adequacy of the total surface observation is addressed in the MIC's recommendation for certification.

Summary of FAA's Weather Observation Service Standards

```
"D" Level Service
Stand-Alone ASOS
        |
        v
"C" Level Service Add-Ons
• Backup basic service
• Augmentation of:
  - Thunderstorm occurrence
  - Tornadic activity
  - Hail
  - Virga
  - Volcanic ash
  - Tower visibility
        |
        v
"B" Level Service Augmentation Add-Ons
- Long-line Runway Visual Range (RVR)
  at designated sites*
  (may be instantaneous readout)
- Freezing drizzle
- Ice pellets
- Snow depth on ground
- Snow increasing rapidly remark
- Thunderstorm/lightning location remark
- Observed significant weather not at station
        |
        v
"A" Level Service Augmentation Add-Ons
- Either 10-minute long-line RVR or visibility
  increments down to 1/8, 1/16, and 0 miles
- Sector visibility
- Variable sky
- Cloud types
- Cloud layers above 12,000 feet
- Widespread dust, sand, and smoke obstructions
- Volcanic eruptions
```

Sites that will provide long-line RVR are designated with an * in Appendix B

(E) Modernization Criteria Unique to Closure Certifications

1. Consolidation Certification: If the field office proposed for closure has or will be consolidated, as defined in §946.2 of the basic modernization regulations, this action has been completed as evidenced by the approved certification or can be completed as evidenced by all of the documentation that all of the requirements of sections II.A. and II.B of this Annex have been completed.

2. Automation Certification: If the field office proposed for closure has or will be automated, as defined in § 946.2 of the basic modernization regulations, this action has been completed as evidenced by the approved certification or can be completed as evidenced by documentation that all of the requirements of sections II.A. and II.C. of this Annex has been completed.

3. Remaining Services and/or Observations: All remaining service and/or observational responsibilities, if applicable to the field office proposed for closure, have been transmitted as addressed in the MIC's recommendation for certification.

4. User Confirmation of Services: Any valid user complaints received related to provision of weather services have been satisfactorily resolved and the issues addressed in the MIC's recommendation for certification.

5. Warning and Forecast Verification: Warning and forecast verification statistics, produced in accordance with the Closure Certification Verification Plan, have been utilized in support of the MIC's recommendation for certification.

[59 FR 9923, Mar. 2, 1994 as amended at 61 FR 39865, July 31, 1996; 61 FR 53311, Oct. 11, 1996]

APPENDIX B TO PART 946—AIRPORT TABLES

''A'' Level Service Airports

*Akron, OH	CAK
*Albany, NY	ALB
*Atlanta, GA	ATL
*Baltimore, MD	BWI
*Boston, MA	BOS
Charlotte, NC	CLT
*Chicago-O'Hare (AV), IL	ORD
Cincinnati, OH	CVG
Columbus, OH	CMH
*Dayton, OH	DAY
*Des Moines, IA	DSM
*Detroit, MI	DTW
*Fairbanks, AK	FAI
*Fresno, CA	FAT
*Greensboro, NC	GSO
*Hartford, CT	BDL
*Indianapolis, IN	IND
*Kansas City, MO	MCI
*Lansing, MI	LAN
Las Vegas, NV	LAS
Los Angeles (AV), CA	LAX
*Louisville, KY	SDF
*Milwaukee, WI	MKE
*Minneapolis, MN	MSP
*Newark, NJ	EWR
*Oklahoma City, OK	OKC
Phoenix, AZ	PHX
*Portland, OR	PDX
*Providence, RI	PVD
*Raleigh, NC	RDU
*Richmond, NC	RIC
*Rochester, NY	ROC
*Rockford, IL	RFD
*San Antonio, TX	SAT
San Diego, CA	SAN
*San Francisco, CA	SFO
*Spokane, WA	GEG
*Syracuse, NY	SYR
Tallahassee, FL	TLH
Tulsa, OK	TUL

''B'' Level Service Airports

*Baton Rouge, LA	BTR
*Billings, MT	BIL
*Charleston, WV	CRW
*Chattanooga, TN	CHA
Colorado Springs, CO	COS
Daytona Beach, FL	DAB
El Paso, TX	ELP
Flint, MI	FNT
Fort Wayne, IN	FWA
Honolulu, HI	HNL
*Huntsville, AL	HSV
*Knoxville, TN	TYS
*Lincoln, NE	LNK
Lubbock, TX	LBB
*Madison, WI	MSN
*Moline, IL	MLI
*Montgomery, AL	MGM
*Muskegon, MI	MKG
*Norfolk, VA	ORF
Peoria, IL	PIA
*Savannah, GA	SAV
*South Bend, IN	SBN
Tucson, AZ	TUS
*West Palm Beach, FL	PBI
*Youngstown, OH	YNG

''C'' Level Service Airports

Abilene, TX	ABI
Allentown, PA	ABE
Asheville, NC	AVL
Athens, GA	AHN
Atlantic City, NJ	ACY
Augusta, GA	AGS
Austin, TX	AUS
Bakersfield, CA	BFL
Bridgeport, CT	BDR
Bristol, TN	TRI
Casper, WY	CPR
Columbia, MO	COU
Columbus, GA	CSG
Dubuque, IA	DBQ
Erie, PA	ERI
Eugene, OR	EUG
Evansville, IN	EVV
Fargo, ND	FAR
Fort Smith, AR	FSM
Grand Island, NE	GRI
Helena, MT	HLN
Huntington, WV	HTS
Kahului, HI	OGG
Key West, FL	EYW
Lewiston, ID	LWS
Lexington, KY	LEX
Lynchburg, VA	LYH
Macon, GA	MCN
Mansfield, OH	MFD
Meridian, MS	MEI
Olympia, WA	OLM
Port Arthur, TX	BPT
Portland, ME	PWM
Rapid City, SD	RAP
Redding, CA	RDD
Reno, NV	RNO
Roanoke, VA	ROA

Rochester, MN ..... RST
Salem, OR ..... SLE
Santa Maria, CA ..... SMX
Sioux City, IA ..... SUX
Springfield, IL ..... SPI
Stockton, CA ..... SCK
Toledo, OH ..... TOL
Waco, TX ..... ACT
Waterloo, IA ..... ALO
Wilkes-Barre, PA ..... AVP
Williamsport, PA ..... IPT
Wilmington, DE ..... ILG
Worcester, MA ..... ORH
Yakima, WA ..... YKM

*Long-line RVR designated site.

[61 FR 39867, July 31, 1996]

SUBCHAPTER D—GENERAL REGULATIONS OF THE ENVIRONMENTAL DATA SERVICE

PART 950—ENVIRONMENTAL DATA AND INFORMATION

Sec.
950.1 Scope and purpose.
950.2 Environmental Data and Information Service (EDIS).
950.3 National Climatic Center (NCC).
950.4 National Oceanographic Data Center (NODC).
950.5 National Geophysical and Solar-Terrestrial Data Center (NGSDC).
950.6 Environmental Science Information Center (ESIC).
950.7 Center for Environmental Assessment Services (CEAS).
950.8 Satellite Data Services Division (SDSD).
950.9 Computerized Environmental Data and Information Retrieval Service.

AUTHORITY: (5 U.S.C. 552, 553). Reorganization Plan No. 4 of 1970.

SOURCE: 44 FR 54468, Sept. 20, 1979, unless otherwise noted.

§ 950.1 Scope and purpose.

This part describes the Environmental Data and Information Service (EDIS), a major program element of the National Oceanic and Atmospheric Administration, and EDIS management of environmental data and information.

§ 950.2 Environmental Data and Information Service (EDIS).

The Environmental Data and Information Service is the first Federal organization created specifically to manage environmental data and information. EDIS acquires, processes, archives, analyzes, and disseminates worldwide environmental (atmospheric, marine, solar, and solid Earth) data and information for use by commerce, industry, the scientific and engineering communities, and the general public, as well as by Federal, State, and local governments. It also provides experiment design and data management support to large-scale environmental experiments; assesses the impact of environmental fluctuations on food production, energy production and consumption, environmental quality, and other economic systems; and manages or provides functional guidance for NOAA's scientific and technical publication and library activities. In addition, EDIS operates related World Data Center-A subcenters and participates in other international data and information exchange programs. To carry out this mission, EDIS operates a network of specialized service centers and a computerized environmental data and information retrieval service.

§ 950.3 National Climatic Center (NCC).

The National Climatic Center acquires, processes, archives, analyzes, and disseminates climatological data; develops analytical and descriptive products to meet user requirements; and provides facilities for the World Data Center-A (Meteorology). It is the collection center and custodian of all United States weather records, the largest of the EDIS centers, and the largest climatic center in the world.

(a) Climatic data available from NCC include:

(1) Hourly Surface Observations from Land Stations (ceiling, sky cover, visibility, precipitation or other weather phenomena, obstructions to vision, pressure, temperature, dew point, wind direction, wind speed, gustiness).

(2) Three-Hourly and Six-Hourly Surface Observations from Land Stations, Ocean Weather Stations, and Moving Ships (variable data content).

(3) Upper Air Observations (radiosondes, rawinsondes, rocketsondes, low-level soundings, pilot balloon winds, aircraft reports).

(4) Radar Observations (radar log sheets, radar scope photography).

(5) Selected Maps and Charts (National Meteorological Center products).

(6) Derived and Summary Data (grid points, computer tabulations, digital summary data).

(7) Special Collections (Barbados Oceanographic and Meteorological Experiment meteorological data, Global Atmospheric Research Program basic data set, solar radiation data, many others).

(b) Queries should be addressed to: National Climatic Center, National Oceanic and Atmospheric Administration, Asheville, NC 28801, tel. 704–258–2850, Ext. 683.

§950.4 National Oceanographic Data Center (NODC).

The National Oceanographic Data Center acquires, processes, archives, analyzes, and disseminates oceanographic data; develops analytical and descriptive products to meet user requirements; and provides facilities for the World Data Center–A (Oceanography). It was the first NODC established and houses the world's largest usuable collection of marine data.

(a) Oceanographic data available from NODC include:

(1) Mechanical and expendable bathytheremograph data in analog and digital form.

(2) Oceanographic station data for surface and serial depths, giving values of temperature, salinity, oxygen, inorganic phosphate, total phosphorus, nitrite-nitrogen, nitrate-nitrogen, silicate-silicon, and pH.

(3) Continuously recorded salinity-temperature-depth data in digital form.

(4) Surface current information obtained by using drift bottle or calculated from ship set and drift.

(5) Biological data, giving values of plankton standing crop, chlorophyll concentrations, and rates of primary productivity.

(6) Other marine environmental data obtained by diverse techniques, e.g., instrumented buoy data, and current meter data.

(b) Queries should be addressed to: National Oceanographic Data Center, National Oceanic and Atmospheric Administration, Washington, DC 20235, tel. 202–634–7500.

§950.5 National Geophysical and Solar-Terrestrial Data Center (NGSDC).

The National Geophysical and Solar-Terrestrial Data Center acquires, processes, archives, analyzes, and disseminates solid Earth and marine geophysical data as well as ionospheric, solar, and other space environment data; develops analytical, climatological, and descriptive products to meet user requirements; and provides facilities for World Data Center–A (Solid-Earth Geophysics, Solar Terrestrial Physics, and Glaciology).

(a) Geophysical and solar-terrestrial data available from NGSDC include:

(1) *Marine geology and geophysics.* Bathymetric measurement; seismic reflection profiles; gravimetric measurements; geomagnetic total field measurements; and geological data, including data on heat flow, cores, samples, and sediments.

(2) *Solar-Terrestrial physics.* Ionosphere data, including ionograms, frequency plots, riometer and field-strength strip charts, and tabulations; solar activity data; geomagnetic variation data, including magnetograms; auroral data; cosmic ray data; and airglow data.

(3) *Seismology.* Seismograms; accelerograms; digitized strong-motion accelerograms; earthquake data list (events since January 1900); earthquake data service with updates on a monthly basis.

(4) *Geomagnetic main field.* Magnetic survey data and secular-change data tables.

(b) Queries should be addressed to: National Geophysical and Solar-Terrestrial Data Center, National Oceanic and Atmospheric Administration, Boulder, CO 80303, tel. 303–499–1000, ext. 6215.

§950.6 Environmental Science Information Center (ESIC).

ESIC is NOAA's information specialist, librarian, and publisher. ESIC coordinates NOAA's library and information services and its participation in the national network of scientific information centers and libraries. Computerized literature searches provide information from over 80 data bases. The complete list of data bases is available on request. All ESIC information facilities provide the normal library tailored information and reference services. As NOAA's publisher of scientific and technical information, ESIC reviews, edits, and processes NOAA manuscripts for publication.

(a) Services available from ESIC include:

(1) *Reference services.* Some services are provided on a cost-recovery basis to non-NOAA individuals.

(2) *Publication copy services.* Copies of NOAA publications are provided on request from qualified users, including governments, universities, non-profit organizations, professional societies, chambers of commerce, public information media, and individuals and organizations having cooperative or exchange agreements with NOAA.

(3) *Bibliographies.* Special bibliographies are prepared on request. When provided to non-NOAA individuals, service is on a full cost-recovery basis.

(4) *Current awareness services.* Periodically provides announcements of titles of newly published NOAA scientific and technical publications.

(5) *Lending services.* Materials are loaned to other libraries and to NOAA employees.

(6) On-site use of library collections.

(7) *Publishing services.* Includes providing refereeing, reviewing, editing, and publishing services for NOAA authors of manuscripts destined for both NOAA and non-NOAA publication series.

(b) Queries should be addressed to: Environmental Science Information Center, National Oceanic and Atmospheric Administration, Rockville, MD 20852, tel. 301–443–8137.

§ 950.7 Center for Environmental Assessment Services (CEAS).

EDIS assists National decisionmakers in solving problems by providing data analyses, applications, assessments, and interpretations to meet their particular requirements. Many of these services are provided by the EDIS Center for Environmental Assessment Services (CEAS).

(a) The following are examples of CEAS projects and services:

(1) CEAS prepares data-based studies and weekly assessments of potential effects of climatic fluctuations on National and global grain production.

(2) CEAS provides environmental analyses and assessments to support efficient and effective planning, site selection, design, construction, and operation of supertanker ports and offshore drilling rigs. Such planning depends heavily upon environmental assessments.

(3) During the heating season, CEAS issues monthly and seasonal projections of natural gas demand for multi-State regions of the conterminous United States. Similar projections are made for electricity during the cooling season.

(4) CEAS has developed and makes available when needed a statistical oil spill trajectory risk model based on historical meteorological and oceanographic data.

(5) The center has analyzed the potential ecological effects of the planned disposal of huge volumes of saturated brine into Gulf waters for the National Strategic Petroleum Reserve and may be called on to provide similar services in other subject areas.

(6) CEAS provides experiment design, data analysis, and data management support to project managers and produces merged, validated multidisciplinary data sets for international and national study (such undertakings as the recent key role in the Global Atmospheric Research Program (GARP) experiments).

(7) CEAS provides special data or information as required. Currently the Center is assembling an inventory of cruises and a global oceanographic data base from observations taken during the First GARP Global Experiment (FGGE).

(b) Additional information on these or related services can be obtained by writing: Director, Center for Environmental Assessment Services, National Oceanic and Atmospheric Administration, Washington, DC 20235; or by calling (202) 634–7251.

§ 950.8 Satellite Data Services Division (SDSD).

The Satellite Data Services Division of the EDIS National Climatic Center provides environmental and earth resources satellite data to other users once the original collection purposes (i.e., weather forecasting) have been satisfied. The division also provides photographs collected during NASA's SKYLAB missions.

(a) Satellite data available from SDSD include:

(1) Data from the TIROS (Television InfraRed Observational Satellite) series of experimental spacecraft; much of the imagery gathered by spacecraft of the NASA experimental NIMBUS series; full-earth disc photographs from NASA's Applications Technology Satellites (ATS) I and III geostationary research spacecraft; tens of thousands of images from the original ESSA and current NOAA series of Improved TIROS Operational Satellites; and both full-disc and sectorized images from the Synchronous Meteorological Satellites (SMS) 1 and 2, the current operational geostationary spacecraft. In addition to visible light imagery, infrared data are available from the NIMBUS, NOAA, and SMS satellites. Each day, SDSD receives about 239 negatives from the polar-orbiting NOAA spacecraft, more than 235 SMS–1 and 2 negatives, and several special negatives and movie film loops.

(2) Photographs (both color and black-and-white) taken during the three SKYLAB missions (May through June, 1973, July through September, 1973, and November 1973 through February 1974).

(b) Queries should be addressed to: Satellite Data Services Division, World Weather Building, Room 606, Washington, DC 20233, tel. 301–763–8111.

§950.9 Computerized Environmental Data and Information Retrieval Service.

The Environmental Data Index (ENDEX) provides rapid, automated referral to multidiscipline environmental data files of NOAA, other Federal agencies, state and local governments, and universities, research institutes, and private industry. A computerized, information retrieval service provides a parallel subject-author-abstract referral service. A telephone call to any EDIS data or information center or NOAA library will allow a user access to these services.

PART 960—LICENSING OF PRIVATE REMOTE-SENSING SPACE SYSTEMS

Subpart A—General

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960.1 Purpose.
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960.7 Amendment, withdrawal, and termination of an application.
960.8 Confidentiality of information.
960.9 Review procedures.
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Subpart C—Enforcement Procedures

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AUTHORITY: 15 U.S.C. 4244.

SOURCE: 52 FR 25970, July 10, 1987, unless otherwise noted.

Subpart A—General

§960.1 Purpose.

These regulations establish the minimum practicable procedures and informational requirements to license and supervise the operation of a private remote-sensing space system under title IV of the Land Remote-Sensing Commercialization Act of 1984 (The Act). They are intended to facilitate the policy of the Act by encouraging development of private sector-owned remote-sensing space systems and promotion of commercialization of land remote-sensing systems in the United States while complying with the requirements of the Act, including:

(a) To preserve and promote the national security of the United States;

(b) To ensure that data from private operational remote-sensing space systems will be sold on a nondiscriminatory basis; and

(c) To fulfill the international obligations of the United States.

To the extent there is a tension between the policy of promoting the commercial use of remote-sensing systems and the policies of promoting national security interests as determined by the Secretary of Defense or international

obligations as determined by the Secretary of State, the Secretary of Commerce may, in his or her discretion, undertake reasonable efforts to satisfactorily resolve the matter in favor of commercialization.

§ 960.2 Scope.

The Act and these regulations apply to any person subject to the jurisdiction or control of the United States who operates a private remote-sensing space system either directly or through an affiliate or subsidiary. For the purposes of these regulations, a person, affiliate, or subsidiary is subject to the jurisdiction or control of the United States if such person is:

(a) An individual who is a citizen of the United States;

(b) A corporation, partnership, association or other entity organized or existing under the laws of the United States or any state, territory or possession thereof; or

(c) Any other private space system operator having substantial connections with the United States or deriving substantial benefits from U.S. law that support its international remote-sensing operations. Relevant connections include using a U.S. launch vehicle and/or platform, operating a spacecraft command and/or data acquisition station in the U.S., and processing the data at and/or marketing it from facilities within the U.S. The following examples are intended to illustrate the application of this paragraph.

EXAMPLE 1: A non-U.S. corporation launches an operational remote-sensing space system using a U.S. operated launch vehicle and/or a platform launched from U.S. territory. The company operates no spacecraft command ground station in the U.S. although it has technicians and supervisors present in the U.S. to ensure integration of the foreign-built satellite or space system with the launch vehicle. The company acquires data directly from the space system and processes and distributes it from facilities outside the U.S., although it advertises the availability of data and/or information in U.S. publications.

The company is not subject to U.S. jurisdiction or control and requires no license for its remote-sensing activities.

EXAMPLE 2: A company's operation is the same as in Example 1 except that it acquires, processes and distributes the data to U.S. and foreign customers from one or more facilities within the U.S.

The company is subject to U.S. jurisdiction or control and requires a license.

Where ground activities in the U.S. are less extensive than those described above, such as mere operation of a data acquisition facility or a small retail distribution outlet for U.S. customers, the Administrator will decide on an individual basis whether the operator is subject to U.S. jurisdiction or control for purposes of Title IV. In such cases, the use of a U.S. launch vehicle and/or platform may be significant although such use alone is not a sufficient connection.

Interested persons with questions may request a formal, binding opinion from the Administrator concerning the application of these regulations to their operation. Informal opinions by agencies should not be relied upon.

§ 960.3 Definitions.

For purposes of these regulations, the following terms have the following meanings:

Act means the Land Remote-Sensing Commercialization Act of 1984 (Pub. L. 98–365, 15 U.S.C. 4201 *et seq.*);

Administrator means the adinistrator of NOAA, or his designee;

Affiliate means any person: (a) Which owns or controls more than 5% interest in the applicant or licensee, or (b) which is under common ownership or control with the applicant or licensee;

Application means any written request submitted under this part for: (a) Issuance of a license for the operation of a private remote-sensing space system; (b) transfer or renewal of any such license; or (c) an amendment to any such license as a result of a substantial change in any of the specified terms and conditions of the license;

Basic data set means data collected by any licensed private remote-sensing space system that (a) has been selected to be maintained by the United States Government in a pubic archive, and (b) shall remain distinct from any inventory of data that a system operator may maintain for sales and for other purposes. Section 602 of the Act (''Archiving of Data'') sets forth the Government's interest and criteria for determining the ''basic data set;''

Experimental data means data collected by the United States Government in experimental remote-sensing programs;

Measured values mean the assigned numbers, shades or colors, which represent, in some standardized system, an amount of electromagnetic radiation sensed in a spectral band.

NESDIS means the National Environmental Satellite, Data, and Information Service;

NOAA means the National Oceanic and Atmospheric Administration;

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity organized or existing under the laws of any nation. ''Person'' does not include any government or intergovernmental organization or agency thereof.

Remote-sensing space system means any instrument or device or combination thereof and any related ground based facilities capable of sensing the Earth's surface from space by making use of the properties of the electromagnetic waves emitted, reflected, or diffracted by the sensed objects. For purposes of these regulations, small, hand-held cameras shall not be considered remote-sensing space systems.

Subsidiary means an entity whose controlling interest is held by the applicant or licensee.

Unenhanced data means unprocessed or minimally processed signals or film collected from a licensed remote-sensing space system, or minimally processed film products derived from such signals. Such mimimal processing includes but is not limited to rectification of distortions, registration with respect to features of the Earth, and calibration of spectral response. Such minimal processing does not include conclusions, substantial and irreversible manipulations, or calculations derived from such signals or film products or the combination of the signals or film products with other data or information in such manner as to effect a substantial and irreversible modification thereof.

Value-added activity means any activity that substantially and irreversibly changes the information content of the unenhanced data by: (a) Altering or replacing the measured values of an unenhanced data product or (b) combing unenhanced signals or film products with other data or information. Production of unenhanced data products through minimal processing of signals and converting assigned values from one unit of measurement to another do not constitute value-added activities. Increasing the marketability or the price of an unenhanced data product does not by itself constitute a value-added activity. The product derived may be for sale, for any other form of distribution, or for the internal use of the system operator.

Subpart B—Application Process

§960.4 Pre-application consultation.

(a) Applicants are encouraged to consult with NOAA and other relevant federal agencies at the earliest possible planning stages. Such consultation may reveal design or data collection requirements that may be accommodated early at low cost or avoid costly changes in design or data collection characteristics. Consultation at the time a license application is being prepared may prove useful in defining informational requirements and in expediting review.

(b) *Consultation.* The Administrator shall consult upon request with any prospective applicant to assist the applicant in

(1) Properly preparing the application, and

(2) Contacting other Government agencies involved in the application review process in order to discuss the prospective application.

(c) *Request.* A prospective applicant who wishes to have a pre-application consultation should make such request in writing to the Assistant Administrator, National Environmental Satellite, Data and Information Service, Washington, DC 20233.

§960.5 General.

(a) *Where to file.* Applications and all related documents shall be filed with the Assistant Administrator, National Environmental Satellite, Data, and Information Service (NESDIS), NOAA, Washington, DC 20233.

(b) *Form.* No particular form is required but each application must be in writing, must include all of the information specified in this subpart, and must be signed as follow:

(1) For a corporation: By a principal executive officer at least the level of vice-president.

(2) For a partnership or a sole proprietorship: By a general partner or proprietor, respectively, or by any authorized principal executive officer of any corporate general partner.

(3) For an association or other entity: By a principal executive officer.

(c) *Number of copies.* Eight (8) copies of each application must be submitted.

§ 960.6 Information to be submitted with application.

The following information on the applicant, and its affiliates and subsidiaries shall be provided by the applicant:

(a) The name, mailing address, telephone number and citizenship of the applicant and any affiliates or subsidiaries, and of each director or owner of greater than five (5) percent interest.

(b) A copy of the charter or instrument by which the applicant was formed and authorized to do business. If the applicant is a corporation its charter shall be certified by the Secretary of State or other appropriate authority of the jurisdiction in which incorporated.

(c) The name, address, and telephone number of a person upon whom service of all documents may be made.

(d) Adequate operational information regarding the applicant's remote-sensing space system on which to base review to ensure compliance with national security and international requirements including,

(1) The date of intended commencement of operations and the expected duration of such operations;

(2) The method of launch, and the name and location of the operator of the launch vehicle and the launch site;

(3) The range of orbits and altitudes requested for authorized operation;

(4) The range of spatial resolution or instantaneous field of view requested; and

(5) The spectral bands requested for authorized operation.

The applicant may wish to include information concerning the extent to which data to be acquired from the applicant's system could be acquired from foreign competitors who are not subject to these regulations.

(e) The applicant's intended data acquisition and distribution plans, including:

(1) Plans for data transmission to the ground;

(2) Method of data distribution including scheduling plans and procedures;

(3) Location of major data distribution outlets;

(4) Data reproduction policy;

(5) Pricing policy;

(6) The names and addresses of any parties that will engage in the marketing of data on a contractual basis with the applicant, or its affiliates and subsidiaries; and

(7) Any other information necessary to satisfy the requirements of section 601 of the Act.

(f) Any plans that the applicant, or any affiliate or subsidiary may have for engaging in value-added activities, including a plan and pricing policy for ensuring nondiscriminatory access to unenhanced data.

(g) All existing or anticipated agreements regarding system operation between the applicant, its affiliates and subsidiaries, and any foreign nation, entity or consortium.

(h) Proposed method of disposition of any remote-sensing satellites owned or operated by the applicant.

In the case of an application for an amendment to an existing license, only modifications or additions to previously submitted information need be provided.

§ 960.7 Amendment, withdrawal, and termination of an application.

(a) If information in an application becomes materially inaccurate or incomplete after it is filed but before the license application proceeding is completed, the applicant must promptly file an amendment that contains the corrected or additional information. The applicant should follow the procedures specified in § 960.5 for an original filing.

(b) If the Administrator determines that any amendment constitutes a major and substantial change to the applicant's original proposal, the Administrator may:

(1) Incorporate the amendment into the original application and, if necessary, extend the time period prescribed in the Act and in these regulations for processing the application by no more than 60 days; or

(2) Require the applicant to submit a new license application.

(c) An applicant may withdraw an application at any time before the license application review is completed by delivering or mailing a written notice of withdrawal to the Administrator.

(d) The Administrator shall terminate review of a license application if:

(1) The application is withdrawn before the decision approving or denying it is issued; or

(2) The applicant, after written notice by the Administrator pursuant to §960.9(c), does not provide adequate additional information to complete the application within the time stated in the written notice.

§960.8 Confidentiality of information.

(a) Any person who submits information pursuant to this part, considered to be a trade secret, or commercial or financial information that is privileged or confidential, may request in writing that the information be given confidential treatment. Such request should:

(1) Be submitted at the time of submission of the information; and

(2) State the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurrence of a certain event, or permanently).

(b) Information for which confidential treatment is requested must be clearly marked with a legend such as ''Proprietary Information'' or ''Confidential Treatment Requested.'' Where such marking proves impracticable, a cover sheet containing such legend must be securely attached.

(c) If a request for confidential treatment is received after the information itself is received, NESDIS will try to associate the request with copies of the information, but cannot guarantee that such efforts will be effective.

(d) Any request for confidential treatment may include a written justification, stating why the information is a trade secret, or commercial or financial information that is privileged or confidential, and describing:

(1) The commercial or financial nature of the information;

(2) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(3) The nature and extent of the competitive harm that would result from public disclosure of the information;

(4) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(5) The extent to which persons other than the person submitting the information possess, or have access to, the same information; and

(6) The nature of the measures that have been and are being taken to protect the information from disclosure.

(e) Request for disclosure.

(1) Requests for disclosure of information submitted, reported, or collected pursuant to this part shall be in accordance with 15 CFR 903.7.

(2) NOAA will not usually determine whether confidential treatment is warranted until it receives a request for disclosure of the information, unless it would encourage the submission of information not required to be submitted under this part.

(3) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator will notify immediately the person who submitted the information and:

(i) Inform such person of the date by which NOAA must determine whether confidential treatment is warranted in order to comply with the request for disclosure (usually within 10 working days of receipt of the request); and

(ii) Inquire whether such person continues to request confidential treatment.

(4) If the person waives or withdraws a request for confidential treatment in full or in part, the person shall deliver to NOAA a written statement to that effect. If the person confirms the request for confidential treatment, such person is strongly encouraged to deliver to NOAA a written statement in sufficient time for NOAA to fully consider it in making its formal determination (generally, not later than the

close of business on the fourth working day after being notified under paragraph (e)(3) of this section). Such statement may:

(i) Address the issues listed in paragraph (d) of this section, describing the basis for believing that the information is deserving of confidential treatment, if such a statement was not previously submitted;

(ii) Update or supplement any statement previously submitted under paragraph (d) of this section; and

(iii) Present arguments against disclosure of the information.

(5) To the extent permitted by applicable law, part or all of any statement submitted under this section will be treated as confidential if so requested by the person submitting the response.

§ 960.9 Review procedures.

(a) The Administrator shall immediately forward a copy of any application or a summary thereof to the Department of Defense, the Department of State, and any other Federal agencies determined to have a substantial interest in the proposed activity, such as the National Aeronautics and Space Administration, and the Department of Transportation. The Administrator shall advise such agencies of the deadline prescribed by paragraph (b) of this section to require additional information from the applicant.

(b) Within 21 days after the receipt of an application, the Administrator shall determine whether the application appears to contain all of the information required by Subpart B of these regulations. In making this determination the Administrator shall consider timely comments provided by the Federal agencies consulted under paragraph (a) of this section.

(c) If the Administrator determines that all of the required information is not contained in the application, the Administrator may require by written notice to the applicant, that the applicant file further information, analysis, or explanation.

(d) If the Administrator requires further information under paragraph (c) of this section, the time limitations prescribed by section 401(c) of the Act do not begin to run until the date on which the Administrator determines that the application appears to be complete and so notifies the applicant.

(e) Within sixty days of receipt of a complete application, each Federal agency consulted under paragraph (a) of this section shall recommend approval or disapproval of the application in writing.

(1) If the Secretary of Defense or the Secretary of State determines that the application may not be approved without modifications or conditions consistent with national security concerns or international obligations, the determination shall clearly state why the modifications or conditions are necessary to accomplish the intended purpose.

(2) If any other agency recommends disapproval, it shall state why it believes the application does not comply with any law or regulation within its area of responsibility and how it believes the application may be amended or the license conditioned to comply with the law or regulation in question.

(f) All determinations and recommendations shall be made a part of the public record for that application. If the recommendation contains classified material, the public record shall reflect at what point in the document deletions have been made.

§ 960.10 Timely approval or denial of application and issuance of license.

(a) The Administrator shall approve or deny a complete application as soon as practicable. If final action has not occurred within one hundred and twenty days after receipt, the Administrator shall inform the applicant of any pending issues and of actions required to resolve them.

(b) If the Administrator denies the application, he or she shall provide the applicant with a concise statement in writing of the reasons therefor. Within 30 days after receipt of a notice of denial, the applicant may appeal by written notice to the Administrator and may request either an informal hearing or a formal hearing to be held in accordance with the procedures set forth at 15 CFR part 904, subpart C.

(c) As soon as practicable after the close of a hearing or, in the case of a

formal hearing, the issuance of a recommended decision by the Administrative Law Judge, the Administrator shall issue the final decision and serve notice thereof on the applicant. This decision shall be considered final agency action.

§960.11 Criteria for approval or denial.

Before approving an application and issuing a license or an amendment to a license, the Administrator shall find in writing that:

(a) The licensee will operate the system in a manner consistent with national security and the international obligations of the U.S.;

(b) The licensee will make available unenhanced data to all potential users on a nondiscriminatory basis in accordance with sections 104(3) and 601 of the Act.

(1) If the licensee or any affiliate or subsidiary will engage in any value-added activities, the plan required by section 402(b)(9)(B) of the Act must clearly identify all such value-added activities, whether conducted by the license itself or by any affiliate or subsidiary, and ensure that any unenhanced data generated by the system will be made available to all potential users on a nondiscriminatory basis;

(2) Where the value-added activity described in the plan required by section 402(b)(9) of the Act consists of processing data for general publication, the plan shall satisfy the requirements of this section if:

(i) Publication is timely;

(ii) The medium in which the imagery will be published will be available to any potential subscriber on a nondiscriminatory basis; and

(iii) All unenhanced data from which the imagery is derived will be available on a nondiscriminatory basis at the time of publication or within a reasonable time thereafter.

(c) The licensee will make available to the Administrator at the reasonable cost of reproduction and transmission all unenhanced data which the Administrator may request for a basic data set pursuant to section 602 of the Act; and

(d) If the space system will utilize a space platform owned or operated by the license, the licensee has agreed to dispose of such platform in a satisfactory manner.

In making the findings required by paragraph (a) of this section, the Administrator shall be entitled to rely upon the written recommendations of the Departments of Defense and State described in §960.9(e).

§960.12 Contents of license.

Each license issued by the Administrator for the operation of a remote-sensing space system shall specify:

(a) The name and address of the person to whom the license is being issued, and the name and address of the agent for service of documents, if different;

(b) The effective date of the license and its duration;

(c) The characteristics of the system approved, including specifically:

(1) The range of orbits and altitudes authorized for operation;

(2) The range of spatial resolution or instantaneous field of view authorized; and

(3) The spectral bands authorized.

(d) Terms and conditions necessary to ensure:

(1) Compliance with any national security concerns and any international obligations specified by the Departments of Defense and State respectively.

(2) Adherence to the approved plans described in §960.6(f) for the licensee to make unenhanced data available to all potential users on a nondiscriminatory basis;

(e) That the licensee will make available to the Administrator any data requested for a basic data set on reasonable terms and conditions;

(f) That the licensee will notify the Administrator of any agreement which it intends to enter into with any foreign nation or entity or any consortium involving a foreign nation or entity at least 30 days before concluding such an agreement;

(g) That the licensee will allow the Administrator or other appropriate federal officials access at any reasonable time to any facility or site of the

licensee or any contractor of the licensee located within the jurisdiction or control of the United States:

(1) To verify that the space system conforms to representations made in the license application; or

(2) To monitor activities of the licensee under the license including the inspection of equipment, facilities and other records and ensure compliance with the terms of the license;

(h) That the licensee will surrender the license and terminate all operations immediately upon notification that the Administrator has determined under section 403(a)(1) of the Act that the licensee has substantially failed to comply with any of the requirements listed in section 403(a)(1);

(i) If the space system will utilize a civilian U.S. Government platform, that the licensee will reach an agreement with the appropriate agency to reimburse the Government for all related costs and to ensure that the use of the platform will not interfere with the government's mission;

(j) Appropriate provisions governing the disposition of any space platforms owned or operated by the licensee, including at a minimum sufficient advance notification to the Administrator of such disposition to allow review and approval of the procedures proposed;

(k) The conditions that require an amendment of the license including any change:

(1) In ownership of the licensee;

(2) In citizenship of: The president, proprietor, or other chief executive officer of the licensee and, if the licensee is a corporation, the chairman of the board of directors, or if the licensee is a partnership, a general partner;

(3) In the operations of the licensee that would result in sensing activities outside the range of orbits and altitudes, the range of spatial resolution or instantaneous field of vision, or the spectral bands approved under paragraph (c) of this section, except in case of an emergency posing an imminent and substantial threat of harm to human life, property, the environment or the remote-sensing space system itself, in which cases the licensee shall attempt to obtain oral approval from the Administrator;

(l) That the licensee will notify the Administrator of any value-added activities that will be conducted by the licensee or by a subsidiary or affiliate.

Subpart C—Enforcement Procedures

§ 960.13 General.

Section 403(a) of the act authorizes the Administrator to take actions adverse to a licensee if the licensee fails to comply with the Act, these regulations, or any terms, conditions, or restrictions in the license. These adverse actions are:

(a) License sanctions, including modification, suspension, and termination of any licensee;

(b) Civil penalties not to exceed $10,000 for each day of operation in violation of a license, regulation, or the Act; and

(c) Seizure of any object, record, or report if there is probable cause to believe that such object, record, or report is being or is likely to be used to commit a violation.

This subpart establishes uniform rules and procedures for these adverse actions.

§ 960.14 License sanctions.

(a) If the Administrator determines, on the basis of available information, that the licensee is not in compliance with any applicable provision of the Act, any regulation, or any license condition or restriction, the Administrator may issue the licensee a Notice of License Sanction (NOLS) proposing to:

(1) Terminate the license;

(2) Suspend the license for a specified period of time or until certain stated requirements are met, or both; or

(3) Modify the license, to aid future enforcement efforts.

(b) The NOLS will contain;

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act, regulation, or license allegedly violated;

(3) The nature and duration of the proposed sanction; and

(4) The effective date of the sanction, which is 30 days after the date of the

NOLS unless the Administrator requires immediate termination of some or all licensed activities under paragraph (e) of this section or unless the licensee requests a hearing under paragraph (d) of this section.

(c) The NOLS also may propose to assess a civil penalty in accordance with §960.15.

(d) Within 30 days after receipt of the NOLS, the licensee may request a hearing by serving a written request on the Administrator either in person or by certified or registered mail, return receipt requested, at the address specified in the NOLS. Such hearing shall be held in accordance with the procedures set forth at 15 CFR part 904, subpart C.

(e) If the Administrator determines that the licensee has substantially failed to comply with any provision of the Act, these regulations, or with any term, condition, or restriction of the license, the NOLS will include a finding to this effect and may require immediate termination of some or all licensed operations. For purposes of this section, *substantially fails to comply* means:

(1) Any failure to comply with a material term or condition of a license or of the Act or these regulations, which the Administrator has reasonable basis to believe is willful or intentional;

(2) Any failure to comply after notice by the Administrator;

(3) Any failure to comply with a material term or condition of a license which the Secretary of Defense determines clearly poses a threat to the national security or which the Secretary of State determines clearly poses a threat to international obligations of the United States.

(f) Any request for a hearing under paragraph (d) of this section will not delay immediate termination under this paragraph and the licensee is entitled to treat the finding as final agency action for purposes of judicial review.

§960.15 Civil penalties.

Section 403(a)(3) of the Act authorizes the Administrator to assess civil penalties of up to $10,000 for any violation of any requirement of the Act, these regulations or any term or condition of a license. Each day of operation in violation constitutes a separate violation. Such penalties will be assessed in accordance with the procedures set forth at 15 CFR part 904, subpart B.

§960.16 Seizure.

(a) If the Administrator determines that there is probable cause to believe that any object, record, or report was used, is being used or is likely to be used in violation of the Act, these regulations or the requirements of any license, the Administrator may seize any such item and issue the licensee a Notice of Seizure (NOS) containing:

(1) A description of the object, record, or report seized;

(2) A concise statement of the facts believed to show use or possible use in a violation; and

(3) A specific reference to the provisions of the Act, regulation, or license allegedly violated.

(b) Within 30 days after receipt of a NOS, the licensee may request a hearing by serving a written and dated request on the Administrator either in person or by certified or registered mail, return receipt requested, at the address specified in the notice. Such hearing shall be held in accordance with the procedures set forth at 15 CFR part 904, subpart C. For good cause shown, the Administrator may in his or her sole discretion return the seized item pending the outcome of the hearing.

PART 970—DEEP SEABED MINING REGULATIONS FOR EXPLORATION LICENSES

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AUTHORITY: 30 U.S.C. 1401 *et seq.*

Subpart A—General

SOURCE: 46 FR 45896, Sept. 15, 1981, unless otherwise noted.

§970.100 Purpose.

(a) *General.* The purpose of this part is to implement those responsibilities and authorities of the National Oceanic and Atmospheric Administration (NOAA), pursuant to Public Law 96–283, the Deep Seabed Hard Mineral Resources Act (the Act), to issue to eligible United States citizens licenses for the exploration for deep seabed hard minerals.

(b) *Purposes of the Act.* In preparing these regulations NOAA has been mindful of the purposes of the Act, as set forth in section 2(b) thereof. These include:

(1) Encouraging the successful conclusion of a comprehensive Law of the Sea Treaty, which will give legal definition to the principle that the hard mineral resources of the deep seabed are the common heritage of mankind and which will assure, among other things, nondiscriminatory access to such resources for all nations;

(2) Establishing, pending the ratification by, and entering into force with respect to, the United States of such a treaty, an interim program to regulate the exploration for and commercial recovery of hard mineral resources of the deep seabed by United States citizens;

(3) Accelerating the program of environmental assessment of exploration for and commercial recovery of hard mineral resources of the deep seabed and assuring that such exploration and recovery activities are conducted in a manner which will encourage the conservation of such resources, protect the quality of the environment, and promote the safety of life and property at sea;

(4) Encouraging the continued development of technology necessary to recover the hard mineral resources of the deep seabed; and

(5) Pending the ratification by, and entry into force with respect to, the United States of a Law of the Sea Treaty, providing for the establishment of an international revenue-sharing fund the proceeds of which will be used for sharing with the international community pursuant to such treaty.

(c) *Regulatory approach.* (1) These regulations incorporate NOAA's recognition that the deep seabed mining industry is still evolving and that more information must be developed to form the basis for future decisions by industry and by NOAA in its implementation of the Act. They also recognize the need for flexibility in order to promote the development of deep seabed mining technology, and the usefulness of allowing initiative by miners to develop mining techniques and systems in a manner compatible with the requirements of the Act and regulations. In this regard, the regulations reflect an approach, pursuant to the Act, whereby their provisions ultimately will be addressed and evaluated on the basis of exploration plans submitted by applicants.

(2) In addition, these regulations reflect NOAA's recognition that the difference in scale and effects between exploration for and commercial recovery of hard mineral resources normally requires that they be distinguished and addressed separately. This distinction is also based upon the evolutionary stage of the seabed mining industry referenced above. Thus, NOAA will issue separate regulations pertaining to commercial recovery, in part 971 of this chapter.

[46 FR 45896, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

§970.101 Definitions.

For purposes of this part, the term:

(a) *Act* means the Deep Seabed Hard Mineral Resources Act (Pub. L. 96–283; 94 Stat. 553; 30 U.S.C. 1401 *et seq.*);

(b) *Administrator* means the Administrator of the National Oceanic and Atmospheric Administration, or a designee;

(c) *Applicant* means an applicant for an exploration license pursuant to the Act and this part;

(d) *Affiliate* means any person:

(1) In which the applicant or licensee owns or controls more than 5% interest;

(2) Which owns or controls more than 5% interest in the applicant or licensee; or

(3) Which is under common ownership or control with the applicant or licensee.

(e) *Commercial recovery* means:

(1) Any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of marketing or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(2) If such recovered hard mineral resource will be processed at sea, such processing; and

(3) If the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(f) *Continental Shelf* means:

(1) The seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(2) The seabed and subsoil of similar submarine areas adjacent to the coast of islands;

(g) *Controlling interest*, for purposes of paragraph (t)(3) of this section, means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(h) *Deep seabed* means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside:

(1) The Continental Shelf of any nation; and

(2) Any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States;

(i) *Exploration* means:

(1) Any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of:

(i) The nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) The environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(2) The taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(j) *Hard mineral resource* means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals, at least one of which contains manganese, nickel, cobalt, or copper;

(k) *International agreement* means a comprehensive agreement concluded through negotiations at the Third United Nations Conference on the Law of the Sea, relating to (among other matters) the exploration for and commercial recovery of hard mineral resources and the establishment of an international regime for the regulation thereof;

(l) *Licensee* means the holder of a license issued under this part to engage in exploration;

(m) *New entrant* means any applicant, with respect to:

(1) Any application which has not been accorded a pre-enactment explorer priority of right under § 970.301; or

(2) Any amendment which has not been accorded a pre-enactment explorer priority of right under § 970.302.

(n) *NOAA* means the National Oceanic and Atmospheric Administration;

(o) *Permittee* means the holder of permit issued under NOAA regulations to engage in commercial recovery;

(p) *Person* means any United States citizen, any individual, and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(q) *Pre-enactment explorer* means a person who was engaged in exploration prior to the date of enactment of the Act (June 28, 1980);

(r) *Reciprocating state* means any foreign nation designated as such by the

Administrator under section 118 of the Act;

(s) *United States* means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(t) *United States citizen* means

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(3) Any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in paragraph (t)(1) or (t)(2) of this section.

[46 FR 45896, Sept. 15, 1981, as amended at 47 FR 5967, Feb. 9, 1982]

§970.102 Nature of licenses.

(a) A license issued under this part will authorize the holder thereof to engage in exploration within a specific portion of the sea floor consistent with the provisions of the Act, this part, and the specific terms, conditions and restrictions applied to the license by the Administrator.

(b) Any license issued under this part will be exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(c) A valid existing license will entitle the holder, if otherwise eligible under the provisions of the Act and implementing regulations, to a permit for commercial recovery from an area selected within the same area of the sea floor. Such a permit will recognize the right of the holder to recover hard mineral resources, and to own, transport, use, and sell hard mineral resources recovered, under the permit and in accordance with the requirements of the Act.

§970.103 Prohibited activities and restrictions.

(a) *Prohibited activities and exceptions.* (1) Except as authorized under subpart C of this part, no United States citizen may engage in any exploration or commercial recovery unless authorized to do so under:

(i) A license or a permit issued pursuant to the Act and implementing regulations;

(ii) A license, permit, or equivalent authorization issued by a reciprocating state; or

(iii) An international agreement which is in force with respect to the United States.

(2) The prohibitions of paragraph (a)(1) of this section will not apply to any of the following activities:

(i) Scientific research, including that concerning hard mineral resources;

(ii) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the deep seabed or significantly affect the environment;

(iii) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction or testing is conducted on shore, or does not involve the recovery of any but incidental hard mineral resources;

(iv) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under the Act and implementing regulations, a license or permit or equivalent authorization issued by a reciprocating state, or under an international agreement; and

(v) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(3) No United States citizen may interfere or participate in interference with any activity conducted by any licensee or permittee which is authorized to be undertaken under a license or permit issued by the Administrator to a licensee or permittee under the Act or with any activity conducted by

the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the exploration or commercial recovery of hard mineral resources. For purposes of this section, interference includes physical interference with activities authorized by the Act, this part, and a license issued pursuant thereto; the filing of specious claims in the United States or any other nation; and any other activity designed to harass deep seabed mining activities authorized by law. Interference does not include the exercise of any rights granted to United States citizens by the Constitution of the United States, any Federal or State law, treaty, or agreement or regulation promulgated pursuant thereto.

(4) United States citizens must exercise their rights on the high seas with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

(b) *Restrictions on issuance of licenses or permits.* The Administrator will not issue:

(1) Any license or permit after the date on which an international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of such license or permit is not inconsistent with such agreement;

(2) Any license or permit the exploration plan or recovery plan of which, submitted pursuant to the Act and implementing regulations, would apply to an area to which applies, or would conflict with:

(i) Any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under this part;

(ii) Any exploration plan or recovery plan associated with any existing license or permit; or

(iii) Any equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to the Act and implementing regulations;

(3) A permit authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to a person other than the licensee for such area;

(4) Any exploration license before July 1, 1981, or any permit which authorizes commercial recovery to commence before January 1, 1988;

(5) Any license or permit the exploration plan or recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for such license or permit:

(i) The applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant; or

(ii) A license or permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106 of the Act; or

(6) A license or permit, or approve the transfer of a license or permit, except to a United States citizen.

Subpart B—Applications

SOURCE: 46 FR 45898, Sept. 15, 1981, unless otherwise noted.

§ 970.200 General.

(a) *Who may apply; how.* Any United States citizen may apply to the Administrator for issuance or transfer of an exploration license. Applications must be submitted in the form and manner prescribed in this subpart.

(b) *Place, form and copies.* Applications for the issuance or transfer of exploration licenses must be submitted in writing, verified and signed by an authorized officer or other authorized representative of the applicant, in 30 copies, to the following address: Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, suite 410, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, DC 20235. The Administrator may waive, in whole or in part, at his discretion, the requirement that 30 copies of an application be filed with NOAA.

(c) *Use of application information.* The contents of an application, as set forth

below, must provide NOAA with the information necessary to make determinations required by the Act and this part pertaining to the issuance or transfer of an exploration license. Thus, each portion of the application should identify the requirement in this part to which it responds. In addition, the information will be used by NOAA in its function under the Act of consultation and cooperation with other Federal agencies or departments in relation to their programs and authorities, in order to reduce the number of separate actions required to satisfy Federal agencies' responsibilities.

(d) *Pre-application consultation.* To assist in the development of adequate applications and assure that applicants understand how to respond to the provisions of this subpart, NOAA will be available for pre-application consultations with potential applicants. This includes consultation on the procedures in subpart C. In appropriate circumstances, NOAA will provide written confirmation to the applicant of any oral guidance resulting from such consultations.

(e) *Priority of right.* (1) Priority of right for issuance of licenses to pre-enactment explorers will be established pursuant to subpart C of this part.

(2) Priority of right for issuance of licenses to new entrants will be established on the basis of the chronological order in which license applications, which are in substantial compliance with the requirements established under this subpart, pursuant to §970.209, are filed with the Administrator.

(3) Applications must be received by the Office of Ocean Minerals and Energy on behalf of the Administrator before a priority can be established.

(4) Upon (i) a determination that:

(A) An application is not in substantial compliance in accordance with §970.209 or subpart C, as applicable;

(B) An application has not been brought into substantial compliance in accordance with §970.210 or subpart C, as applicable;

(C) A license has been relinquished or surrendered in accordance with §970.903; or

(ii) A decision to:

(A) Deny certification of a license pursuant to §970.407; or

(B) Deny issuance of a license pursuant to §970.508,

and after the exhaustion of any administrative or judicial review of such determination or decision, the priority of right for issuance of a license will lapse.

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in his application treated as confidential, he must so indicate pursuant to 15 CFR 971.802.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 5968, Feb. 9, 1982; 54 FR 547, Jan. 6, 1989]

CONTENTS

§970.201 Statement of financial resources.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator the financial resources of the applicant to carry out, in accordance with this part, the exploration program set forth in the applicant's exploration plan. The information must show that the applicant is reasonably capable of committing or raising sufficient resources to cover the estimated costs of the exploration program. The information must be sufficient for the Administrator to make a determination on the applicant's financial responsibility pursuant to §970.401.

(b) *Contents.* In particular, the information on financial resources must include:

(1) A description of how the applicant intends to finance the exploration program;

(2) The estimated cost of the exploration program;

(3) With respect to the applicant and those entities upon which the applicant will rely to finance his exploration activities, the most recent audited financial statement (for publicly-held companies, the most recent annual report and Form 10–K filed with the Securities and Exchange Commission will suffice in this regard); and

(4) The credit rating and bond rating of the applicant, and such financing entities, to the extent they are relevant.

§ 970.202 Statement of technological experience and capabilities.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator the technological capability of the applicant to carry out, in accordance with the regulations contained in this part, the exploration program set out in the applicant's exploration plan. It must contain sufficient information for the Administrator to make a determination on the applicant's technological capability pursuant to § 970.402.

(b) *Contents.* In particular, the information submitted pursuant to this section must demonstrate knowledge and skills which the applicant either possesses or to which he can demonstrate access. The information must include:

(1) A description of the exploration equipment to be used by the applicant in carrying out the exploration program;

(2) A description of the environmental monitoring equipment to be used by the applicant in monitoring the environmental effects of the exploration program; and

(3) The experience on which the applicant will rely in using this or similar equipment.

§ 970.203 Exploration plan.

(a) *General.* Each application must include an exploration plan which describes the applicant's projected exploration activities during the period to be covered by the proposed license. Generally, the exploration plan must demonstrate to a reasonable extent that the applicant's efforts, by the end of the 10-year license period, will likely lead to the ability to apply for and obtain a permit for commercial recovery. In particular, the plan must include sufficient information for the Administrator, pursuant to this part, to make the necessary determinations pertaining to the certification and issuance or transfer of a license and to the development and enforcement of the terms, conditions and restrictions for a license.

(b) *Contents.* The exploration plan must contain the following information. In presenting this information, the plan should incorporate the applicant's proposed individual approach, including a general description of how projected participation by other entities will relate to the following elements, if appropriate. The plan must present:

(1) The activities proposed to be carried out during the period of the license;

(2) A description of the area to be explored, including its delineation according to § 970.601;

(3) The intended exploration schedule which must be responsive to the diligence requirements in § 970.602. Taking into account that different applicants may have different concepts and chronologies with respect to the types of activities described, the schedule should include an approximate projection for the exploration activities planned. Although the details in each schedule may vary to reflect the applicant's particular approach, it should address in some respect approximately when each of the following types of activities is projected to occur.

(i) Conducting survey cruises to determine the location and abundance of nodules as well as the sea floor configuration, ocean currents and other physical characteristics of potential commercial recovery sites;

(ii) Assaying nodules to determine their metal contents;

(iii) Designing and testing system components onshore and at sea;

(iv) Designing and testing mining systems which simulate commercial recovery;

(v) Designing and testing processing systems to prove concepts and designing and testing systems which simulate commercial processing;

(vi) Evaluating the continued feasibility of commercial scale operations based on technical, economic, legal, political and environmental considerations; and

(vii) Applying for a commercial recovery permit and, to the extent known, other permits needed to construct and operate commercial scale facilities (if application for such permits is planned prior to obtaining a commercial recovery permit);

(4) A description of the methods to be used to determine the location, abundance, and quality (i.e., assay) of nodules, and to measure physical conditions in the area which will affect nodule recovery system design and operations (e.g., seafloor topography, seafloor geotechnic properties, and currents);

(5) A general description of the developing recovery and processing technology related to the proposed license, and of any planned or ongoing testing and evaluation of such technology. To the extent possible at the time of application, this description should address such factors as nodule collection technique, seafloor sediment rejection subsystem, mineship nodule separation scheme, pumping method, anticipated equipment test areas, and details on the testing plan;

(6) An estimated schedule of expenditures, which must be responsive to the diligence requirements as discussed in §970.602;

(7) Measures to protect the environment and to monitor the effectiveness of environmental safeguards and monitoring systems for commercial recovery. These measures must take into account the provisions in §§970.506, 970.518, 970.522 and subpart G of this part; and

(8) A description of any relevant activity that the applicant has completed prior to the submission of the application.

§970.204 Environmental and use conflict analysis.

(a) *Environmental information.* To enable NOAA to implement better its responsibility under section 109(d) of the Act to develop an environmental impact statement (EIS) on the issuance of an exploration license, the application must include information for use in preparing NOAA's EIS on the environmental impacts of the activities proposed by the applicant. The applicant must present physical, chemical and biological information for the exploration area. This information should include relevant environmental information, if any, obtained during past exploration activities, but need not duplicate information obtained during NOAA's DOMES Project. Planned activities in the area, including the testing of integrated mining systems which simulate commercial recovery, also must be described. NOAA will need information with the application on location and boundaries of the proposed exploration area, and plans for delineation of features of the exploration area including baseline data or plans for acquiring them. The applicant may at his option delay submission of baseline and equipment data and system test plans. However, applicants so electing should plan to submit this latter information at least one year prior to the initial test, to allow time for the supplement to the site-specific EIS, if one is required, to be prepared by NOAA, circulated, reviewed and filed with EPA. The submission of this information with the application is strongly encouraged, however, to minimize the possibility that a supplement will be required. If such latter information is submitted subsequent to the original application such tests may not be undertaken in the absence of concurrence by NOAA (which, if applicable, will be required in a term, condition, or restriction in the license). NOAA has developed a technical guidance document which will provide assistance for the agency and the applicant, in consultation, to identify the details on information needed in each case. NOAA may refer to such information for purposes of other determinations under the Act as well. NOAA also will seek to facilitate other Federal and, as necessary, state decisions on exploration activities by functioning as lead agency for the EIS on the application and related actions by other agencies, including those pertaining to any onshore impacts which may result from the proposed exploration activities.

(b) *Use conflict information.* To assist the Administrator in making determinations relating to potential use conflicts between the proposed exploration and other activities in the exploration area, pursuant to §§970.503, 970.505, and 970.520, the application must include information known to the applicant with respect to such other activities.

§ 970.205 Vessel safety.

In order to provide a basis for the necessary determinations with respect to the safety of life and property at sea, pursuant to §§970.507, 970.521 and subpart H of this part, the application must contain the following information, except for those vessels under 300 gross tons which are engaged in oceanographic research if they are used in exploration.

(a) *U.S. flag vessel.* The application must contain a demonstration or affirmation that any United States flag vessel utilized in exploration activities will possess a current valid Coast Guard Certificate of Inspection (COI). To the extent that the applicant knows which United States flag vessel he will be using, the application must include a copy of the COI.

(b) *Foreign flag vessel.* The application must also contain information on any foreign flag vessels to be used in exploration activities, which responds to the following requirements. To the extent that the applicant knows which foreign flag vessel he will be using, the application must include evidence of the following:

(1) That any foreign flag vessel whose flag state is party to the International Convention for Safety of Life at Sea, 1974 (SOLAS 74) possesses current valid SOLAS 74 certificates;

(2) That any foreign flag vessel whose flag state is not party to SOLAS 74 but is party to the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) possesses current valid SOLAS 60 certificates; and

(3) That any foreign flag vessel whose flag state is not a party to either SOLAS 74 or SOLAS 60 meets all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies (IACS).

(c) *Supplemental certificates.* If the applicant does not know at the time of submitting an application which vessels he will be using, he must submit the applicable certification for each vessel before the cruise on which it will be used.

§ 970.206 Statement of ownership.

The application must include sufficient information to demonstrate that the applicant is a United States citizen, as required by §970.103(b)(6), and as defined in §970.101(t). In particular, the application must include:

(a) Name, address, and telephone number of the United States citizen responsible for exploration operations to whom notices and orders are to be delivered; and

(b) A description of the citizen or citizens engaging in such exploration, including:

(1) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(2) The state of incorporation or state in which the partnership or other business entity is registered;

(3) The name of registered agent or equivalent representative and places of business;

(4) Certification of essential and nonproprietary provisions in articles of incorporation, charter or articles of association; and

(5) The name of each member of the association, partnership, or joint venture, including information about the participation of each partner and joint venturer and/or ownership of stock.

§ 970.207 Antitrust information.

(a) *General.* Section 103(d) of the Act specifically provides for antitrust review of applications by the Attorney General of the United States and the Federal Trade Commission.

(b) *Contents.* In order to provide information for this antitrust review, the application must contain the following:

(1) A copy of each agreement between any parties to any joint venture which is applying for a license, provided that said agreement relates to deep seabed hard mineral resource exploration or mining;

(2) The identity of any affiliate of any person applying for a license; and

(3) For each applicant, its affiliate, or parent or subsidiary of an affiliate which is engaged in production in, or the purchase or sale in or to, the United States of copper, nickel, cobalt or manganese minerals or any metals refined from these minerals:

(i) The annual tons and dollar value of any of these minerals and metals so purchased, sold or produced for the two preceding years;

(ii) Copies of the annual report, balance sheet and income statement for the two preceding years; and

(iii) Copies of each document submitted to the Securities and Exchange Commission.

§970.208 Fee.

(a) *General.* Section 104 of the Act provides that no application for the issuance or transfer of an exploration license will be certified unless the applicant pays to NOAA a reasonable administrative fee, which must reflect the reasonable administrative costs incurred in reviewing and processing the application.

(b) *Amount.* In order to meet this requirement, the application must include a fee payment of $100,000, payable to the National Oceanic and Atmospheric Administration, Department of Commerce. If costs incurred by NOAA in reviewing and processing an application are significantly less than or in excess of the original fee, the agency subsequently will determine those differences in costs and adjust the fee accordingly. If the costs are significantly less, NOAA will refund the difference. If they are significantly greater, the applicant will be required to submit the additional payment prior to issue or transfer of the license. In the case of an application for transfer of a license to an entity which has previously been found qualified for a license, the Administrator may, on the basis of pre-application consultations pursuant to §970.200(d), reduce the fee in advance by an appropriate amount which reflects costs avoided by reliance on previous findings made in relation to the proposed transferee. If an applicant elects to pursue the 'banking' option under §970.601(d), and exercises that option by submitting two applications, only one application fee needs to be submitted with respect to each use of the 'banking' option.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 5966, 5968, Feb. 9, 1982]

PROCEDURES

§970.209 Substantial compliance with application requirements.

(a) Priority of right for the issuance of licenses to new entrants will be established on the basis of the chronological order in which license applications which are in substantial compliance with the requirements established under this subpart are filed with the Administrator pursuant to §970.200.

(b) In order for an application to be in substantial compliance with the requirements of this subpart, it must include information specifically identifiable with and materially responsive to each requirement contained in §§970.201 through 970.208. A determination on substantial compliance relates only to whether the application contains the required information, and does not constitute a determination on certification of the application, or on issuance or transfer of a license.

(c) The Administrator will make a determination as to whether the application is in substantial compliance. Within 30 days after receipt of an application and the opening of coordinates describing the application area, he will issue written notice to the applicant regarding such determination. The notice will identify, if applicable, in what respects the application is not in either full or substantial compliance. If the application is in substantial but not full compliance, the notice will specify the information which the applicant must submit in order to bring it into full compliance, and why the additional information is necessary.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 11513, Mar. 17, 1982]

§970.210 Reasonable time for full compliance.

Priority of right will not be lost in case of any application filed which is in substantial but not full compliance, as specified in §970.209, if the Administrator determines that the applicant, within 60 days after issuance to the applicant by the Administrator of written notice that the application is in substantial but not full compliance, has brought the application into full

compliance with the requirements of §§ 970.201 through 970.208.

[46 FR 45898, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

§ 970.211 Consultation and cooperation with Federal agencies.

(a) Promptly after his receipt of an application and the opening of coordinates describing the application area, the Administrator will distribute a copy of the application to each other Federal agency or department which, pursuant to section 103(e) of the Act, has identified programs or activities within its statutory responsibilities which would be affected by the activities proposed in the application (i.e., the Departments of State, Transportation, Justice, Interior, Defense, Treasury and Labor, as well as the Environmental Protection Agency, Federal Trade Commission, Small Business Administration and National Science Foundation). Based on its legal responsibilities and authorities, each such agency or department may, not later than 60 days after it receives a copy of the application which is in full compliance with this subpart, recommend certification of the application, issuance or transfer of the license, or denial of such certification, issuance or transfer. The advice or recommendation by the Attorney General or Federal Trade Commission on antitrust review, pursuant to § 970.207, must be submitted within 90 days after their receipt of a copy of the application which is in full compliance with this subpart. NOAA will use the benefits of this process of consultation and cooperation to facilitate necessary Federal decisions on the proposed exploration activities, pursuant to the mandate of section 103(e) of the Act to reduce the number of separate actions required to satisfy Federal agencies' statutory responsibilities.

(b) In any case in which a Federal agency or department recommends a denial, it will set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and will indicate how the application may be amended, or how terms, conditions or restrictions might be added to the license to assure compliance with such law or regulation.

(c) A recommendation from another Federal agency or department for denying or amending an application will not affect its having been in substantial compliance with the requirements of this subpart, pursuant to § 970.209, for purposes of establishing priority of right. However, pursuant to section 103(e) of the Act, NOAA will cooperate with such agencies and with the applicant with the goal of resolving the concerns raised and satisfying the statutory responsibilities of these agencies.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 11513, Mar. 17, 1982]

§ 970.212 Public notice, hearing and comment.

(a) *Notice and comments.* The Administrator will publish in the FEDERAL REGISTER, for each application for an exploration license, notice that such application has been received. Subject to 15 CFR 971.802, interested persons will be permitted to examine the materials relevant to such application. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) After preparation of the draft EIS on an application pursuant to section 109(d) of the Act, the Administrator shall hold a public hearing on the application and the draft EIS in an appropriate location, and may employ such additional methods as he deems appropriate to inform interested persons about each application and to invite their comments thereon.

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of subpart I of 15 CFR part 971. The record developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

(c) Hearings held pursuant to this section and other procedures will be consolidated insofar as practicable with hearings held and procedures employed by other agencies.

[46 FR 45898, Sept. 15, 1981, as amended at 54 FR 547, Jan. 6, 1989]

§970.213 Amendment to an application.

After an application has been submitted to the Administrator, but before a determination is made on the issuance or transfer of a license, the applicant must submit an amendment to the application if required by a significant change in the circumstances represented in the original application and affecting the requirements of this subpart. Applicants should consult with NOAA to determine if changes in circumstances are sufficiently significant to require submission of an amendment. The application, as amended, would then serve as the basis for determinations by the Administrator under this part. For each amendment judged by the Administrator to be significant, he will provide a copy of such amendment to each other Federal agency and department which received a copy of the original application, and also will provide for public notice, hearing and comment on the amendment pursuant to §970.212. Such amendment, however, will not affect the priority of right established by the filing of the original application. After the issuance of or transfer of a license, any revision by the licensee will be made pursuant to §970.513.

Subpart C—Procedures for Applications Based on Exploration Commenced Before June 28, 1980; Resolution of Conflicts Among Overlapping Applications; Applications by New Entrants

SOURCE: 47 FR 24948, July 8, 1982, unless otherwise noted.

§970.300 Purposes and definitions.

(a) This subpart sets forth the procedures which the Administrator will apply to applications filed with NOAA covering areas of the deep seabed where the applicants have engaged in exploration prior to June 28, 1980, and to the resolution of conflicts arising out of such applications. This subpart also establishes the date on which NOAA will begin to accept applications or amendments filed by new entrants, and certain other procedures for new entrants.

(b) For the purposes of this subpart the term:

(1) *Amendment* means an amendment to an application which changes the area applied for;

(2) *Application* means an application for an exploration license which is filed pursuant to the Act and this subpart;

(3) *Conflict* means the existence of more than one application or amendment with the same priority of right:

(i) Which are filed with the Administrator or with the Administrator and a reciprocating state; and

(ii) In which the deep seabed areas applied for overlap in whole or part, to the extent of the overlap;

(4) *Original conflict* means a conflict solely between or among applications;

(5) *New conflict* means a conflict between or among amendments filed after July 22, 1982, and on or before October 15, 1982;

(6) *Domestic conflict* means a conflict solely between or among applications or amendments which have been filed with the Administrator.

(7) *International conflict* means a conflict arising between or among applications or amendments filed with the Administrator and a reciprocating state.

§970.301 Requirements for applications based on pre-enactment exploration.

(a) Pursuant to section 101(b) of the Act, any United States citizen who was engaged in exploration before the effective date of the Act (June 28, 1980) qualifies as a pre-enactment explorer and may continue to engage in such exploration without a license:

(1) If such citizen applies under this part for a license with respect to such exploration within the time period specified in paragraph (b) of this section; and

(2) Until such license is issued to such citizen or a final administrative or judicial determination is made affirming the denial of certification of the application for, or issuance of, such license.

(b) Any application for a license based upon pre-enactment exploration must be filed, at the address specified in §970.200(b), no later than 5:00 p.m. EST on March 12, 1982 (or such later date and time as the Administrator

may announce by regulation). All such applications filed at or before that time will be deemed to be filed on such closing date.

(c) Applications not filed in accordance with this section will not be considered to be based on pre-enactment exploration, and may be filed only as new entrant applications under § 970.303.

(d) To receive a pre-enactment explore priority of right for issuance of a license, and application must be, when filed, in substantial compliance with requirements described in § 970.209(b). An application which is in substantial but not full compliance will not lose its priority of right if it is brought into full compliance according to § 970.210.

(e) Any application based on pre-enactment exploration must be for a reasonably compact area with respect to which the applicant is a pre-enactment explorer, and, notwithstanding any part of § 970.601 which indicates otherwise, such area must be bounded by a single continuous boundary.

(f) The coordinates and any chart of the logical mining unit applied for in an application based on a pre-enactment exploration must be submitted in a separate, sealed envelope.

(g) On or before March 12, 1982, the applicants must indicate to the Administrator, other than in the sealed portion of the application: (1) The size of the area applied for; (2) Whether the applicant or any person on the applicant's behalf has applied, or intends to apply, for the same area or substantially the same area to one or more nations, and the number of such other applications; and (3) Whether the other applicant is pursuing the ''banking'' option under § 970.601(d), and the number of applications filed, or to be filed, in pursuit of the ''banking'' option.

§ 970.302 Procedures and criteria for resolving conflicts.

(a) *General.* This section governs the resolution of all conflicts between or among applications or amendments having pre-enactment explorer priority of right.

(b) *Identification of applicants.* On June 21, 1982, the Administrator will meet with representatives of reciprocating states to identify their respective pre-enactment explorer applicants, and will identify the coordinates of the application areas applied for by such applicants.

(c) *Initial processing.* On or before July 13, 1982, the Administrator will determine whether each domestic application is entitled to a priority of right based on pre-enactment exploration in accordance with § 970.301.

(d) *Identification of conflicts.* On July 14, 1982, the Administrator will meet with representatives of reciprocating states to exchange lists of applications accorded pre-enactment explorer priorities of right, and will identify any conflicts existing among such applications.

(e) *Notification to applicants of conflicts.* If the Administrator identifies a conflict, he will send, no later than July 22, 1982, written notice of the conflict to each domestic applicant involved in the conflict. The notice will:

(1) Identify each applicant involved in the conflict in question:

(2) Identify the coordinates of the portions of the application areas which are in conflict;

(3) Indicate that the applicant may request from the Administrator the coordinates of the application areas from any other applications filed with the Administrator or with a reciprocating state (such coordinates will be provided subject to appropriate confidentiality arrangements);

(4) State whether;

(i) Each domestic application involved in the conflict is in substantial or, if known, full compliance with the requirements described in § 970.209(b); and

(ii) Each foreign application involved in the conflict meets, if known, the legal requirements of the reciprocating state in which it is filed;

(5) Notify each domestic applicant involved in a conflict that he may, after July 22, 1982, and on or before November 16, 1982, resolve the conflict voluntarily according to paragraph (f) of this section, and that on or after November 17, 1982, any unresolved conflict shall be resolved in accordance with paragraph (j) or (k) of this section, as applicable; and

(6) In the case of an international conflict, include a copy of any applicable conflict resolution procedures in force between the United States and its reciprocating states pursuant to section 118 of the Act.

(f) *Voluntary resolution of conflicts.* Each U.S. applicant involved in a conflict may resolve the conflict after July 22, 1982, and on or before November 16, 1982, by:

(1) Unilaterally, or by agreement with each other applicant involved in the conflict, filing an amendment to the application eliminating the conflict; or

(2) Agreeing in writing with the other applicant(s) involved in the conflict to submit it to an agreed binding conflict resolution procedure.

(g) *Amendments.* (1) Amendments must be filed in accordance with the requirements for applications described in §970.200.

(2) The Administrator will:

(i) Accept no amendment prior to July 23, 1982;

(ii) Accord pre-enactment explorer priority of right only to amendments which:

(A) Pertain to areas with respect to which the applicant has engaged in pre-enactment exploration;

(B) Resolve an existing conflict with respect to that application;

(C) Do not apply for an area included in an application filed pursuant to §970.301 which is accorded pre-enactment explorer priority of right or an application identified pursuant to §970.302(b) which has been filed with a reciprocating state; and

(D) Are filed on or before October 15, 1982; and

(iii) Accord amendments which meet the requirements of this paragraph (g) the same priority of right as the applications to which they pertain.

(3) The area applied for in an amendment need not be adjacent to the area applied for in the original application.

(4) Amendments not accorded pre-enactment explorer priority of right may be filed as new entrant amendments under §970.303.

(h) *Notification of amendments and new conflicts.* The Administrator will:

(1) No later than October 25, 1982, notify each reciprocating state of any amendment accorded pre-enactment explorer priority of right pursuant to paragraph (g) of this section and, in cooperation with such states, identify any new conflicts;

(2) No later than October 27, 1982, notify each domestic applicant who is involved in a new conflict. The notice will:

(i) Identify each applicant with whom each new conflict has arisen;

(ii) Identify the coordinates of each area in which the applicant is involved in a new conflict;

(iii) Indicate that the applicant may request from the Administrator the coordinates of each area included in an amendment accorded pre-enactment explorer priority of right pursuant to paragraph (g) of this section, or for which notice has been received from a reciprocating state (such coordinates will be provided subject to appropriate confidentiality arrangements);

(iv) Notify the applicant that he may, on or before November 16, 1982, resolve the conflict voluntarily according to paragraph (f) of this section, and that on or after November 17, 1982, any unresolved conflict shall be resolved in accordance with paragraph (j) or (k) of this section, as applicable; and

(v) In the case of an international conflict, include a copy of any applicable conflict resolution procedures in force between the United States and its reciprocating states pursuant to section 118 of the Act.

(i) *Government assistance in resolving international conflicts.* If, by October 26 1982, the applicants have not resolved, or agreed in writing to a specified binding procedure to resolve, an original international conflict, or new international conflict, the Administrator, the Secretary of State of the United States, and appropriate officials of the government of the reciprocating state to which the other applicant involved in the conflict applied will use their good offices to assist the applicants to resolve the conflict. After November 16, 1982, any unresolved international conflicts will be resolved in accordance with paragraph (k) of this section.

(j) *Unresolved domestic conflict*—(1) *Procedure.* (i) In the case of an original domestic conflict or a new domestic conflict, the applicants will be allowed

until April 15, 1983, to resolve the conflict or agree in writing to submit the conflict to a specified binding conflict resolution procedure. If, by April 15, 1983, all applicants involved in an original or new domestic conflict have not resolved that conflict, or agreed in writing to submit the conflict to a specified binding conflict resolution procedure, the conflict will be resolved in a formal hearing held in accordance with Subpart I of 15 CFR Part 971, except that:

(A) The General Counsel of NOAA will not, as a matter of right, be a party to the hearing; however, the General Counsel may be admitted to the hearing by the administrative law judge as a party or as an interested person pursuant to 15 CFR 971.901 (f)(2) or (f)(3); and

(B) The administrative law judge will take such actions as he deems necessary and appropriate to conclude the hearing and transmit a recommended decision to the Administrator in an expeditious manner.

(ii) Notwithstanding the above, at any time on or after November 17, 1982, and on or before April 14, 1983, the applicants involved in the conflict may, by agreement, request the Administrator to resolve the conflict in a formal hearing as described above.

(2) *Decision principles for NOAA formal conflict resolution*. (i) The Administrator shall determine which applicant involved in a conflict between or among pre-enactment explorer applications or amendments shall be awarded all or part of each area in conflict.

(ii) The determination of the Administrator shall be based on the application of principles of equity which take into consideration, with respect to each applicant involved in the conflict, the following factors:

(A) The continuity and extent of activities relevant to each area in conflict and the application area of which it is a part;

(B) The date on which each applicant involved in the conflict, or predecessor in interest or component organization thereof, commenced activities at sea in the application area;

(C) The financial cost of activities relevant to each area in conflict and to the application area of which it is a part, measured in constant dollars;

(D) The time when the activities were carried out, and the quality of the activities; and

(E) Such additional factors as the Administrator determines to be relevant, but excluding consideration of the future work plans of the applicants involved in any conflict.

(iii) For the purposes of this paragraph (j) of this section, the word *activities* means the undertakings, commitments of resources investigations, findings, research, engineering development and other activities relevant to the identification, discovery, and systematic analysis and evaluation of hard mineral resources and to the determination of the technical and economic feasibility of commercial recovery.

(iv) When considering the factors specified in paragraph (j)(2)(ii) of this section, the Administrator shall hear, and shall (except for purposes of apportionment pursuant to paragraph (j)(2)(v) of this section) limit his consideration to, all evidence based on the activities specified in paragraph (j)(2)(ii) of this section which were conducted on or before January 1, 1982, *Provided, however,* That an applicant must prove at-sea activities in the area in conflict prior to June 28, 1980, as a pre-condition to presentation of further evidence to the Administrator regarding activities in the area in conflict.

(v) In making his determination, the Administrator may award the entire area in conflict to one applicant involved in the conflict, or he may apportion the area among any or all of the applicants involved in the conflict. If, after applying the principles of equity, the Administrator determines that the area in conflict should be apportioned, the Administrator shall (to the maximum extent practicable consistent with the Administrator's application of the principles of equity) apportion the area in a manner designed to satisfy the plan of work set forth in the application of each applicant which is awarded part of the area.

(vi) Each applicant involved in the conflict must file an amendment to its application if necessary to implement

the determination made by the Administrator.

(k) *Unresolved international conflicts.* (1) If, by November 17, 1982, all applicants involved in an original or new international conflict have not resolved that conflict, or agreed in writing to submit the conflict to a specified binding conflict resolution procedure, the applicants shall proceed in accordance with the conflict resolution procedures agreed to between the United States and its reciprocating states pursuant to section 118 of the Act.

(2) Each applicant whose application is involved in an international conflict shall be responsible for actions required in the conduct of the conflict resolution procedures, including bearing a proportional cost of implementing the procedures, representing himself in any proceedings, and assisting in the selection of arbitrators if necessary.

(l) *Continued opportunity for voluntary resolutions.* Each applicant may resolve any conflict by voluntary procedures at any time while that conflict persists.

(m) *Effect on priorities of new entrants.* (1) A pre-enactment explorer is entitled to a priority of right over a new entrant for any area in which the pre-enactment explorer has engaged in exploration prior to June 28, 1980 if, with respect to that area, the pre-enactment explorer files an application in accordance with this part on or after January 25, 1982 and on or before the closing date for pre-enactment explorer applications established under §970.301(b).

(2) Any amendment which is filed by a pre-enactment explorer on or before October 15, 1982, relates back to the date of filing of the original application and shall give the pre-enactment explorer priority of right over all new entrants if the amendment is accorded a pre-enactment explorer priority of right under paragraph (g) of this section.

[47 FR 24948, July 8, 1982, as amended at 54 FR 548, Jan. 6, 1989]

§970.303 Procedures for new entrants.

(a) *Filing of new entrant applications or amendments; priority of right.* New entrant applications or amendments must be filed in accordance with §970.200. A new entrant may file an application or amendment only at or after 1500 hours G.m.t. (11:00 a.m. EDT) January 3, 1983. All applications or amendments filed at that time shall be deemed to be filed simultaneously, and, if in accordance with §970.209, shall have priority of right over any application or amendment filed subsequently. Priority of right for any application or amendment filed after that time will be established as described in §970.209.

(b) *Conflicts.* (1) If a domestic conflict exists between or among new entrant applications or amendments, the applicants involved in the conflict shall resolve it.

(2) If an international conflict exists between or among new entrant applications or amendments, the conflict shall be resolved in accordance with applicable conflict resolution procedures agreed to between the United States and its reciprocating States pursuant to section 118 of the Act. The Administrator will provide each domestic applicant involved in an international conflict a copy of any such procedures in force when the Administrator issues notice to the applicant that an international conflict exists. Each applicant whose application is involved in an international conflict shall be responsible for actions required in the conduct of the conflict resolution procedures, including bearing a proportional cost of implementing the procedures, representing himself in any proceedings, and assisting in the selection of arbitrators if necessary.

§970.304 Action on portions of applications or amendments not in conflict.

If an applicant so requests, the Administrator will proceed in accordance with this part to review that portion of an area included in an application or amendment that is not involved in a conflict. However, the Administrator will proceed with such review only if the applicant advises the Administrator in writing that the applicant will continue to seek a license for the proposed exploration activities in the portion of the application area that is not in conflict. To the extent practicable, the deadlines for certification

of an application or amendment and issuance of a license provided in § 970.400 and § 970.500, respectively, will run from the date of filing of the original application.

Subpart D—Certification of Applications

SOURCE: 46 FR 45902, Sept. 15, 1981, unless otherwise noted.

§ 970.400 General.

(a) Certification is an intermediate step between receipt of an application for issuance or transfer of a license and its actual issuance or transfer. It is a determination which focuses on the eligibility of the applicant.

(b) Before the Administrator may certify an application for issuance or transfer of a license, he must determine that issuance of the license would not violate any of the restrictions in § 970.103(b). He also must make written determinations with respect to the requirements set forth in §§ 970.401 through 970.406. This will be done after consultation with other departments and agencies pursuant to § 970.211.

(c) To the maximum extent possible, the Administrator will endeavor to complete certification of an application within 100 days after submission of an application which is in full compliance with Subpart B of this part. If final certification or denial of certification has not occurred within 100 days after such submission of the application, the Administrator will inform the applicant in writing of the pending unresolved issues, the agency's efforts to resolve them, and an estimate of the time required to do so.

§ 970.401 Financial responsibility.

(a) Before the Administrator may certify an application for an exploration license he must find that the applicant has demonstrated that, upon issuance or transfer of the license, the applicant will be financially responsible to meet all obligations which he may require to engage in the exploration proposed in the application.

(b) In order for the Administrator to make this determination, the applicant must show to the Administrator's satisfaction that he is reasonably capable of committing or raising sufficient resources to carry out, in accordance with the provisions contained in this part, the exploration program set forth in his exploration plan.

§ 970.402 Technological capability.

(a) Before the Administrator may certify an application for an exploration license, he must find that the applicant has demonstrated that, upon issuance or transfer of the license, the applicant will possess, or have access to or a reasonable expectation of obtaining, the technological capability to engage in the proposed exploration.

(b) In order for the Administrator to make this determination, the applicant must demonstrate to the Administrator's satisfaction that the applicant will possess or have access to, at the time of issuance or transfer of the license, the technology and expertise, as needed, to carry out the exploration program set forth in his exploration plan.

§ 970.403 Previous license and permit obligations.

In order to certify an application, the Administrator must find that the applicant has satisfactorily fulfilled all past obligations under any license or permit previously issued or transferred to the applicant under the Act.

§ 970.404 Adequate exploration plan.

Before he may certify an application, the Administrator must find that the proposed exploration plan of the applicant meets the requirements of § 970.203.

§ 970.405 Appropriate exploration site size and location.

Before the Administrator may certify an application, he must approve the size and location of the exploration area selected by the applicant. The Administrator will approve the size and location of the area unless he determines that the area is not a logical mining unit pursuant to § 970.601.

§ 970.406 Fee payment.

Before the Administrator may certify an application, he must find that the applicant has paid the license fee as specified in § 970.208.

§970.407 Denial of certification.

(a) The Administrator may deny certification of an application if he finds that the requirements of this subpart have not been met. If, in the course of reviewing an application for certification, the Administrator becomes aware of the fact that one or more of the requirements for issuance or transfer under §§970.503 through 970.507 will not be met, he may also deny certification of the application.

(b) When the Administrator proposes to deny certification he will send to the applicant, and publish in the FEDERAL REGISTER, written notice of intention to deny certification. Such notice will include:

(1) The basis upon which the Administrator proposes to deny certification; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (the period of time may not exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny certification:

(1) On the 30th day after the date the notice is sent to the applicant, under paragraph (b) of this section, unless before such 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) of this section in which the applicant must correct a deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (c)(1) of this section is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of 15 CFR Part 971. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies certification, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying certification is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

[46 FR 45902, Sept. 15, 1981, as amended at 54 FR 547, Jan. 6, 1989]

§970.408 Notice of certification.

Upon making a final determination to certify an application for an exploration license, the Administrator will promptly send written notice of his determination to the applicant.

Subpart E—Issuance/Transfer/Terms, Conditions and Restrictions

SOURCE: 46 FR 45903, Sept. 15, 1981, unless otherwise noted.

§970.500 General.

(a) *Proposal.* After certification of an application pursuant to Subpart D of this part, the Administrator will proceed with a proposal to issue or transfer a license for the exploration activities described in the application.

(b)(1) *Terms, conditions and restrictions.* Within 180 days (or such longer period as the Administrator may establish for good cause shown in writing) after certification, the Administrator will propose terms and conditions for, and restrictions on, the proposed exploration which are consistent with the provisions of the Act and this part as set forth in §§970.517 through 970.524. Proposed and final terms, conditions and restrictions will be uniform in all licenses, except to the extent that differing physical and environmental conditions require the establishment of special terms, conditions and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The Administrator will propose these in writing to the applicant. Also, public notice thereof will be provided pursuant to §970.501, and they will be

included with the draft of the EIS on the issuance of a license which is required by section 109(d) of the Act.

(2) If the Administrator does not propose terms, conditions and restrictions within 180 days after certification, he will notify the applicant in writing of the reasons for the delay and will indicate the approximate date on which the proposed terms, conditions and restrictions will be completed.

(c) *Findings.* Before issuing or transferring an exploration license, the Administrator must make written findings in accordance with the requirements of §§970.503 through 970.507. These findings will be made after considering all information submitted with respect to the application and proposed issuance or transfer. He will make a final determination on issuance or transfer of a license, and will publish a final EIS on that action, within 180 days (or such longer period of time as he may establish for good cause shown in writing) following the date on which proposed terms, conditions and restrictions, and the draft EIS, are published.

ISSUANCE/TRANSFER; MODIFICATION/REVISION; SUSPENSION/REVOCATION

§ 970.501 Proposal to issue or transfer and of terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the FEDERAL REGISTER notice of each proposal to issue or transfer, and of terms and conditions for, and restrictions on, an exploration license. Subject to 15 CFR 971.802, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) The Administrator will hold a public hearing in an appropriate location and may employ such additional methods as he deems appropriate to inform interested persons about each proposal and to invite their comments thereon.

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of subpart I of 15 CFR part 971. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and of terms, conditions and restrictions for the license.

(c) Hearings held pursuant to this section will be consolidated insofar as practicable with hearings held by other agencies.

[46 FR 45903, Sept. 15, 1981, as amended at 54 FR 548, Jan. 6, 1989]

§ 970.502 Consultation and cooperation with Federal agencies.

Prior to the issuance or transfer of an exploration license, the Administrator will continue the consultation and cooperation with other Federal agencies which were initiated pursuant to §970.211. This consultation will be to assure compliance with, among other statutes, the Endangered Species Act of 1973, as amended, the Marine Mammal Protection Act of 1972, as amended, and the Fish and Wildlife Coordination Act. He also will consult, prior to any issuance, transfer, modification or renewal of a license, with any affected Regional Fishery Management Council established pursuant to section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852) if the activities undertaken pursuant to such license could adversely affect any fishery within the Fishery Conservation Zone, or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond such zone.

§ 970.503 Freedom of the high seas.

(a) Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not unreasonably interfere with the exercise of the freedoms of the high seas by other nations, as recognized under general principles of international law.

(b) In making this finding, the Administrator will recognize that exploration for hard mineral resources of the deep seabed is a freedom of the high seas. In the exercise of this right,

each licensee must act with reasonable regard for the interests of other nations in their exercise of the freedoms of the high seas.

(c)(1) In the event of a conflict between the exploration program of an applicant or licensee and a competing use of the high seas by another nation or its nationals, the Administrator, in consultation and cooperation with the Department of State and other interested agencies, will enter into negotiations with that nation to resolve the conflict. To the maximum extent possible the Administrator will endeavor to resolve the conflict in a manner that will allow both uses to take place in a manner in which neither will unreasonably interfere with the other.

(2) If both uses cannot be conducted harmoniously in the area subject to the exploration plan, the Administrator will decide whether to issue or transfer the license.

§970.504 International obligations of the United States.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States.

§970.505 Breach of international peace and security involving armed conflict.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

§970.506 Environmental effects.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application cannot reasonably be expected to result in a significant adverse effect on the quality of the environment, taking into account the analyses and information in any applicable EIS prepared pursuant to section 109(c) or 109(d) of the Act. This finding also will be based upon the considerations and approach in §970.701.

§970.507 Safety at sea.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not pose an inordinate threat to the safety of life and property at sea. This finding will be based on the requirements reflected in §§970.205 and 970.801.

§970.508 Denial of issuance or transfer.

(a) The Administrator may deny issuance or transfer of a license if he finds that the applicant or the proposed exploration activities do not meet the requirements of this part for the issuance or transfer of a license.

(b) When the Administrator proposes to deny issuance or transfer, he will send to the applicant, and publish in the FEDERAL REGISTER, written notice of such intention to deny issuance or transfer. Such notice will include:

(1) The basis upon which the Administrator proposes to deny issuance or transfer; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (the period of time may not exceed 180 days except as specified by the Administrator for good cause).

The FEDERAL REGISTER notice will not include the coordinates of the proposed exploration area.

(c) The Administrator will deny issuance or transfer:

(1) On the 30th day after the date the notice is sent to the applicant under paragraph (b) of this section, unless before such 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) of this section in which the applicant must correct a deficiency, if such deficiency has not been corrected before

such day and an administrative review requested pursuant to paragraph (c)(1) of this section is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with subpart I of 15 CFR part 971. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies issuance or transfer, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying issuance of a license is subject to judicial review as provided in chapter 7 of title 5, United States Code.

[46 FR 45903, Sept. 15, 1981, as amended at 54 FR 548, Jan. 6, 1989]

§ 970.509 Notice of issuance or transfer.

If the Administrator finds that the requirements of this part have been met, he will issue or transfer the license along with the appropriate terms, conditions and restrictions. Notification thereof will be made in writing to the applicant and in the FEDERAL REGISTER.

§ 970.510 Objections to terms, conditions and restrictions.

(a) The licensee may file a notice of objection to any term, condition or restriction in the license. The licensee may object on the grounds that any term, condition or restriction is inconsistent with the Act or this part, or on any other grounds which may be raised under applicable provisions of law. If the licensee does not file notice of an objection within the 60-day period immediately following the licensee's receipt of the notice of issuance or transfer under § 970.509, he will be deemed conclusively to have accepted the terms, conditions and restrictions in the license.

(b) Any notice of objection filed under paragraph (a) of this section must be in writing, must contain the precise legal basis for the objection, and must provide information relevant to any underlying factual issues deemed by the licensee as necessary to the Administrator's decision upon the objection.

(c) Within 90 days after receipt of the notice of objection, the Administrator will act on the objection and publish in the FEDERAL REGISTER, as well as provide to the licensee, written notice of his decision.

(d) If, after the Administrator takes final action on an objection, the licensee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with subpart I of 15 CFR part 971.

(e) Any final determination by the Administrator on an objection to terms, conditions or restrictions in a license after the formal hearing provided in paragraph (d) of this section is subject to judicial review as provided in chapter 7 of title 5, United States Code.

[46 FR 45903, Sept. 15, 1981, as amended at 54 FR 548, Jan. 6, 1989]

§ 970.511 Suspension or modification of activities; suspension or revocation of licenses.

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under subpart J of 15 CFR part 971, or in addition to the imposition of any fine under subpart J, suspend or revoke any license issued under this part, or suspend or modify any particular activities under such a license, if the licensee substantially fails to comply with any provision of the Act, this part, or any term, condition or restriction of the license; and

(2) Suspend or modify particular activities under any license, if the President determines that such suspension or modification is necessary:

(i) To avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States; or

(ii) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) will proceed pursuant to the procedures in 15 CFR 971.1003. Any action taken in accordance with paragraph (a)(2) will proceed pursuant to paragraphs (c) through (i) of this section, other than paragraph (h)(2).

(c) Prior to taking any action specified in paragraph (a)(2) of this section the Administrator will publish in the FEDERAL REGISTER, and send to the licensee, written notice of the proposed action. The notice will include:

(1) The basis of the proposed action; and

(2) If the basis for the proposed action is a deficiency which the Administrator believes the licensee can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (this period of time may not exceed 180 days except as specified by the Administrator for good cause).

(d) The Administrator will take the proposed action:

(1) On the 30th day after the date the notice is sent to the licensee, under paragraph (c) of this section, unless before such 30th day the licensee files with the Administrator a written request for an administrative review of the proposed action; or

(2) On the last day of the period established under paragraph (c)(2)(ii) of this section in which the licensee must correct the deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (d)(1) of this section is not pending or in progress.

(e) If a timely request for administrative review of the proposed action is made by the licensee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with subpart I of 15 CFR part 971. If the proposed action is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(f) The Administrator will serve on the licensee, and publish in the FEDERAL REGISTER, written notice of the action taken including the reasons therefor.

(g) Any final determination by the Administrator to take the proposed action is subject to judicial review as provided in chapter 7 of title 5, United States Code.

(h) The issuance of any notice of proposed action under this section will not affect the continuation of exploration activities by a licensee, except as provided in paragraph (i) of this section.

(i) The provisions of paragraphs (c), (d), (e) and (h) of this section will not apply when:

(1) The President determines by Executive Order that an immediate suspension of a license, or immediate suspension or modification of particular activities under such license, is necessary for the reasons set forth in paragraph (a)(2) of this section; or

(2) The Administrator determines that immediate suspension of such a license, or immediate suspension or modification of particular activities under a license, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life or property at sea, and the Administrator issues an emergency order in accordance with §971.1003(d)(4).

(j) The Administrator will immediately rescind the emergency order as soon as he has determined that the cause for the order has been removed.

[46 FR 45903, Sept. 15, 1981, as amended at 54 FR 548, Jan. 6, 1989]

§970.512 Modification of terms, conditions and restrictions.

(a) After issuance or transfer of any license, the Administrator, after consultation with interested agencies and the licensee, may modify any term, condition, or restriction in such license for the following purposes:

(1) To avoid unreasonable interference with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law.

This determination will take into account the provisions of § 970.503;

(2) If relevant data and other information (including, but not limited to, data resulting from exploration activities under the license) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea;

(3) To avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(4) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(b) The procedures for objection to the modification of a term, condition or restriction will be the same as those for objection to an original term, condition or restriction under § 970.510, except that the period for filing notice of objection will run from the receipt of notice of proposed modification. Public notice of proposed modifications under this section will be made according to § 970.514. On or before the date of publication of public notice, written notice will be provided to the licensee.

[46 FR 45903, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

§ 970.513 Revision of a license.

(a) During the term of an exploration license, the licensee may submit to the Administrator an application for a revision of the license or the exploration plan associated with it. NOAA recognizes that changes in circumstances encountered, and in information and technology developed, by the licensee during exploration may require such revisions. In some cases it may even be advisable to recognize at the time of filing the original license application that although the essential information for issuing or transferring a license as specified in §§ 970.201 through 920.208 must be included in such application, some details may have to be provided in the future in the form of a revision. In such instances, the Administrator may issue or transfer a license which would authorize exploration activities and plans only to the extent described in the application.

(b) The Administrator will approve such application for a revision upon a finding in writing that the revision will comply with the requirements of the Act and this part.

(c) A change which would require an application to and approval by the Administrator as a revision is a major change in one or more of:

(1) The bases for certifying the original application pursuant to §§ 970.401 through 970.406;

(2) The bases for issuing or transferring the license pursuant to §§ 970.503 through 970.507; or

(3) The terms, conditions and restrictions issued for the license pursuant to §§ 970.517 through 970.524.

A major change is one which is of such significance so as to raise a question as to:

(i) The applicant's ability to meet the requirements of the sections cited in paragraphs (c) (1) and (2) of this section; or

(ii) The sufficiency of the terms, conditions and restrictions to accomplish their intended purpose.

§ 970.514 Scale requiring application procedures.

(a) A proposal by the Administrator to modify a term, condition or restriction in a license pursuant to § 970.512, or an application by a licensee for revision of a license or exploration plan pursuant to § 970.513, is significant, and the full application requirements and procedures will apply, if it would result in other than an incidental:

(1) Increase in the size of the exploration area; or

(2) Change in the location of the area.

An incidental increase or change is that which equals two percent or less of the original exploration area, so long as such adjustment is contiguous to the licensed area.

(b) All proposed modifications or revisions other than described in paragraph (a) of this section will be acted on after a notice thereof is published by the Administrator in the FEDERAL REGISTER, with a 60-day opportunity for public comment. On a case-by-case basis, the Administrator will determine if other procedures, such as a

public hearing in a potentially affected area, are warranted. Notice of the Administrator's decision on the proposed modification will be provided to the licensee in writing and published in the FEDERAL REGISTER.

§970.515 Duration of a license.

(a) Each exploration license will be issued for a period of 10 years.

(b) If the licensee has substantially complied with the license and its associated exploration plan and requests an extension of the license, the Administrator will extend the license on terms, conditions and restrictions consistent with the Act and this part for a period of not more than 5 years.

In determining substantial compliance for purposes of this section, the Administrator may make allowance for deviation from the exploration plan for good cause, such as significantly changed market conditions. However, a request for extension must be accompanied by an amended exploration plan to govern the activities by the licensee during the extended period.

(c) Successive extensions may be requested, and will be granted by the Administrator, based on the criteria, and for the length of time, specified in paragraph (b) of this section.

§970.516 Approval of license transfers.

(a) The Administrator may transfer a license after a written request by the licensee. After a licensee submits such a request to the Administrator, the proposed transferee will be deemed an applicant for an exploration license, and will be subject to the requirements and procedures of this part.

(b) The Administrator will transfer a license if the proposed transferee and exploration activities meet the requirements of the Act and this part, and if the proposed transfer is in the public interest. The Administrator will presume that the transfer is in the public interest if it meets the requirements of the Act and this part. In case of mere change in the form or ownership of a licensee, the Administrator may waive relevant determinations for requirements for which no changes have occurred since the preceding application.

TERMS, CONDITIONS, AND RESTRICTIONS

§970.517 Diligence requirements.

The terms, conditions and restrictions in each exploration license must include provisions to assure diligent development. The Administrator will establish these pursuant to §970.602.

§970.518 Environmental protection requirements.

(a) Each exploration license must contain such terms, conditions and restrictions, established by the Administrator, which prescribe actions the licensee must take in the conduct of exploration activities to assure protection of the environment. The Administrator will establish these pursuant to §970.702.

(b) Before establishing the terms, conditions and restrictions pertaining to environmental protection, the Administrator will consult with the Administrator of the Environmental Protection Agency, the Secretary of State and the Secretary of the department in which the Coast Guard is operating. He also will take into account and give due consideration to the information contained in the final EIS prepared with respect to that proposed license.

§970.519 Resource conservation requirements.

For the purpose of conservation of natural resources, each license issued under this part will contain, as needed, terms, conditions and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the license area. The Administrator will establish these pursuant to §970.603.

§970.520 Freedom of the high seas requirements.

Each license issued under this part must include such restrictions as may be necessary and appropriate to ensure that the exploration activities do not unreasonably interfere with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law, such as fishing, navigation, submarine pipeline and

cable laying, and scientific research. The Administrator will consider the provisions in § 970.503 in establishing these restrictions.

§ 970.521 Safety at sea requirements.

The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, will require in any license issued under this part, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the license comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea. These requirements will be established with reference to subpart H of this part.

§ 970.522 Monitoring requirements.

Each exploration license must require the licensee:

(a) To allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the licensee in exploration activities to:

(1) Monitor such activities at such time, and to such extent, as the Administrator deems reasonable and necessary to assess the effectiveness of the terms, conditions, and restrictions of the license; and

(2) Report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply with such terms, conditions, and restrictions;

(b) To cooperate with such officers and employees in the performance of monitoring functions; and

(c) To monitor the environmental effects of the exploration activities in accordance with a monitoring plan approved and issued by the Administrator as license terms, conditions and restrictions, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects. This environmental monitoring plan and reporting will respond to the concerns and procedures discussed in Subpart G of this part.

§ 970.523 Special terms, conditions, and restrictions.

Although the general criteria and standards to be used in establishing terms, conditions, and restrictions for a license are set forth in this part, as referenced in §§ 970.517 through 970.522, the Administrator may impose special terms, conditions, and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea when required by differing physical and environmental conditions.

§ 970.524 Other Federal requirements.

Pursuant to § 970.211, another Federal agency, upon review of an exploration license application submitted under this part, may indicate how terms, conditions, and restrictions might be added to the license, to assure compliance with any law or regulation within that agency's area of responsibility. In response to the intent, reflected in section 103(e) of the Act, to reduce the number of separate actions to satisfy the statutory responsibilities of these agencies, the Administrator may include such terms, conditions, and restrictions in a license.

Subpart F—Resource Development Concepts

SOURCE: 46 FR 45907, Sept. 15, 1981, unless otherwise noted.

§ 970.600 General.

Several provisions in the Act relate to appropriate mining techniques or mining efficiency. These raise what could be characterized as resource development issues. In particular, under section 103(a)(2)(D) of the Act, the applicant will select the size and location of the area of an exploration plan, which will be approved unless the Administrator finds that the area is not a ''logical mining unit.'' Also, pursuant to section 108 of the Act the applicant's exploration plan and the terms, conditions and restrictions of each license must be designed to ensure diligent development. In addition, for the purpose of conservation of natural resources,

section 110 of the Act provides that each license is to contain, but only as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the resources.

§970.601 Logical mining unit.

(a) In the case of an exploration license, a logical mining unit is an area of the deep seabed which can be explored under the license, and within the 10-year license period, in an efficient, economical and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant as set forth in the exploration plan. In addition, it must be of sufficient size to allow for intensive exploration.

(b) Approval by the Administrator of a proposed exploration logical mining unit will be based on a case-by-case review of each application. In order to provide a proper basis for this evaluation, the applicant's exploration plan should describe the seabed topography, the location of mineral deposits and the nature of planned equipment and operations. Also, the exploration plan must show the relationship between the area to be explored and the applicant's plans for commercial recovery volume, to the extent projected in the exploration plan.

(c) In delineating an exploration area, the applicant need not include unmineable areas. Thus, the area need not consist of contiguous segments, as long as each segment would be efficiently mineable and the total proposed area constitutes a logical mining unit. In describing the area, the applicant must present the geodetic coordinates of the points defining the boundaries, referred to the World Geodetic System (WGS) Datum. A boundary between points must be a geodesic. If grid coordinates are desired, the Universal Transverse Mercator Grid System must be used.

(d) At the applicant's option, for the purpose of satisfying a possible obligation under a future Law of the Sea Treaty, the applicant may propose an exploration area which includes two exploration logical mining units. The applicant should specify in the application if this ''banking'' option is chosen, and any applicant choosing this option and filing an application based on pre-enactment exploration under §970.301 shall so notify the Administrator in accordance with §970.301(g).

(e) Applicants are advised that NOAA will not accept an application or issue a license for an exploration area larger than 150,000 square kilometers unless the applicant can demonstrate the necessity of a larger area based on factors such as topography, nodule abundance, distribution and ore grade. If the applicant elects to pursue the ''banking'' option described in paragraph (d) of this section, and wishes to apply for an exploration area larger than 150,000 square kilometers, the applicant must file a second application with respect to at least the area in excess of 150,000 square kilometers, unless the applicant justifies such excess area as part of a single application under the preceding sentence.

[46 FR 45907, Sept. 15, 1981, as amended at 47 FR 5968, Feb. 9, 1982]

§970.602 Diligent exploration.

(a) Each licensee must pursue diligently the activities described in his approved exploration plan. This requirement applies to the full scope of the plan, including environmental safeguards and monitoring systems. To help assure this diligence, terms, conditions and restrictions which the Administrator issues with a license will require such periodic reasonable expenditures for exploration by the licensee as the Administrator may establish, taking into account the size of the area of the deep seabed to which the exploration plan applies and the amount of funds which is estimated by the Administrator to be required during exploration for commercial recovery of hard mineral resources to begin within the time limit established by the Administrator. However, such required expenditures will not be established at a level which would discourage exploration by persons with less costly technology than is prevalently in use.

(b) In order to fulfill the diligence requirement, the applicant first must propose to the Administrator an estimated schedule of activities and expenditures pursuant to § 970.203(b) (3) and (6). The schedule must show, and the Administrator must be able to make a reasonable determination, that the applicant can complete his exploration activities within the term of the license. In this regard, there must be a reasonable relationship between the size of the exploration area and the financial and technological resources reflected in the application. Also, the exploration must clearly point toward developing the ability, by the end of the 10-year license period, to apply for and obtain a permit for commercial recovery.

(c) Ultimately, the diligence requirement will involve a retrospective determination by the Administrator, based on the licensee's reasonable conformance to the approved exploration plan. Such determination, however, will take into account the need for some degree of flexibility in an exploration plan. It also will include consideration of the needs and stage of development of each licensee, again based on the approved exploration plan. In addition, the determination will take account of legitimate periods of time when there is no or very low expenditure, and will allow for a certain degree of flexibility for changes encountered by the licensee in such factors as its resource knowledge and financial considerations.

(d) In order for the Administrator to make determinations on a licensee's adherence to the diligence requirements, the licensee must submit a report annually reflecting his conformance to the schedule of activities and expenditures contained in the license. In case of any changes requiring a revision to an approved license and exploration plan, the licensee must advise the Administrator in accordance with § 970.513.

§ 970.603 Conservation of resources.

(a) With respect to the exploration phase of seabed mining, the requirement for the conservation of natural resources, encompassing due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the area to which the license applies, may not be particularly relevant. Thus, since the Act requires such terms, conditions and restrictions only as needed, exploration licenses will require such provisions only as the Administrator deems necessary.

(b) NOAA views license phase mining system tests as an opportunity to examine, with industry, the conservation implications of any mining patterns used. Thus, in order to develop information needed for future decisions during commercial recovery, NOAA will include with a license a requirement for the submission of collector track and nodule production data. Only if information submitted reflects that the integrated system tests are resulting in undue waste or threatening the future opportunity for commercial recovery of the unrecovered balance of hard mineral resources will the Administrator modify the terms, conditions or restrictions pertaining to the conservation of natural resources, in order to address such problems.

(c) If the Administrator so modifies such terms, conditions and restrictions relating to conservation of resources, he will employ a balancing process in the consideration of the state of the technology being developed, the processing system utilized and the value and potential use of any waste, the environmental effects of the exploration activities, economic and resource data, and the national need for hard mineral resources.

Subpart G—Environmental Effects

SOURCE: 46 FR 45908, Sept. 15, 1981, unless otherwise noted.

§ 970.700 General.

Congress, in authorizing the exploration for hard mineral resources under the Act, also enacted provisions relating to the protection of the marine environment from the effects of exploration activities. For example, before the Administrator may issue a license, pursuant to section 105(a)(4) of the Act

he must find that the exploration proposed in an application cannot reasonably be expected to result in a significant adverse effect on the quality of the environment. Also, the Act requires in section 109(b) that each license issued by the Administrator must contain such terms, conditions and restrictions which prescribe the actions the licensee must take in the conduct of exploration activities to assure protection of the environment. Furthermore, the Act in section 105(c)(1)(B) provides for the modification by the Administrator of any term, condition or restriction if relevant data and other information indicates that modification is required to protect the quality of the environment. In addition, section 114 of the Act specifies that each license issued under the Act must require the licensee to monitor the environmental effects of the exploration activities in accordance with guidelines issued by the Administrator, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects.

§970.701 Significant adverse environmental effects.

(a) *Activities with no significant impact.* NOAA believes that exploration activities of the type listed below are very similar or identical to activities considered in section 6(c)(3) of NOAA Directives Manual 02–10, and therefore have no potential for significant environmental impact, and will require no further environmental assessment.

(1) Gravity and magnetometric observations and measurements;

(2) Bottom and sub-bottom acoustic profiling or imaging without the use of explosives;

(3) Mineral sampling of a limited nature such as those using either core, grab or basket samplers;

(4) Water and biotic sampling, if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species, or if permitted by the National Marine Fisheries Service or another Federal agency;

(5) Meteorological observations and measurements, including the setting of instruments;

(6) Hydrographic and oceanographic observations and measurements, including the setting of instruments;

(7) Sampling by box core, small diameter core or grab sampler, to determine seabed geological or geotechnical properties;

(8) Television and still photographic observation and measurements;

(9) Shipboard mineral assaying and analysis; and

(10) Positioning systems, including bottom transponders and surface and subsurface buoys filed in *Notices to Mariners.*

(b) *Activities with potential impact.* (1) NOAA research has identified at-sea testing of recovery equipment and the operation of processing test facilities as activities which have some potential for significant environmental impacts during exploration. However, the research has revealed that only the following limited effects are expected to have potential for significant adverse environmental impact.

(2) The programmatic EIS's documents three at-sea effects of deep seabed mining which cumulatively during commercial recovery have the potential for significant effect. These three effects also occur during mining system tests that may be conducted under a license, but are expected to be insignificant. These include the following:

(i) *Destruction of benthos in and near the collector track.* Present information reflects that the impact from this effect during mining tests under exploration licenses will be extremely small.

(ii) *Blanketing of benthic fauna and dilution of food supply away from mine site subareas.* The settling of fine sediments disturbed by tests under a license of scale-model mining systems which simulate commercial recovery could adversely affect benthic fauna by blanketing, diluation of their food supply, or both. Because of the anticipated slow settling rate of the sediments, the affected area could be quite large. However, research results are insufficient to conclude that this will indeed be a problem.

(iii) *Surface plume effect on fish larvae.* The impact of demonstration-scale

mining tests during exploration is expected to be insignificant.

(3) If processing facilities in the United States are planned to be used for testing during exploration, NOAA also will assess their impacts in the site-specific EIS developed for each license.

(c) *NOAA approach.* In making determinations on significant adverse environmental effects, the Administrator will draw on the above conclusions and other findings in NOAA's programmatic environmental statement and site-specific statements issued in accordance with the Act. He will issue licenses with terms, conditions and restrictions containing, as appropriate, environmental protection or mitigation requirements (pursuant to § 970.518) and monitoring requirements (pursuant to § 970.522). The focus of NOAA's environmental efforts will be on environmental research and on monitoring during mining tests to acquire more information on the environmental effects of deep seabed mining. If these efforts reveal that modification is required to protect the quality of the environment, NOAA then may modify terms, conditions and restrictions pursuant to § 970.512.

§ 970.702 Monitoring and mitigation of environmental effects.

(a) *Monitoring.* If an application is determined to be otherwise acceptable, the Administrator will specify an environmental monitoring plan as part of the terms, conditions and restrictions developed for each license. The plan will be based on the monotoring plan proposed by the applicant and reviewed by NOAA for completeness, accuracy and statistical reliability. This monitoring strategy will be devised to insure that the exploration activities do not deviate significantly from the approved exploration plan and to determine if the assessment of the plan's acceptability was sound. The monitoring plan, among other things, will include monitoring environmental parameters relating to verficiation of NOAA's findings concerning potential impacts, but relating mainly to the three unresolved concerns with the potential for significant environmental effect, as identified in § 970.701(b)(2). NOAA has developed a technical guidance document, which includes parameters pertaining to the upper and lower water column and operational aspects, which document will provide assistance in developing monitoring plans in consultation with applicants.

(b) *Mitigation.* Monitoring and continued research may develop information on future needs for mitigating environmental effects. If such needs are identified, terms, conditions and restrictions can be modified appropriately.

Subpart H—Safety of Life and Property at Sea

§ 970.800 General.

The Act contains requirements, in the context of several decisions, that relate to assuring the safety of life and property at sea. For instance, before the Administrator may issue a license, section 105(a)(5) of the Act requires that he find that the proposed exploration will not pose an inordinate threat to the safety of life and property at sea. Also, under section 112(a) of the Act the Coast Guard, in consultation with NOAA, must require in any license or permit issued under the Act, in conformity with principles of international law, that vessels documented in the United States and used in activities authorized under the license comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the safety of life and property at sea. In addition, under section 105(c)(1)(B) of the Act, the Administrator may modify terms, conditions and restrictions for a license if required to promote the safety of life and property at sea.

[46 FR 45909, Sept. 15, 1981]

§ 970.801 Criteria for safety of life and property at sea.

Response to the safety at sea requirements in essence will involve vessel inspection requirements. These inspection requirements may be identified by reference to present laws and regulations. The primary inspection statutes pertaining to United States flag vessels are: 46 U.S.C. 86 (Loadlines); 46 U.S.C. 395 (Inspection of seagoing barges over

100 gross tons); 46 U.S.C. 367 (Inspection of sea-going motor vessels over 300 gross tons); and 46 U.S.C. 404 (Inspection of vessels above 15 gross tons carrying freight for hire). All United States flag vessels will be required to meet existing regulatory requirements applicable to such vessels. This includes the requirement for a current valid Coast Guard Certificate of Inspection, as specified in §970.205. Being United States flag, these vessels will be under United States jurisdiction on the high seas and subject to domestic enforcement procedures. With respect to foreign flag vessels, the SOLAS 74 or SOLAS 60 certificate requirements or alternative IACS requirements, as specified in §970.205, apply.

[46 FR 45909, Sept. 15, 1981]

Subpart I—Miscellaneous

§970.900 Other applicable regulations.

The regulations in subparts H, I and J of 15 CFR part 971 are consolidated regulations and are applicable both to licenses under this part and to permits under 15 CFR part 971. The regulations in subparts H, I and J of part 971 govern records to be maintained and information to be submitted by licensees and permittees, public disclosure of documents received by NOAA, relinquishment and surrender of licenses and permits, amendment of regulations, competition of time, uniform hearing procedures, and enforcement under the Act.

[54 FR 548, Jan. 6, 1989]

Subparts J–W [Reserved]

Subpart X—Pre-enactment Exploration

§970.2401 Definitions.

(a) *Engage in exploration* means:

(1) To cause or authorize exploration to occur, including but not limited to a person's actions as a sponsor, principal, or purchaser of exploration services; or

(2) To conduct exploration on behalf of a person described in paragraph (a)(1) of this section.

[45 FR 76662, Nov. 20, 1980, as amended at 47 FR 5966, Feb. 9, 1982]

§970.2402 Notice of pre-enactment exploration.

(a) *General.* NOAA encourages any United States citizen who engaged in exploration for deep seabed hard mineral resources before June 28, 1980, to file not later than February 1, 1981, a written notice with the Administrator, in care of: The Director, Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, Department of Commerce, Page Building 1, Suite 410, 2001 Wisconsin Avenue, NW., Washington, DC 20235. Such notice shall not constitute an application for a license or permit and shall not confer or confirm any priority of right to any site.

(b) *Content of pre-enactment exploration Notice.* If a notice of exploration commenced prior to June 28, 1980, is filed pursuant to paragraph (a) it should be in writing and include the following:

(1) Names, addresses, and telephone numbers of the United States citizens responsible for exploration operations to whom notices and orders are to be delivered;

(2) A description of the citizen or citizens engaging in such exploration including:

(i) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(ii) The state of incorporation of state in which the partnership or other business entity is registered;

(iii) The name of registered agent and places of business;

(iv) Certification of essential and non-proprietary provisions in articles of incorporation, charter, or articles of association; and

(v) Membership of the association, partnership, or joint venture, including information about the participation of partners and joint venturers, and/or ownership of stock.

(3) A general description of the exploration activities conducted prior to June 28, 1980, including:

(i) The approximate date that the citizen, or predecessor in interest, commenced exploration activities;

(ii) A general estimate of expenditures made on the exploration program prior to June 28, 1980;

(iii) A statement of whether the citizen intends to file an application for an exploration license pursuant to section 101(b)(1)(A) of the Act after NOAA issues regulations implementing section 103(a) of the Act; and

(iv) A statement of whether the citizen intends to continue to engage in exploration as allowed by section 101(b) of the Act, pending a final determination on his application for an exploration license.

(c) *Exclusion of location information.* The information submitted in the notice of pre-enactment exploration required by this section shall *not* include the location of past or future exploration or prospective mine sites.

[45 FR 76662, Nov. 20, 1980]

Subpart Y—Pre-license Exploration

SOURCE: 45 FR 76662, Nov. 20, 1980, unless otherwise noted.

§ 970.2501 Notice of pre-license exploration voyages.

(a) *General.* Any United States citizen who schedules an exploration voyage to begin after November 20, 1980 shall file written notice with the Administrator which sets out:

(1) The name, address and telephone number of the citizen;

(2) The anticipated date of commencement of the voyage and its planned duration;

(3) The exploration activities to be carried out on the voyage, including a general description of the equipment and methods to be used, and an estimate of the anticipated extent of seabed disturbance and effluent discharge; and

(4) If the U.S. citizen has not filed a notice of pre-enactment exploration in accordance with § 970.2402, the information specified in § 970.2402(b).

(b) *When and where to file Notice of future exploration*—(1) *When.* (i) Except as allowed in paragraph (b)(2) of this section, the notice required by paragraph (a) of this section must be filed not later than 45 days prior to the date on which the exploration voyage is scheduled to begin.

(ii) With respect to filing of the information referred to in paragraph (a)(4) of this section, the filing dates specified in paragraph (b) of this section shall prevail over the date specified in § 970.2402(a).

(2) *Exception.* If an exploration voyage is scheduled to begin before January 5, 1981, the notice required by paragraph (a) of this section must be filed on or before December 22, 1980.

(3) *Where.* The notice required by paragraph (a) of this section must be filed in writing with the Administrator, at the address specified in § 970.2402(a) of this part.

§ 970.2502 Post voyage report.

Within 30 days of the conclusion of each exploration voyage, the United States citizen engaging in the voyage shall submit to NOAA a report containing any environmental data or information obtained during that voyage.

§ 970.2503 Suspension of exploration activities.

(a) The Administrator may issue an emergency order, either in writing or orally with written confirmation, requiring the immediate suspension of exploration activities or any particular exploration activity when, in his judgment, immediate suspension of such activity or activities is necessary to prevent a significant adverse effect on the environment. Upon receipt of notice of the emergency order, the United States citizen engaged in the exploration shall immediately cease the activity that is the subject of the emergency order. During any suspension NOAA will consult with the citizen engaged in the activity suspended concerning appropriate measures to remove the cause of suspension. A suspension may be rescinded at any time by written notice from the Administrator upon presentation of satisfactory evidence by the citizen that the activity will no longer threaten a significant adverse effect on the environment.

Subpart Z—Miscellaneous

§ 970.2601 Additional information.

Any United States citizen filing notice under § 970.2402 or § 970.2501 of this part shall provide such additional information as the Administrator may

require as necessary and appropriate to implement section 101 of the Act.

[45 FR 76662, Nov. 20, 1980]

PART 971—DEEP SEABED MINING REGULATIONS FOR COMMERCIAL RECOVERY PERMITS

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AUTHORITY: 30 U.S.C. 1401 *et seq.*

SOURCE: 54 FR 525, Jan. 6, 1989, unless otherwise noted.

Subpart A—General

§ 971.100 Purpose.

The purpose of this part is to implement the responsibilities and authorities of the Administrator of the National Oceanic and Atmospheric Administration (NOAA) pursuant to Public Law 96–283, the Deep Seabed Hard Mineral Resources Act (the Act), to issue to eligible United States citizens permits for the commercial recovery of deep seabed hard minerals.

§ 971.101 Definitions.

For purposes of this part, the term

(a) *Act* means the Deep Seabed Hard Mineral Resources Act (Pub. L. 96–283; 94 Stat. 553; 30 U.S.C. 1401 *et seq.*);

(b) *Administrator* means the Administrator of the National Oceanic and Atmospheric Administration, or the Administrator's designee;

(c) *Affected State* means any State with a coastal zone management program approved under Section 306 of the Coastal Zone Management Act, as amended, where coastal zone land and water uses are affected by the issuance of a commercial recovery permit under the provisions of the Act or this part;

(d) *Applicant* means an applicant for a commercial recovery permit pursuant to the Act and this part; as used in subparts H, I and J of this part, ''applicant'' also means an applicant for an exploration license pursuant to the Act and part 970 of the title. ''Applicant'' also means a proposed permit transferee;

(e) *Commercial recovery* means—

(1) Any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of marketing or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(2) If such recovered hard mineral resource will be processed at sea, such processing; and

(3) If the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(f) *Continental Shelf* means—

(1) The seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(2) The seabed and subsoil of similar submarine areas adjacent to the coast of islands;

(g) *Controlling interest*, for purposes of paragraph (v)(3) of this section, means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(h) *Deep seabed* means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside—

(1) The Continental Shelf of any nation; and

(2) Any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States;

(i) *Environment* or *environmental* as used in the definitions of ''irreparable harm'' and ''significant adverse environmental effect'' means or pertains to the deep seabed and ocean waters lying at and within the permit area, and in surrounding areas including transportation corridors to the extent that they might be affected by the commercial recovery activities, and the living and non-living resources of those areas;

(j) *Exploration* means—

(1) Any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of—

(i) The nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) The environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(2) The taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(k) *Hard mineral resource* means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals, at least one of which is manganese, nickel, cobalt, or copper;

(l) *Irreparable harm* means significant undesirable effects to the environment occurring after the date of the permit issuance which will not be reversed after cessation or modification of the activities authorized under the permit;

(m) *Licensee* means the holder of a license issued under NOAA regulations to engage in exploration;

(n) *NOAA* means the National Oceanic and Atmospheric Administration;

(o) *Permittee* means the holder of a permit issued or transferred under this part to engage in commercial recovery;

(p) *Person* means any United States citizen, any individual, and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(q) *Reciprocating state* means any foreign nation designated as such by the Administrator under section 118 of the Act;

(r) *Recovery plan* or *commercial recovery plan* means the plan submitted by an applicant for a commercial recovery permit pursuant to §971.203;

(s) *Significant adverse environmental effect* means: (1) Important adverse changes in ecosystem diversity, productivity, or stability of the biological communities within the environment; (2) threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms; or (3) important loss of aesthetic, recreational, scientific or economic values;

(t) *State agency* means the agency responsible for implementing the responsibilities of section 306(c)(5) under the Coastal Zone Management Act, as amended, and 15 CFR part 930;

(u) *United States* means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(v) *United States citizen* means—

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(3) Any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in paragraph (v)(1) or (v)(2).

§971.102 Nature of permits.

(a) A permit issued under this part authorizes the holder thereof to engage in commercial recovery within a specific portion of the sea floor consistent with the provisions of the Act and this part and consistent with the specific terms, conditions, and restrictions (TCRs) applied to the permit by the Administrator.

(b) A permit issued under this part is exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(c) A valid existing license under 15 CFR part 970 will entitle the holder, if otherwise eligible under the provisions of the Act and implementing regulations, to a permit for commercial recovery from an area selected from within the license area. Such a permit will recognize the right of the holder to recover hard mineral resources, and to own, tranport, use, and sell hard mineral resources recovered under the permit and in accordance with the requirements of the Act and this part.

§ 971.103 Prohibited activities and restrictions.

(a) *Prohibited activities and exceptions.*

(1) No United States citizen may engage in any commercial recovery unless authorized to do so under—

(i) A permit issued pursuant to the Act and implementing regulations;

(ii) A license, permit or equivalent authorization issued by a reciprocating state; or

(iii) An international agreement which is in force with respect to the United States.

(2) The prohibitions of paragraph (a)(1) of this section do not apply to any of the following activities:

(i) Scientific research, including that concerning hard mineral resources;

(ii) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the seabed or significantly affect the environment;

(iii) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction or testing is conducted onshore, or does not involve the recovery of any but incidental hard mineral resources;

(iv) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under the Act and implementing regulations, a license or permit or equivalent authorization issued by a reciprocating state, or any relevant international agreement; and

(v) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(3) No United States citizen may interfere or participate in interference with any activity conducted by any permittee which is authorized to be undertaken under a permit issued by the Administrator to a permittee under the Act or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the commercial recovery of hard mineral resources. For purposes of this section, interference includes physical interference with activities authorized by the Act, this part, and a license or permit issued pursuant thereto; the filing of a specious claim in the United States or any other nation; and any other activity designed to harass, or which has the effect of harassing, persons conducting deep seabed mining activities authorized by law. Interference does not include the exercise of any superior rights granted to United States citizens by the Constitution of the United States, or any Federal or State law, treaty, or agreement or regulation promulgated pursuant thereto.

(4) United States citizens shall exercise their rights on the high seas with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

(b) *Restrictions on issuance of permits.* The Administrator will not issue any permit—

(1) After the date on which any relevant international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of the permit is not inconsistent with that agreement.

(2) The recovery plan of which, submitted pursuant to the Act and implementing regulations, would apply to an area to which applies, or would conflict with:

(i) Any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under 15 CFR part 970 or this part;

(ii) Any exploration plan or recovery plan associated with any existing license or permit; or

(iii) An equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to the Act and implementing regulations;

(3) Authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to a person other than the licensee for such area;

(4) Which authorizes commercial recovery to commence before January 1, 1988;

(5) The recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for that permit:

(i) The applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant; or

(ii) A permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106 of the Act;

(6) Or approve the transfer of a permit, except to a United States citizen; or

(7) That would authorize commercial recovery activities in an area other than for which the applicant therefore holds a valid exploration license under part 970 of this title.

§971.104 OMB control number.

The information collection requirements and reporting and recordkeeping requirements contained in this part were approved by the Office of Management and Budget under control number 0648–0170.

Subpart B—Applications

§971.200 General.

(a) *Who may apply; how.* Any United States citizen holding a valid exploration license may apply to the Administrator for issuance of a commercial recovery permit for all or part of the area to which the license applies. Any holder of a commercial recovery permit may apply to the Administrator for transfer of the permit. Applications must be submitted in the form and manner described in this subpart.

(b) *Place, form and copies.* An application for the issuance or transfer of a commerical recovery permit must be in writing, verified and signed by an authorized officer or other authorized representative of the applicant. The application and 25 copies thereof must be submitted to:

Ocean Minerals and Energy Division, Office of Ocean and Coatal Resource Management, National Oceanic and Atmospheric Administration, Suite 710, 1825 Connecticut Avenue, NW., Washington, DC 20235.

The Administrator may waive in whole or in part, at his discretion, the requirement that 25 copies of an application be filed with NOAA.

(c) *General contents.* The application must contain a proposed commerical recovery plan and the financial, technical, environmental and other information specified in this part, which in total are necessary for the Administrator to make the determinations required by the Act and this part. Although the ultimate standards for determinations under these rules are identical for both transferees and original preexisting licensees, NOAA anticipates that applicants who are transferees will have to supply more information with the application than licensees will [see subsection (e) in this section].

(d) *Identification of requirements.* Each portion of the application should identify the requirements of this part to which it responds.

(e) *Information previously submitted in connection with an exploration license.* Information previously submitted as part of an exploration license application, as well as information submitted during the course of license activities

(such as data included in annual reports to NOAA), may be incorporated in the commercial recovery permit application by reference.

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in its application not be subject to public disclosure, it must so request, at the time of submitting the information, pursuant to § 971.802 which will govern disposition of the request.

(g) *Pre-application consultation.* The Administrator will make NOAA staff available to potential applicants for pre-application consultations on how to respond to the provisions of this part. In appropriate circumstances, the Administrator will provide written confirmation to the applicant of oral guidance resulting from such consultations. Such consultation is required for the purpose of § 971.207. The applicant is encouraged to consult with affected States as early as is practicable [see also §§ 971.213 and 971.606(b)].

(h) *Compliance with Federal consistency requirements.* An applicant for a commercial recovery permit must comply with all necessary requirements, including procedures, pursuant to 15 CFR part 930, subpart D. Applications and other necessary data and information must be transmitted to the designated State agency as prescribed under 15 CFR 930.50.

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§ 971.201 Statement of financial resources.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator pursuant to § 971.301 that, upon issuance or transfer of the permit, the applicant will have access to the financial resources to carry out, in accordance with this part, the commercial recovery program set forth in the applicant's commercial recovery plan.

(b) *Specific.* In particular, the information on financial resources is expected to be general in nature but must include the likely sources and timing of funds to meet the applicant's scheduled expenditures in the recovery plan. These sources may include cash flow, reserves, and outside funding.

§ 971.202 Statement of technological experience and capabilities.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator pursuant to § 971.301 that, upon issuance or transfer of the permit, the applicant will have the technological capability to carry out, in accordance with the regulations contained in this part, the commercial recovery program set out in the applicant's commercial recovery plan.

(b) *Specific.* In particular, the information submitted pursuant to this section must describe the equipment, knowledge, and skills the applicant possesses, or to which it can demonstrate access [see § 971.200(e)]. The information must include:

(1) A description of the technology or the equipment and methods to be used by the applicant in carrying out each step in the mining process, including nodule collection, retrieval, transfer to ship, environmental monitoring, transport to processing facilities, nodule processing, waste disposal and compliance with applicable water quality standards. The description must include:

(i) An analysis of the performance of experimental systems, sub-systems, or analogous machinery;

(ii) The rationale for extrapolating from test results to commercial mining. The more test data offered with the application the less analysis will be expected; and

(iii) Anticipated system reliability within the context of anticipated production time lost through equipment failure.

(2) A functional description of the types of technical persons on whom the applicant will rely to operate its equipment.

§ 971.203 Commercial recovery plan.

(a) *General.* The application must include a proposed commercial recovery plan which describes the applicant's projected commercial recovery activities, in a general way, for the twenty year period to be covered by the proposed permit. Although preliminary and subject to change, the plan must be more detailed for that portion of the

permit term leading up to the initiation of commercial recovery. The plan must include sufficient information for the Administrator, pursuant to this part, to make the necessary determinations pertaining to the certification and issuance or transfer of a permit and to the development and enforcement of the TCRs for a permit.

(b) *Specific.* The plan must include:

(1) A description of the activities proposed to be carried out during the period of the permit;

(2) The intended schedule of commercial recovery (see ''Diligent commercial recovery,'' §971.503);

(3) Environmental safeguards and monitoring systems, which must take into account requirements under subpart F of this part, including best available technologies (BAT) (§971.604) and monitoring (§971.603);

(4) Details of the area or areas proposed for commercial recovery, which meet requirements for diligence (§971.503) and conservation of resources pursuant to subpart E (especially §971.502);

(5) A resource assessment of the area or areas proposed for commercial recovery which meets the requirements for resource assessment and logical mining unit (§971.501);

(6) A description of the methods and technology to be used for commercial recovery and processing (see §971.202(b)(1)); and

(7) The methods to be used for disposal of wastes from recovery and processing, including the areas for disposal and identification of any toxic substances in wastes.

§971.204 Environmental and use conflict analysis.

(a) *Environmental information submission.* The application must be supported by sufficient marine environmental information for the Administrator to prepare an environmental impact statement (EIS) on the proposed mining activities, and to determine the appropriate permit TCRs based on environmental characteristics of the requested minesite. The Administrator may require the submission of additional data, in the event he determines that the basis for a suitable EIS, or a determination of appropriate TCRs, is not available.

(b)(1) In preparing the EIS, the Administrator will attempt to characterize the environment in such a way as to provide a basis for judging the potential for significant adverse effects or irreparable harm triggered by commercial mining (see subpart F). In compiling these data, the Administrator will utilize existing information including the relevant license EIS, additional exploration data acquired by the applicant, and other data in the public domain.

(2) The EIS must present adequate physical, chemical, and biological information for the permit area. If the permit area lies within the area of NOAA's Deep Ocean Mining Environmental Study (DOMES), the parameters listed in NOAA's Technical Guidance Document pertaining to the upper and lower water column should be included. Specifically, these parameters include:

(i) Upper water column—

Nutrients
Endangered species
Salinity, temperature, density
Currents.

(ii) Lower water column and seafloor—

Currents
Suspended particulate matter dispersion
Sediment characteristics (mineralogy, particle size, shape and density, and water content)
Topography
Benthos.

(3) For a permit area outside the DOMES area, the applicant is encouraged to consult with NOAA at the earliest opportunity in order to determine the specific parameters to be measured based on the location and specific environmental characteristics of the permit area. The Administrator, in consultation with the Administrator of the Environmental Protection Agency and with the assistance of other appropriate Federal agencies, may determine that a programmatic EIS is required for any new area.

(c) The application must include a monitoring plan for test mining and at-sea commercial recovery activities

which meets the objectives and requirements of § 971.603.

(d) *Use conflict analysis.* The application must include information known to the applicant on other uses of the proposed mining area to support the Administrator's determination regarding potential use conflicts between commercial mining activities and those activities of other nations or of other U.S. citizens.

(e) *Onshore information.* Because of NEPA requirements, the Administrator must include in the EIS on the proposed permit the complete spectrum of activities resulting from the issuance of a permit. Therefore, onshore information including the location and operation of nodule processing facilities must be submitted with the application in accordance with the details in § 971.606.

§ 971.205 Vessel safety and documentation.

In order to provide a basis for the necessary determinations with respect to the safety of life and property at sea, pursuant to § 971.407, § 971.422 and Subpart G of this part, the application must contain the following information for vessels used in commercial recovery, except for those vessels under 300 gross tons which are engaged in oceanographic research:

(a) *U.S. flag vessel.* All mining ships and at least one of the transport ships used by each permittee must be documented under the laws of the United States. To the extent that the applicant knows which United States flag vessels it will use, it must include with its application copies of the vessels' current valid Coast Guard Certificates of Inspection.

(b) *Foreign flag vessels.* To the extent that the applicant knows which foreign flag vessel(s) it will be using for other purposes, the application must include evidence of the following:

(1) That any foreign flag vessel whose flag state is party to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) possesses current valid SOLAS 74 certificates;

(2) That any foreign flag vessel whose flag state is not party to SOLAS 74 but is party to the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) possesses current valid SOLAS 60 certificates; and

(3) That any foreign flag vessel whose flag state is not a party to either SOLAS 74 or SOLAS 60 meets all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies (IACS).

(c) *Supplemental certificates.* If the applicant does not know at the time of submitting an application which vessels it will be using, it must submit the applicable certification for each vessel before the cruise on which it will be used.

§ 971.206 Statement of ownership.

(a) *General.* The application must include sufficient information to demonstrate that the applicant is a United States citizen.

(b) *Specific.* In particular, the application must include:

(1) Name, address, and telephone number of the United States citizen responsible for commercial recovery operations;

(2) A description of the citizen or citizens engaging in commercial recovery, including:

(i) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(ii) The state of incorporation or state in which the partnership or other business entity is registered;

(iii) The name and place of business of the registered agent or equivalent representative to whom notices and orders are to be delivered;

(iv) Copies of all essential and nonproprietary provisions in articles of incorporation, charter or articles of association; and

(v) The name of each member of the association, partnership, or joint venture, including information about the participation and/or ownership of stock of each partner or joint venturer.

§ 971.207 Antitrust information.

In order to support the antitrust review referenced in § 971.211, the application must contain information sufficient, in the applicant's view and based

on preapplication consultations pursuant to §971.200(g), to identify the applicant and describe any significant existing market share it has with respect to the mining or marketing of the metals proposed to be recovered under the permit.

§971.208 Fee.

(a) *General.* Section 104 of the Act provides that no application for the issuance or transfer of a permit will be certified unless the applicant pays to NOAA an administrative fee which reflects the reasonable administrative costs incurred in reviewing and processing the application.

(b) *Amount.* A fee payment of $100,000, payable to the National Oceanic and Atmospheric Administration, Department of Commerce, must accompany each application. If the administrative costs of reviewing and processing the application are significantly less than or in excess of $100,000, the Administrator, after determining the amount of the under- or over-charge, as applicable, will refund the difference or require the applicant to pay the additional amount before issuance or transfer of the permit. In the case of an application for transfer of a permit to, or for a significant change to a permit held by, an entity which has previously been found qualified for a permit, the Administrator may reduce the fee in advance by an appropriate amount which reflects costs avoided by reliance on previous findings made in relation to the proposed transferee.

§971.209 Processing outside the United States.

(a) Except as provided in this section and §971.408, the processing of hard minerals recovered pursuant to a permit shall be conducted within the U.S., provided that the President or his designee does not determine that this restriction contravenes the overriding national interests of the United States.

(b) If foreign processing is proposed, the applicant shall submit a justification demonstrating the basis for a finding pursuant to §971.408(a)(1). The justification shall include an analysis of each factor which the applicant considers essential to its conclusion that processing at a site within the U.S. is not economically viable.

(c) If the Administrator determines that the justification provided by the applicant is insufficient, or if the Administrator receives during the public comment or hearing period what the Administrator determines to be a serious alternative U.S. processing site proposal, the Administrator may require the applicant to supply, within a specified reasonable time, additional information relevant to the §971.408(a)(1) finding.

(d) The applicant must include in its application satisfactory assurances that such resources after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use if the Administrator determines pursuant to §971.408 that the national interest necessitates such return. Assurances must include proposed arrangements with the host country.

PROCEDURES

§971.210 Determination whether application is complete for further processing.

Upon receipt of an application, the Administrator will review it to determine whether it includes information specifically identifiable with and fully responsive to each requirement in §971.201 through §971.209. The Administrator will notify the applicant whether the application is complete within 60 days after it is received. The notice will identify, if applicable, in what respects the application is not complete, and will specify the information which the applicant must submit in order to make it complete, why the additional information is necessary, and a reasonable date by which the application must be completed. Application processing will not begin until the Administrator determines that the application is complete.

§971.211 Consultation and cooperation with Federal agencies.

(a) Promptly after receipt of an application that the Administrator has determined pursuant to §971.210 is complete, the Administrator will distribute

a copy of the application to every Federal agency or department which, pursuant to section 103(e) of the Act, has identified programs or activities within its statutory responsibilities which would be affected by the activities proposed in the application (e.g., the Departments of State, Transportation, Justice, Interior, Defense, Treasury and Labor, as well as the Environmental Protection Agency, Federal Trade Commission, International Trade Administration and National Science Foundation). Based on its legal responsibilities and authorities, each such agency or department may, not later than 60 days after it receives a copy of the application, recommend certification of the application, issuance or transfer of the permit, or denial of such certification, issuance or transfer. The advice or recommendation by the Attorney General or Federal Trade Commission on antitrust review, pursuant to section 103(d) of the Act, must be submitted within 90 days after their receipt of a copy of the application.

(b) NOAA will use this process of consultation and cooperation to facilitate necessary Federal decisions on proposed commercial recovery activities, pursuant to the mandate of section 103(e) of the Act to reduce the number of separate actions required to satisfy Federal agencies' statutory responsibilities. The Administrator will not issue or transfer the permit during the 90 day period after receipt by the Attorney General and the Federal Trade Commission except upon written confirmation of the Attorney General and the Federal Trade Commission that neither intends to submit further comments or recommendations with respect to the application.

(c) In any case in which a Federal agency or department recommends a denial, it must set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and how the application may be amended, or how TCRs might be added to the permit, to assure compliance with such law or regulation.

(d) NOAA will cooperate with such agencies and with the applicant with the goal of resolving any concerns raised and satisfying the statutory responsibilities of these agencies.

(e) If the Administrator decides to issue or transfer a permit with respect to which denial of the issuance or transfer has been recommended by the Attorney General or the Federal Trade Commission, or to issue or transfer a permit without imposing TCRs recommended by the Attorney General or the Federal Trade Commission, as appropriate, the Administrator will, before or at issuance or transfer of the permit, notify the Attorney General and the Federal Trade Commission of the reasons for his decision.

§ 971.212 Public notice, hearing and comment.

(a) *Notice and comments.* The Administrator will publish in the FEDERAL REGISTER, for each complete application for issuance or transfer of a commercial recovery permit, notice that the application has been received. Subject to § 971.802, interested persons will be allowed to examine the materials relevant to the application, and will have at least 60 days after publication of notice to submit written comments to the Administrator.

(b) *Hearings.* After preparation of the draft environmental impact statement (EIS) on an application, the Administrator will hold a public hearing on the application and the draft EIS in an appropriate location and may employ additional methods he/she deems appropriate to inform interested persons about each application and to invite comments thereon. A hearing will be conducted in any State in which a processing plant or any of its ancillary facilities (such as a marine terminal or a waste disposal facility) are proposed to be located.

(c) If the Administrator determines there exist one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of Subpart I of this part. The record developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

(d) Hearings held pursuant to this section and other procedures will be

consolidated, if practicable, with hearings held and procedures employed by other Federal and State agencies.

§971.213 Amendment to an application.

After an application has been submitted to the Administrator, but before a determination is made on the issuance or transfer of a permit, the applicant must submit an amendment to the application if there is a significant change in the circumstances represented in the original application which affects the requirements of this subpart. Applicants should consult with NOAA to determine if changes in circumstances are sufficiently significant to require submission of an amendment. The application, as amended, would then serve as the basis for determinations by the Administrator under this part. For each amendment judged by the Administrator to be significant, the Administrator will provide a copy of that amendment to each other Federal agency and department which received a copy of the original application, and also will provide for public notice, hearing and comment on the amendment pursuant to §971.212. After the issuance or transfer of a permit, any revision of the permit will be made pursuant to §971.413. Any amendment or modification which would cause coastal zone effects substantially different than those originally reviewed by the state agency would be subject to Federal consistency review as prescribed in 15 CFR part 930.

§971.214 Consolidated license and permit procedures. [Reserved]

Subpart C—Certification of Applications

§971.300 General.

(a) Certification is an intermediate step between receipt of an application for issuance or transfer of a permit and actual issuance or transfer. It is a determination which focuses on the eligibility of the applicant.

(b) Before the Administrator may certify an application for issuance or transfer of a permit, the Administrator must determine that issuance of the permit would not violate any of the restrictions in §971.103(b). The Administrator also must make written determinations with respect to the requirements with respect to the requirements set forth in §971.301.

(c) To the maximum extent possible, the Administrator will endeavor to complete certification within 100 days after receipt of a complete application. If final certification or denial of certification has not occurred within 100 days after receipt of the application, the Administrator will inform the applicant in writing of the pending unresolved issues, the efforts to resolve them, and an estimate of the time required to do so.

§971.301 Required findings.

Before the Administrator may certify an application for a commercial recovery permit, the Administrator must:

(a) Approve the size and location of the commercial recovery area selected by the applicant, and this approval will occur unless the Administrator determines that (1) the area is not a logical mining unit under §971.501, or (2) commercial recovery activities in the proposed area would result in a significant adverse environmental effect which cannot be avoided by imposition of reasonable restrictions; and

(b) Find that the applicant—

(1) Has demonstrated that, upon issuance or transfer of the permit, the applicant will be financially responsible to meet all obligations which may be required to engage in its proposed commercial recovery activities;

(2) Has demonstrated that, upon permit issuance or transfer, it will possess, or have access to, the technological capability to engage in the proposed commercial recovery;

(3) Has satisfactorily fulfilled all past obligations under any license or permit previously issued or transferred to the applicant under the Act;

(4) Has a commercial recovery plan which meets the requirements of §971.203; and

(5) Has paid the permit fee specified in §971.208.

§ 971.302 Denial of certification.

(a) The Administrator may deny certification of an application if the Administrator finds that the requirements of this subpart, or the requirements for issuance or transfer under § 971.403 through § 971.408, have not been met.

(b) When the Administrator proposes to deny certification the Administrator will send to the applicant, via certified mail, return receipt requested, and publish in the FEDERAL REGISTER, written notice of intention to deny certification. The notice will include:

(1) The basis upon which the Administrator proposes to deny certification; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny certification:

(1) On the 30th day after the date the notice is received by the applicant, under paragraph (b) of the section, unless before the 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) in which the applicant must correct a deficiency, if that deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (c)(1) is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies certification, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying certification is subject to judicial review as provided in chapter 7 of title 5, United States Code.

§ 971.303 Notice of certification.

Upon making a final determination to certify an application for a commercial recovery permit, the Administrator will promptly send written notice of the determination to the applicant.

Subpart D—Issuance/Transfer: Terms, Conditions and Restrictions

§ 971.400 General.

(a) *Proposal.* After certification of an application pursuant to subpart C of this part, the Administrator will proceed with a proposal to issue or transfer a permit for the commercial recovery activities described in the application.

(b) *Terms conditions and restrictions.* (1) Within 180 days after certification (or such longer period as the Administrator may establish for good cause shown in writing), the Administrator will propose terms and conditions for, and restrictions on, the proposed commercial recovery which are consistent with the provisions of the Act and this part as set forth in § 971.418 through § 971.430. Proposed and final TCRs will be uniform in all permits, except to the extent that differing physical and environmental conditions and/or mining methods require the establishment of special TCRs for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The Administrator will propose TCRs in writing to the applicant, and public notice thereof will be provided pursuant to § 971.401. The proposed TCRs will be included with the draft of the EIS on permit issuance.

(2) If the Administrator does not propose TCRs within 180 days after certification, the Administrator will notify the applicant in writing of the reasons for delay and of the approximate date

on which the proposed TCRs will be completed.

(c) *Findings.* Before issuing or transferring a commercial recovery permit, the Administrator must make written findings in accordance with the requirements of §971.403 through §971.408. These findings will be made after considering all information submitted with respect to the application and proposed issuance or transfer. The Administrator will make a final determination of issuance or transfer of a permit, and will publish a final EIS on that action, within 180 days (or such longer period of time as the Administrator may establish for good cause shown in writing) following the date on which proposed TCRs and the draft EIS are published.

ISSUANCE/TRANSFER, MODIFICATION/REVISION; SUSPENSION/REVOCATION

§971.401 Proposal to issue or transfer and proposed terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the FEDERAL REGISTER notice of each proposal to issue or transfer, including notice of a draft EIS, and of proposed terms and conditions for, and restrictions on, a commercial recovery permit that will be included with the draft EIS [see §971.400(b)]. Subject to §971.802, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons and affected States will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) The Administrator will hold the public hearing(s) required by §971.212(b) in an appropriate location and may employ such additional methods as he deems appropriate to inform interested persons about each proposal and to invite their comments thereon. A copy of the notice and draft EIS will be provided to the affected State agency. Information provided by NOAA may be used to supplement information provided by the applicant, however it will not affect schedules for State agency review and decisions with respect to consistency determinations as required in 15 CFR part 930, subpart D.

(2) If the Administrator determines there exist one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing, which may be consolidated with a hearing held by another agency, will be held in the District of Columbia metropolitan area in accordance with the provisions of subpart I of this part. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and on TCRs for, the permit.

§971.402 Consultation and cooperation with Federal and State agencies.

Before issuance or transfer of a commercial recovery permit, the Administrator will conclude any consultations in cooperation with other Federal and State agencies which were initiated pursuant to §§971.211 and 971.200(g). These consultations will be held to assure compliance with, as applicable and among other statutes, the Endangered Species Act of 1973, as amended, the Marine Mammal Protection Act of 1972, as amended, the Fish and Wildlife Coordination Act, and the Coastal Zone Management Act of 1972, as amended. The Administrator also will consult, before any issuance, transfer, modification or renewal of a permit, with any affected Regional Fishery Management Council established pursuant to section 302 of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852) if the activities undertaken pursuant to the permit could adversely affect any fishery within the Fishery Conservation Zone (now known as the Exclusive Economic Zone), or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond that zone.

§971.403 Freedom of the high seas.

(a) Before issuing or transferring a commercial recovery permit, the Administrator must find the recovery proposed in the application will not unreasonably interfere with the exercise of the freedoms of the high seas by other nations, as recognized under general principles of international law.

(b) In making this finding, the Administrator will recognize that commercial recovery of hard mineral resources of the deep seabed is a freedom of the high seas. In the exercise of this right, each permittee shall act with reasonable regard for the interests of other nations in their exercise of the freedoms of the high seas.

(c)(1) In the event of a conflict between the commercial recovery program of an applicant or permittee and a competing use of the high seas by another nation or its nationals, the Administrator, in consultation and cooperation with the Department of State and other interested agencies, will enter into negotiations with that nation to resolve the conflict. To the maximum extent possible the Administrator will endeavor to resolve the conflict in a manner that will allow both uses to take place such that neither will unreasonably interfere with the other.

(2) If both uses cannot be conducted harmoniously in the area subject to the recovery plan, the Administrator will decide whether to issue or transfer the permit.

§ 971.404 International obligations of the United States.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States.

§ 971.405 Breach of international peace and security involving armed conflict.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the recovery proposed in the application will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

§ 971.406 Environmental effects.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse environmental effect, taking into account the analyses and information in any applicable EIS and any TCRs associated with the permit. This finding also will be based upon the requirements in subpart F. However, as also noted in subpart F, if a determination on this question cannot be made on the basis of available information, and it is found that irreparable harm will not occur during a period when an approved monitoring program is undertaken to further examine the significant adverse environmental effect issue, a permit may be granted, subject to modification or suspension and, if necessary and appropriate, revocation pursuant to § 971.417(a), or subject to emergency suspension pursuant to § 971.417(h).

§ 971.407 Safety at sea.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application will not pose an inordiante threat to the safety of life and property at sea. This finding will be based on the requirements in § 971.205 and subpart G.

§ 971.408 Processing outside the United States.

(a) Before issuing or transferring a commercial recovery permit which authorizes processing outside the U.S., the Administrator must find, after the opportunity for an agency hearing required by § 971.212(b), that:

(1) The processing of the quantity concerned of hard mineral resource at a place other than within the United States is necessary for the economic viability of the commercial recovery activities of the permittee; and

(2) Satisfactory assurances have been given by the permittee that such resources, after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use, if the Administrator so requires after determining that the national interest necessitates such return.

(b) At or after permit issuance the Administrator may determine, or revise a prior determination, that the national interest necessitates return to the U.S. of a specified amount of hard mineral resource recovered pursuant to the permit and authorized to be processed outside the United States. Considerations in making this determination may include:

(1) The national interest in an adequate supply of minerals;

(2) The foreign policy interests of the United States; and

(3) The multi-national character of deep seabed mining operations.

(c) As appropriate, TCRs will incorporate provisions to implement the decision of the Administrator made pursuant to this section.

(d) Environmental considerations of the proposed activity will be addressed in accordance with §971.606(c).

§971.409 Denial of issuance or transfer.

(a) The Administrator may deny issuance or transfer of a permit if he finds that the applicant or the proposed commercial recovery activities do not meet the rquirements of this part for the issuance or transfer of a permit.

(b) When the Administrator proposes to deny issuance or transfer, he will send to the applicant, via certified mail, return receipt requested, and publish in the FEDERAL REGISTER, written notice of his intention to deny issuance or transfer. The notice will include:

(1) The basis upon which the Administrator proposes to deny issuance or transfer; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny issuance or transfer:

(1) On the 30th day after the date the notice is received by the applicant under paragraph (b) of this section, unless before the 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) in which the applicant must correct a deficiency, if the deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (c)(1) is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies issuance or transfer, the Administrator will send to the applicant written notice of final denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying issuance or transfer of a permit is subject to judicial review as provided in chapter 7 of title 5, United States Code.

§971.410 Notice of issuance or transfer.

If the Administrator finds that the requirements of this subpart have been met, he will issue or transfer the permit along with the appropriate TCRs. Notice of issuance or transfer will be made in writing to the applicant and published in the FEDERAL REGISTER.

§971.411 Objections to terms, conditions and restrictions.

(a) The permittee may file a notice of objection to any TCR in the permit. The permittee may object on the grounds that any TCR is inconsistent with the Act or this part, or on any other grounds which may be raised under applicable provisions of law. If the permittee does not file notice of an objection within the 60-day period immediately following the permittee's reciept of the notice of issuance or

transfer under § 971.410, the permittee will be deemed conclusively to have accepted the TCRs in the permit.

(b) Any notice of objection filed under paragraph (a) of this section must be in writing, must indicate the legal or factual basis for the objection, and must provide information relevant to any underlying factual issues deemed by the permittee as necessary to the Administrator's decision upon the objection.

(c) Within 90 days after receipt of the notice of objection, the Administrator will act on the objection and publish in the FEDERAL REGISTER, as well as provide to the permittee, written notice of the decision.

(d) If, after the Administrator takes final action on an objection, the permittee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with Subpart I of this part.

(e) Any final determination by the Administrator on an objection to TCRs in a permit, after the formal hearing provided in paragraph (d), is subject to judicial review as provided in chapter 7 of title 5, United States Code.

§ 971.412 Changes in permits and permit terms, conditions, and restrictions.

(a) During the duration of a commercial recovery permit, changes in the permit or its associated commercial recovery plan may be initiated by either the permittee or the Administrator.

(b) A significant change is one which, if approved, would result in:

(1) An increase of more than five percent in the size of the commercial recovery area; or

(2) A change in the location of five percent or more of the commercial recovery area.

(c) A major change is one affecting one or more of:

(1) The bases for certifying the original application pursuant to § 971.301;

(2) The bases for issuing or transferring the permit pursuant to § 971.403 through § 971.408;

(3) The TCRs issued as part of the permit pursuant to § 971.418 through § 971.430; or

(4) The ownership of a permittee (or the membership of the joint venture, partnership or other entity on whose behalf the permit was issued); and which change is sufficiently broad in scope to raise a question as to:

(i) The permittee's ability to meet the requirements of the sections cited in paragraphs (c)(1) and (2) of this section;

(ii) The sufficiency of the TCRs to accomplish their intended purpose; or

(iii) The antitrust characteristic of the permittee.

(d) A minor change is one that is clearly more modest in scope than the changes described in paragraph (b) or (c) of this section.

(e) A permittee may not implement a significant or major change, as defined in paragraphs (b) and (c) of this section, until an application for revision of the permit or its associated commercial recovery plan has been approved by the Administrator. However, advance notice of proposed major changes in a permittee's corporate membership or legal structure is not required, unless practicable, but the Administrator expects prompt notification of the occurrence of such a major change.

(f) A proposed significant or major change, as defined in paragraphs (b) and (c) of this section, may trigger the need for additional review, under the Federal consistency provisions of the Coastal Zone Management Act of 1972, as amended.

§ 971.413 Revision of a permit.

(a) During the term of a commercial recovery permit, the permittee may submit to the Administrator an application for a revision of the permit or the commercial recovery plan associated with it to accommodate changes desired by the permittee. In some cases it may be advisable to recognize at the time of filing the original permit application that, although the essential information for issuing or transferring a permit as specified in § 971.201 through § 971.209 must be included in such application, some details may have to be provided in the future in the form of a revision. In such instances, the Administrator may issue or transfer a permit

which would authorize commercial recovery activities and plans only to the extent described in the application.

(b) An application by a permittee for a revision of a permit or its associated commercial recovery plan involving a significant change, as defined in §971.412(b), must be followed by the full application procedures in this part, including a public hearing.

(c) An application by a permittee for a revision of a permit or its associated commercial recovery plan involving a major change, as defined in §971.412(c) (See also §971.425 of this part), will be acted on after notice thereof is published by the Administrator in the FEDERAL REGISTER with a 60-day opportunity for public comment and consultation with appropriate Federal agencies.

(d)(1) The Administrator will approve a revision if the Administrator finds in writing that the revision will comply with the requirements of the Act and this part.

(2) Notice of the Administrator's decision on the proposed revision will be provided to the permittee in writing and published in the FEDERAL REGISTER.

(e) A permittee may notify the Administrator of minor changes, as defined in §971.412(d), subsequently in the annual report (See §971.801 of this part).

(f) If the relative importance of the change is unclear to the permittee, the Administrator should be notified in advance so that the Administrator can decide whether a revision in accordance with §971.412(e) is required.

§971.414 Modification of permit terms, conditions, and restrictions.

(a) After issuance or transfer of any permit, the Administrator, after consultation with appropriate Federal agencies and the permittee, may modify the TCRs in a permit for the following purposes:

(1) To avoid unreasonable interference with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. This determination will take into account the considerations listed in §971.403;

(2) If relevant data and information (including, but not limited to, data resulting from activities under a permit) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea;

(3) To avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(4) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(b) A proposal by the Administrator to modify the TCRs in a permit is significant and must be followed by the full application procedures in this part, including a public hearing, if it would result in either of the changes identified in §971.412(b).

(c) All proposed modifications other than those described in paragraph (b) of this section will be acted on after the Administrator provides:

(1) Written notice of the proposal to the permittee; and

(2) Publication of this proposal in the FEDERAL REGISTER with a 60-day opportunity for comment.

(d)(1) The Administrator will effect a modification of the TCRs if the Administrator finds in writing that the proposed modification will comply with the requirements of the Act and this part.

(2) Upon adopting a TCR modification, the Administrator shall issue to the permittee an amended permit including the modified TCRs, and shall publish notice of issuance in the FEDERAL REGISTER.

(3) The procedures for objection to modification of the TCRs are the same as those for objection to a TCR under §971.411 of this part.

§971.415 Duration of a permit.

(a) Unless suspended or revoked pursuant to §§971.406 and 971.417, each commercial recovery permit will be issued for a period of 20 years and for so long thereafter as hard mineral resources are recovered annually in commercial

quantities from the area listed in the permit.

(b) If the permittee has substantially complied with the permit and its associated recovery plan and requests an extension of the permit, the Administrator will extend the permit with appropriate TCRs, consistent with the Act, for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area to which the recovery plan associated with the permit applies. The Administrator may make allowance for deviation from the recovery plan for good cause, such as significantly changed market conditions. However, a request for extension must be accompanied by an amended recovery plan to govern the activities by the permittee during the extended period.

(c) Successive extensions may be requested, and will be granted by the Administrator, based on the criteria specified in paragraphs (a) and (b).

§ 971.416 Approval of permit transfers.

(a) The Administrator may transfer a permit after a written request by the permittee. After a permittee submits a transfer request to the Administrator, the proposed transferee will be deemed an applicant for a commercial recovery permit, and will be subject to the requirements and procedures of this part.

(b) The Administrator will transfer a permit if the proposed transferee is a United States citizen and proposed commercial recovery activities meet the requirements of the Act and this part, and if the proposed transfer is in the public interest. The Administrator will presume that the transfer is in the public interest if it meets the requirements of the Act and this part. In case of mere change in the form or ownership of a permittee, the Administrator may waive relevant determinations for requirements for which no changes have occurred since the preceding application.

§ 971.417 Suspension or modification of activities; suspension or revocation of permits.

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under subpart J of this part, or in addition to the imposition of any fine under subpart J, suspend or revoke any permit issued under this part, or suspend or modify any particular activities under such a permit, if the permittee substantially fails to comply with any provision of the Act, this part, or any term, condition or restriction of the permit; and

(2) Suspend or modify particular activities under any permit, if the President determines that such suspension or modification is necessary:

(i) To avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States; or

(ii) To avoid any situtation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) will proceed pursuant to the procedures in § 971.1003. Any action taken in accordance with paragraph (a)(2) will proceed pursuant to paragraphs (c) through (i) of this section, other than paragraph (h)(2).

(c) Prior to taking any action specified in paragraph (a)(2) the Administrator will publish in the FEDERAL REGISTER, and send to the permittee, written notice of the proposed action. The notice will include:

(1) The basis of the proposed action; and

(2) If the basis for the proposed action is a deficiency which the Administrator believes the permittee can correct:

(i) The action necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(d) The Administrator will take the proposed action:

(1) On the 30th day after the date notice is sent to the permittee, under paragraph (c) of this section, unless before the 30th day the permittee files with the Administrator a written request for an administrative review of the proposed action; or

(2) On the last day of the period established under paragraph (c)(2)(ii) in which the permittee must correct the deficiency, if such deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (d)(1) is not pending or in progress.

(e) If a timely request for administrative review of the proposed denial is made by the permittee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with subpart I of this part. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(f) The Administrator will serve on the permittee, and publish in the FEDERAL REGISTER, written notice of the action taken including the reasons therefor.

(g) Any final determination by the Administrator to take the proposed action is subject to judicial review as provided in chapter 7 of title 5, United States Code.

(h) The issuance of any notice of proposed action under this section will not affect the continuation of commercial recovery activities by a permittee. The provisions of paragraphs (c), (d), (e) and the first sentence of this paragraph (h) of this section will not apply when:

(1) The President determines by Executive Order that an immediate suspension or modification of particular activities under that permit, is necessary for the reasons set forth in paragraph (a)(2); or

(2) The Administrator determines that immediate suspension of such a permit or immediate suspension or modification of particular activities under a permit, is necessary to prevent a significant adverse environmental effect or to preserve the safety of life or property at sea, and the Administrator issues an emergency order in accordance with §971.1003(d)(4).

(i) The Administrator will immediately rescind the suspension order as soon as he has determined that the cause for suspension has been removed.

TERMS, CONDITIONS AND RESTRICTIONS

§971.418 Diligence requirements.

The TCRs in each commercial recovery permit must include provisions to assure diligent development consistent with §971.503, including a requirement that recovery at commercial scale be underway within ten years from the date of permit issuance unless that deadline is extended by the Administrator for good cause.

§971.419 Environmental protection requirements.

(a) Each commercial recovery permit must contain TCRs established by the Administrator pursuant to subpart F which prescribe actions the permittee must take in the conduct of commercial recovery activities to assure protection of the environment. Factors to be taken into account regarding the potential for significant adverse environmental effects are discussed in §§971.601 and 971.602.

(b) Before establishing the TCRs pertaining to environmental protection, the Administrator will consult with the Administrator of the Environmental Protection Agency, the Secretary of State and the Secretary of the department in which the Coast Guard is operating. The Administrator also will take into account and give due consideration to formal comments received from the public, including those from the State agency, and to the information contained in the final site-specific EIS prepared with respect to the proposed permit.

§971.420 Resource conservation requirements.

For the purpose of conservation of natural resources, each permit issued under this part will contain, as needed, TCRs which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the recovery area. The Administrator will establish these requirements pursuant to §971.502.

§971.421 Freedom of the high seas requirements.

Each permit issued under this part must include appropriate restrictions

to ensure that commercial recovery activities do not unreasonably interfere with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. The Administrator will consider the factors in § 971.403 in establishing these restrictions.

§ 971.422 Safety at sea requirements.

The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, will require in any permit issued under this part, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the permit comply with conditions regarding design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea. These requirements will be established with reference to subpart G of this part.

§ 971.423 Best available technology.

The Administrator will require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant adverse effect on safety, health, or the environment, (see §§ 971.203(b)(3), 971.602(f), and 971.604(a)), except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies.

§ 971.424 Monitoring requirements.

Each commercial recovery permit will require the permittee:

(a) To allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the permittee in commercial recovery activities to:

(1) Monitor activities at times, and to the extent, the Administrator deems reasonable and necessary to assess the effectiveness of the TCRs of the permit; and

(2) Report to the Administrator whenever those officers or employees have reason to believe there is a failure to comply with the TCRs;

(b) To cooperate with Federal officers and employees in the performance of monitoring functions; and

(c) To monitor the environmental effects of the commercial recovery activities in accordance with a monitoring plan approved and issued by NOAA as permit TCRs and to submit data and other information as necessary to permit evaluation of environmental effects. The environmental monitoring plan and reporting will respond to the concerns and procedures discussed in Subpart F.

§ 971.425 Changes of circumstances.

Each permit must require the permittee to advise the Administrator of any changes of circumstances which might constitute a revision which would be a major change under § 971.412(c). Changes in ownership, financing, and use conflicts are examples, as are technology or methodology changes including those which might result in significant adverse environmental effects.

§ 971.426 Annual report and records maintenance.

Each permit will require the permittee to submit an annual report and maintain information in accordance with § 971.801 including compliance with the commercial recovery plan and the quantities of hard mineral resources recovered and the disposition of such resources.

§ 971.427 Processing outside the United States.

If appropriate TCRs will incorporate provisions to implement the decision of the Administrator regarding the return of resources processed outside the United States, in accordance with § 971.408.

§ 971.428 Other necessary permits.

Each permit will provide that securing the deep seabed mining permit for activities described in the recovery plan and accompanying application does not eliminate the need to secure

all other necessary Federal, State, and local permits.

§971.429 Special terms, conditions and restrictions.

Although the general criteria and standards to be used in establishing TCRs for a permit are set forth in this part, as referenced in §971.418 through §971.428, the Administrator may impose special TCRs for the conservation of natural resources, protection of the environment, or the safety of life and property at sea when required by differing physical and environmental conditions.

§971.430 Other Federal requirements.

Pursuant to §971.211, another Federal agency, or a State acting under Federal authority, upon review of a commercial recovery permit application submitted under this part, may propose that certain TCRs be added to the permit, to assure compliance with any law or regulation within that agency's area of responsibility. The Administrator will include appropriate TCRs in a permit.

Subpart E—Resource Development

§971.500 General.

Several provisions in the Act relate to appropriate mining techniques or mining efficiency. These raise what could be characterized as resource development issues. In particular, section 103(a)(2)(C) requires a resource assessment to be provided with the recovery plan. Section 103(a)(2)(D) of the Act provides that the applicant will select the size and location of the area of a recovery plan, which will be approved unless the Administrator finds that the area is not a ''logical mining unit'' or the commercial recovery activities in the proposed site would result in a significant adverse environmental effect which cannot be avoided by the imposition of reasonable restrictions. Also, pursuant to section 108 of the Act, the applicant's recovery plan and the TCRs of each permit must be designed to ensure diligent development. In addition, for the purpose of conservation of natural resources, section 110 of the Act provides that each permit is to contain, as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the resources.

§971.501 Resource assessment, recovery plan, and logical mining unit.

(a) The applicant must submit with the application a resource assessment to provide a basis for assessing the area applied for. This assessment must include a discussion of mineable and unmineable areas, taking into account nodule grade, nodule concentration, and other factors such as seafloor topography. These areas may be delineated graphically. The resources in the area must be described in relation to the applicant's production requirements, operating period, and recovery efficiency in order to justify the area applied for.

(b) The applicant shall select the size and location of the area of the recovery plan, which area shall be approved unless the Administrator finds that, among other considerations (see §971.301(a)), the area is not a logical mining unit. In the case of a commercial recovery permit, a logical mining unit is an area of the deep seabed:

(1) In which hard mineral resources can be recovered in sufficient quantities to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant set out in the recovery plan;

(2) Which is not larger than necessary to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit; and

(3) In relation to which the permittee's estimated production requirements are not found by the Administrator to be unreasonable.

(c) Approval by the Administrator of a proposed logical mining unit will be based on a case-by-case review of each application. The area need not consist

of contiguous segments, as long as each segment would be efficiently mineable and the total proposed area constitutes a logical mining unit.

(d) In describing the area, the applicant must present the geodetic coordinates of the points defining the boundaries referred to the World Geodetic System (WGS) Datum. A boundary between points must be a geodesic. If grid coordinates are desired, the Universal Transverse Mercator Grid System must be used.

§ 971.502 Conservation of resources.

(a) If the Administrator establishes terms, conditions and restrictions relating to conservation of resources, he will employ a balancing process in the consideration of the state of the technology being developed, the processing system utilized and the value and potential use of any waste, the environmental effects of the recovery activities, economic and resource data, and the national need for hard mineral resources.

(b) The application must set forth how the applicant's proposed method of collecting nodules will conserve resources by providing for the future opportunity for commercial recovery of the unrecovered balance of the resources in the proposed permit area. Although preliminary and subject to change, the discussion must include a plan for the chronology of areas to be mined. This is needed in order for the Administrator to determine if selective mining, expected to be carried out in the early years to improve cash flow, is part of a long range recovery plan.

(c) If the applicant proposes a refining process that does not include the use of manganese in a productive manner, it may not render the manganese unavailable to future users by dispersing the tailings over a vast area unless such a scheme is necessary for the financial practicability of the commercial recovery activities of the applicant. A permittee must advise the Administrator in the annual report of the location, composition and quantity of manganese in tailings which remain after processing. Should national needs for manganese develop during the duration of a permit, e.g., in case of national emergency, the Administrator may cancel the exception granted involving dispersion of tailings. Applicants seeking an exception would be required to demonstrate how and in what time frame their commercial recovery processing activities could be modified to respond to new national needs.

§ 971.503 Diligent commercial recovery.

(a) Each permittee must pursue diligently the activities described in its approved commercial recovery plan. This requirement applies to the full scope of the plan, including environmental safeguards and monitoring systems. Permit TCRs will require periodic reasonable expenditures for commercial recovery by the permittee, taking into account the size of the area of the deep seabed to which the recovery plan applies and the amount of funds estimated by the Administrator to be required to initiate commercial recovery of hard mineral resources within the time limit established by the Administrator. However, required expenditures will not be established at a level which would discourage commercial recovery or operational efficiency.

(b) To meet the diligence requirement, the applicant must propose to the Administrator an estimated schedule of activities and expenditures pursuant to § 971.203(b)(2). The schedule must show, and the Administrator must be able to make a reasonable determination, that the applicant can reasonably develop the resources in the permit area within the term of the permit. There must be a reasonable relationship between the size of the recovery area and the financial and technological resources reflected in the application. The permittee must initiate the recovery of nodules in commerical quantities within ten years of the issuance of the permit unless this deadline is extended by the Administrator for good cause.

(c) Once commercial recovery is achieved, the permittee must, within reasonable limits and taking into consideration all relevant factors, maintain commercial recovery throughout the period of the permit. However, the Administrator will, for good cause shown, authorize temporary suspension

of commercial recovery activities. The duration of any suspension will not exceed one year, unless the Administrator determines that conditions justify an extension of the suspension.

(d) Ultimately, the diligence requirement will involve a retrospective determination by the Administrator, based on the permittee's reasonable conformance to the approved recovery plan. This determination, however, will take into account the need for some degree of flexibility in a recovery plan. It also will include consideration of the needs and stage of development of the permittee based on the approved recovery plan; legitimate periods of time when there is no or very low expenditure; and allowance for a certain degree of flexibility for changes encountered by the permittee in market conditions or other factors.

(e) The permittee must submit a report annually reflecting its conformance to the schedule of activities and expenditures contained in the permit and its associated recovery plan. In case of any changes requiring a revision to an approved permit and recovery plan, the permittee must advise the Administrator in accordance with §971.413.

Subpart F—Environmental Effects

§971.600 General.

The Act contains several provisions which relate to environmental protection. For example, section 105(a)(4) requires that, before the Administrator may issue a commercial recovery permit, he must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse environmental effect. In addition, each permit issued must contain TCRs which prescribe actions the permittee must take in the conduct of commercial recovery activities to assure protection of the environment (section 109(b)). The Act also provides for modification by the Administrator of any TCR if relevant data and information indicate that modification is required to protect the quality of the environment (section 105(c)(1)(B)). The Administrator also may order an immediate suspension or modification of activities (section 106(c)), or require use of best available technologies (section 109(b)), to prevent a significant adverse environmental effect. Furthermore, each permit issued under the Act must require the permittee to monitor the environmental effects of commercial recovery activities in accordance with guidelines issued by the Administrator, and to submit information the Administrator finds necessary and appropriate to assess environmental effects and to develop and evaluate possible methods of mitigating adverse effects (section 114).

§971.601 Environmental requirements.

Before issuing a permit for the commercial recovery of deep seabed hard mineral resources, the Administrator must find that:

(a) The issuance of a permit cannot reasonably be expected to result in a significant adverse environmental effect, or, if there is insufficient information to make that determination, that no irreparable harm will result during a period when monitoring of commerical recovery is undertaken to gather sufficient information in order to determine the potential for or occurrence of any significant adverse environmental effect. In examining this issue, NOAA will give consideration to the following Ocean Discharge Criteria of the Clean Water Act (40 CFR part 125, subpart M), as they may pertain to discharges and other environmental perturbations related to the commercial recovery operations:

(1) The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;

(2) The potential transport of such pollutants by biological, physical or chemical processes;

(3) The composition and vulnerability of the biological communities which may be exposed to such pollutants including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, or the presence of those species critical to the structure or function of the ecosystem such as those important for the food chain;

(4) The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism;

(5) The existence of special aquatic sites including but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;

(6) The potential impacts on human health through direct and indirect pathways;

(7) Existing or potential recreational and commercial fishing, including finfishing and shellfishing;

(8) Any applicable requirements of an approved Coastal Zone Management plan;

(9) Such other factors relating to the effects of the discharge as may be appropriate;

(10) Marine water quality criteria developed pursuant to section 304(a)(1) of the Clean Water Act; and

(b) The applicant has an approved monitoring plan (§ 971.603) and the resources and other capabilities to implement it.

§ 971.602 Significant adverse environmental effects.

(a) *Determination of significant adverse environmental effects.* The Administrator will determine the potential for or the occurrence of any significant adverse environmental effect or impact (for the purposes of sections 103(a)(2)(D), 105(a)(4), 106(c) and 109(b) (second sentence) of the Act), on a case-by-case basis.

(b) *Basis for determination.* Determinations will be based upon the best information available, including relevant environmental impact statements, NOAA-collected data, monitoring results, and other data provided by the applicant or permittee, as well as consideration of the criteria in § 971.601(a).

(c) *Related considerations.* In making a determination the Administrator may take into account any TCRs or other mitigation measures.

(d) *Activities with no significant adverse environmental effect.* NOAA believes that exploration-type activities, as listed in the license regulations (15 CFR 970.701), require no further environmental assessment.

(e) *Activities with potential for significant adverse environmental effects.* NOAA research has identified at-sea testing of recovery equipment, the recovery of manganese nodules in commercial quantities from the deep seabed, and the construction and operation of commercial-scale processing facilities as activities which may have some potential for significant adverse envirnomental effects.

(f) *Related terms, conditions and restrictions.* Permits will be issued with TCRs containing environmental requirements with respect to protection (pursuant to § 971.419), mitigation (pursuant to § 971.419), or best available technology requirements (pursuant to § 971.423), as appropriate, and monitoring requirements (pursuant to § 971.424) to acquire more information on the environmental effects of deep seabed mining.

§ 971.603 At-sea monitoring.

(a) An applicant must submit with its application a monitoring plan designed to enable the Administrator to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects, to validate assessments made in the EIS, and to assure compliance with the environmental protection requirements of this part.

(b) The monitoring plan shall include a characterization of the proposed mining system in terms of collector contact, benthic discharge and surface discharge.

(c) The monitoring plan shall include determination of (1) the spatial and temporal characteristics of the mining ship discharges; (2) the spatial extent and severity of the benthic impact, including recovery rate and pattern of benthic recolonization; and (3) any secondary effects that result from the impact of the mining collector and benthic plume.

(d) The monitoring of benthic impact shall involve the study of two types of areas, each selected by the permittee in consultation with NOAA, which

areas shall be representative of the environmental characteristics of the permittee's site:

(1) An impact reference area, located in a portion of a permit area tentatively scheduled to be mined early in a commercial recovery plan; and

(2) An interim preservational reference area, located in a portion of a permit area tentatively determined: to be non-mineable, not to be scheduled for mining during the commercial recovery plan, or to be scheduled for mining late in the plan.

Reference areas may be selected provisionally prior to application for a commercial recovery permit.

(e) The following specific environmental parameters must be proposed for examination in the applicant's monitoring plan:

(1) Discharges—

(i) Salinity, temperature, density.

(ii) Suspended particulates concentration and density.

(iii) Particulate and dissolved nutrients and metals.

(iv) Size, configuration, and velocities of discharge.

(2) Upper water column—

(i) Nutrients.

(ii) Endangered species (observations).

(iii) Salinity, temperature, density.

(iv) Currents and direct current shear.

(v) Vertical distribution of light.

(vi) Suspended particulate material advection and diffusion.

(vii) In-situ settling velocities of suspended particulates.

(viii) Zooplankton and trace metals uptake.

(ix) Fish larvae.

(x) Behavior of biota, including commercially and recreationally valuable fish.

(3) Lower water column and seafloor—

(i) Currents.

(ii) Suspended particulate material advection and diffusion.

(iii) In-situ settling velocities of suspended particulates.

(iv) Benthic scraping and blanketing, and their impacts and recovery.

(f) The monitoring plan shall include provision for monitoring those areas impacted by the permittee's mining activities, even if such areas fall outside its minesite, where the proposed activities have the potential to cause significant adverse environmental effect or irreparable harm in the outside area.

(g) After the Administrator's approval of the monitoring plan, this plan will become a permit TCR. The monitoring plan TCR will include, to the maximum extent practicable, identification of those activities or events that could cause suspension or modification due to environmental effects under §971.417, or permit revocation in the event that these effects cannot be adequately mitigated. The TCR also will authorize refinement of the monitoring plan prior to testing and commercial-scale recovery, and at other appropriate times, if refinement is necessary to reflect accurately proposed operations or to incorporate recent research or monitoring results.

(h) If test mining is proposed, the applicant shall include in the monitoring plan a monitoring plan for the test(s) as well as a strategy for using the result to monitor more effectively commercial-scale recovery. This monitoring shall address concerns expressed in the PEIS and in the permit EIS.

(i) The monitoring plan shall include a sampling strategy that assures: that it is based on sound statistical methods, that equipment and methods be scientifically accepted, that the personnel who are planning, collecting and analyzing data be scientifically well qualified, and that the resultant data be submitted to the Administrator in accordance with formats of the National Oceanographic Data Center and other formats as may be specified by the Administrator.

(j) Pursuant to section 114(1) of the Act, the Administrator intends to place observers onboard mining vessels, not only to ensure that permit TCRs are followed, but also to evaluate the effectiveness of monitoring strategies, both in terms of protecting the environment and in being cost-effective (See §971.1005), and if necessary, to develop potential mitigation measures. If modification of permit TCRs or regulations is required to protect the quality of the environment, the Administrator may modify TCRs pursuant to §971.414, or the regulations pursuant to §971.804.

§ 971.604 Best available technologies (BAT) and mitigation.

(a) The Administrator shall require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant adverse effect on safety, health, or the environment, except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies. Because of the embryonic nature of the industry, NOAA is unable either to specify particular equipment or procedures comprising BAT or to define performance standards. Until such experience exists, the applicant shall submit such information as is necessary to indicate, as required above, the use of BAT, the alternatives considered to the specific equipment or procedures proposed, and the rationale as to why one alternative technology was selected in place of another. This analysis shall include a discussion of the relative costs and benefits of the technologies considered.

(b) NOAA is not specifying particular mitigation methodologies or techniques at this time (such as requiring the sub-surface release of mining vessel discharges), but expects applicants and permittees to develop and carry out their operations, to the extent possible, to minimize adverse environmental effects and to be able to demonstrate efforts to that end. The applicant must submit a plan describing how he would mitigate a problem, if it were caused by the surface release of mining vessel discharges, including a plan for the monitoring of any discharges. Based upon monitoring results, NOAA may find it necessary in the future to specify particular procedures for minimizing adverse environmental effects. These procedures would be incorporated into permit TCRs.

(c) NOAA will require the permittee to report, prior to implementation, any proposed technological or operational changes that will increase or have unknown environmental effects. Changes in composition, concentration or size distribution of suspended particulates discharged from the mining vessel, water depth of vessel discharges, depth of cut in the seafloor of the mining collector, and direction or amount of sediment discharged at the seafloor are factors of concern to NOAA. In reporting any such change, the permittee shall submit information to indicate the use of BAT, alternatives considered, and rationale for selecting one technology in place of another, in a manner comparable to and to the extent required in paragraph (a) of this section. If proposed changes have a high potential for increasing adverse environmental effects, the Administrator may disapprove or require modification of the changes.

§ 971.605 Stable Reference Areas. [Reserved]

§ 971.606 Onshore information.

(a) To assist the Administrator in complying with NEPA requirements and to enable NOAA to function as lead agency in preparing permit site-specific environmental impact statements (EISs) and facilitating the preparation and processing of other environmental documents and permits, the applications must include the following information:

(1) The location and affected environment of port, transport, processing and waste disposal facilities and associated facilities (e.g., maps, land use and layout);

(2) A description of the environmental consequences and socio-economic effects of construction and operation of the facilities, including waste characteristics and toxicity;

(3) Any mitigating measures that may be proposed;

(4) Certification of consistency with the federally approved State coastal management program, where applicable, and evidence of the status of compliance with other State or local requirements relating to protection of the environment; and

(5) Alternative sites and technologies considered by the applicant and the considerations which eliminate their selection.

(b) The applicant must consult with NOAA as early as possible concerning the information to be submitted to

NOAA to prepare an adequate environmental impact statement. The applicant is encouraged to consult with potentially affected States as early as is practicable [see also §§971.200(g) and 971.213].

(c) The requirements of paragraphs (a)(1)–(3) and (5) of this section also apply if approval of processing outside the United States is requested by the applicant, in accordance with Executive Order 12114 which requires the environmental review of major Federal actions abroad. Information detailing the socio-economic impacts of foreign processing activities is not required.

Subpart G—Safety of Life and Property at Sea

§971.700 General.

The Act contains several requirements that relate to assuring the safety of life and property at sea. For example, before the Administrator may issue a permit, he must find that the proposed recovery will not pose an inordinate threat to the safety of life and property at sea (section 105(a)(5)). The Coast Guard, in consultation with NOAA, must require in any permit issued under the Act, in conformity with principles of international law, that vessels documented in the United States and used in activities authorized under the permit comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the safety of life and property at sea (section 112(a)). The Administrator may impose or modify TCRs for a permit if required to promote the safety of life and property at sea (section 105(c)(1)(B)).

§971.701 Criteria for safety of life and property at sea.

Response to the safety at sea requirements in essence will involve vessel inspection requirements, as identified by present laws and regulations. The primary inspection statutes pertaining to United States flag vessels are: 46 App. U.S.C. 86 (Loadlines) and 46 U.S.C. 3301 (Inspection of Seagoing Barges, Seagoing Motor Vessels, and Freight Vessels). United States flag vessels will be required to meet all applicable regulatory requirements, including the requirement for a current valid Coast Guard Certificate of Inspection (pursuant to §971.205(a)). United States flag vessels are under United States jurisdiction on the high seas and subject to domestic enforcement procedures. With respect to foreign flag vessels, the SOLAS 74 or SOLAS 60 certificate requirements specified in §971.205(b) apply.

Subpart H—Miscellaneous

§971.800 General.

The subpart contains miscellaneous provisions pursuant to the Act which are applicable to exploration licenses and commercial recovery permits.

§971.801 Records to be maintained and information to be submitted by licensees and permittees.

(a)(1) In addition to the information specified elsewhere in the part and in 15 CFR part 970, each licensee and permittee must keep such records, consistent with standard accounting principles, as specified by the Administrator in the license or permit. Such records shall include information which will fully disclose expenditures for exploration for, or commercial recovery of hard mineral resources in the area under license or permit, and any other information which will facilitate an effective audit of these expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination to any books, documents, papers, and records of licensees and permittees which are necessary and directly pertinent to verification of the expenditures referred to in paragraph (a)(1) of this section.

(b) In addition to the information specified elsewhere in this part and in 15 CFR part 970, each applicant, licensee or permittee will be required to submit to the Administrator, upon request, data or other information the Administrator may reasonably need for purposes of:

(1) Making determinations with respect to the issuance, revocation,

modification, or suspension of the license or permit in question;

(2) Evaluating the effectiveness of license or permit TCRs;

(3) Compliance with the biennial Congressional report requirement contained in section 309 of the Act; and

(4) Evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

At a minimum, licensees and permittees shall submit an annual written report within 90 days after each anniversary of the license or permit issuance or transfer, discussing exploration or commercial recovery activities and expenditures. The report shall address diligence requirements (see § 971.503 and 15 CFR 970.602), implementation of any approved monitoring plan (see § 971.602 and 15 CFR 970.522(c) and 970.702(a)), and applicable changes which do not constitute revisions (see § 971.413(e) and 15 CFR 970.513(c)). Permittees must also report the tonnage of nodules recovered (§ 971.426) and discuss manganese conservation measures (see § 971.502).

§ 971.802 Public disclosure of documents received by NOAA.

(a) *Purpose.* This section provides a procedure by which persons submitting information pursuant to this part and 15 CFR part 970 may request that certain information not be subject to public disclosure. The substantiation requested is intended to assure that NOAA has a complete and proper basis for determining the legality and appropriateness of withholding or releasing the identified information if a public request for disclosure is received.

(b) *Written requests for confidential treatment.* (1) Any person who submits any information pursuant to this part or 15 CFR part 970, which information is considered by that person to be protected by the Trade Secrets Act (18 U.S.C. 1905) or otherwise to be a trade secret or commercial or financial information which is privileged or confidential, may request that the Administrator give the information confidential treatment.

(2)(i) Any request for confidential treatment of information:

(A) Should be submitted at the time of submission of information;

(B) Should state the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurrence of a certain event, or permanently);

(C) Must be submitted in writing; and

(D) Must include the name, mailing address, and telephone number of an agent of the submitter who is authorized to receive notice of requests for disclosure of the information pursuant to paragraph (d) of this section.

(ii) If information is submitted to the Administrator without an accompanying request for confidential treatment, the notice referred to in paragraph (d)(2) of this section need not be given. If a request for confidential treatment is received after the information itself is received, the Administrator will make efforts to the extent administratively practicable to associate the request with copies of the previously submitted information in the files of NOAA and the Federal agencies to which the Administrator distributed the information.

(3)(i) Information subject to a request for confidential treatment must be segregated from information for which confidential treatment is not being requested, and each page (or segregable portion of each page) subject to the request must be clearly marked with the name of the person requesting confidential treatment, the name of the applicant, licensee or permittee, and an identifying legend such as ''Proprietary Information'' or ''Confidential Treatment Requested.'' Where this marking proves impracticable, a cover sheet containing the identifying names and legend must be securely attached to the compilation of information for which confidential treatment is requested. Each copy of the information for which confidential treatment has been requested must be cross-referenced to the appropriate section of the application or other document. All information for which confidential treatment is requested pertaining to the same application or other document must be submitted to the Administrator in a package separate from that information for which confidential treatment is not being requested.

(ii) Each copy of any application or other document with respect to which

confidential treatment of information has been requested must indicate, at each place in the application or document where confidential information has been deleted, that confidential treatment of information has been requested.

(4) Normally, the Administrator will not make a determination as to whether confidential treatment is warranted until a request for disclosure of the information is received. However, on a case-by-case basis, the Administrator may make a determination in advance of a request, where it would facilitate obtaining voluntarily submitted information (rather than information required to be submitted under this part).

(c) *Substantiation of request for confidential treatment.* (1) Any request for confidential treatment may include a statement of the basis for believing that the information is deserving of confidential treatment, which addresses the issues relevant to a determination of whether the information is a trade secret, or commercial or financial information which is privileged or confidential. To the extent permitted by applicable law, part or all of any substantiation statement submitted will be treated as confidential if so requested, and must be segregated, marked, and submitted in accordance with the procedure described in paragraph (b)(3) of this section.

(2) Issues addressed in the statement should include:

(i) The commercial or financial nature of the information;

(ii) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(iii) The nature and extent of the competitive harm which would result from public disclosure of the information;

(iv) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(v) The extent to which persons other than the person submitting the information possesses, or have access to, the same information; and

(vi) The nature of the measures which have been and are being taken to protect the information from disclosure.

(d) *Requests for disclosure of trade secrets, privileged, or confidential information.* (1) Any request for disclosure of information submitted, reported or collected pursuant to this part must be made in accordance with 15 CFR 903.7.

(2) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) of the request for disclosure to the person who requested confidential treatment of the information or to the designated agent. The notice also will:

(i) Inquire whether that person continues to maintain the request for confidential treatment;

(ii) Notify that person of the date (generally, not later than the close of business on the seventh working day after issuance of the notice) by which the person is strongly encouraged to deliver to the Administrator a written statement that the person either:

(A) Waives or withdraws the request for confidential treatment in full or in part; or

(B) Confirms that the request for confidential treatment is maintained;

(iii) Inform that person that by a date the Administrator specifies (generally, not later than the close of business on the seventh working day after issuance of the notice), the person:

(A) Is strongly encouraged to deliver to the Administrator a written statement addressing the issues listed in paragraph (c)(2) of this section, describing the basis for believing that the information is deserving of confidential treatment, if this statement was not previously submitted;

(B) Is strongly encouraged to deliver to the Administrator an update of or supplement to any statement previously submitted under paragraph (c) of this section; and

(C) May present to the Administrator in a form the Administrator deems appropriate (such as by telephone or in an informal conference) agruments against disclosure of the information; and

(iv) Inform that person that the burden is on him to assure that any response to the notice is delivered to the Administrator within the time specified in the notice.

(3) To the extent permitted by applicable law, part or all or of any statement submitted in response to any notice issued under paragraph (d)(2) will be treated as confidential if so requested by the person submitting the response. Any response for which confidential treatment is requested must be segregated, marked and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(4) Upon the expiration of the time allowed for response under paragraph (d)(2) of this section, the Administrator will determine, in consultation with the General Counsel for the Department of Commerce, whether confidential treatment is warranted based on the information then available to NOAA.

(5) If the person who requested confidential treatment waives or withdraws that request, the Administrator will proceed with appropriate disclosure of the information.

(6) If the Administrator determines that confidential treatment is warranted, he will so notify the person requesting confidential treatment, and will issue an initial denial of the request for disclosure of records in accordance with 15 CFR 903.8.

(7) If the Administrator determines that confidential treatment is not warranted for part or all of the information, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) to the person who requested confidential treatment. The notice will state:

(i) The basis for the Administrator's determination;

(ii) That the Administrator's determination constitutes final agency action on the request for confidential treatment;

(iii) That the final agency action is subject to judicial review under chapter 7 of title 5, United States Code; and

(iv) That on the seventh working day after issuance of the notice described in this paragraph (d)(7), the Administrator will make the information available to the person who requested disclosure unless the Administrator has first been notified of the filing of an action in a Federal court to obtain judicial review of the determination, and the court has issued an appropriate order preventing or limiting disclosure.

(8) The Administrator will keep a record of the date any notice is issued and the date any response is received, by the Administrator, under this paragraph (d).

(9) In all other respects, procedures for handling requests for records containing information submitted to, reported to, or collected by the Administrator pursuant to this part will be in accordance with 15 CFR Part 903. For example, if ten working days have passed after the receipt of a request for disclosure and, despite the exercise of due diligence by the agency, the Administrator cannot make a determination as to whether confidential treatment is warranted, the Administrator will issue appropriate notice in accordance with 15 CFR 903.8(b)(5).

(e) *Direct submission of confidential information.* If any person has reason to believe that it would be prejudiced by furnishing information required from it to the applicant, licensee or permittee, that person may file the required information directly with the Administrator. Information for which the person requests confidential treatment must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(f) *Protection of confidential information transmitted by the Administrator to other agencies.* Each copy of information for which confidential treatment has been requested which is transmitted by the Administrator to other Federal agencies will be accompanied by a cover letter containing:

(1) A request that the other Federal agency maintain the information in confidence in accordance with applicable law (including the Trade Secret Act, 18 U.S.C. 1905) and any applicable protective agreement entered into by the Administrator and the Federal agency receiving the information;

(2) A request that the other Federal agency notify the Administrator immediately upon receipt of any request for disclosure of the information; and

(3) A request that all copies of the information be returned to the Administrator for secure storage or disposal promptly after the Federal agency determines that it no longer needs the information for its official use.

(g) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposal.

§971.803 Relinquishment and surrender of licenses and permits.

(a) Any licensee or permittee may at any time, without penalty:

(1) Surrender to the Administrator a license or permit issued to the licensee or permittee; or

(2) Relinquish to the Administrator, in whole or in part, any right to conduct any exploration or commercial recovery activities authorized by the license or permit.

(b) Any licensee or permittee who surrenders, or relinquishes any right under, a license or permit will remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee or permittee as a result of activities engaged in by the licensee or permittee under the license or permit.

§971.804 Amendment to regulations for conservation, protection of the environment, and safety of life and property at sea.

The Administrator may amend the regulations in this part and 15 CFR part 970 at any time as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The amended regulations will apply to all exploration or commercial recovery activities conducted under any license or permit issued or maintained pursuant to this part or 15 CFR part 970, except that amended regulations which provide for conservation of natural resources will apply to activities conducted under an existing license or permit during the present term of that license or permit only if the Administrator determines that the amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee or permittee. Any amendment to regulations under this section will be made pursuant to the procedures in subpart I of this part.

§971.805 Computation of time.

Except where otherwise specified, Saturdays, Sundays and Federal Government holidays will be included in computing the time period allowed for filing any document or paper under this part or 15 CFR part 970, but when a time period expires on any of these days, that time period will be extended to include the next following Federal Government work day. Filing periods expire at the close of business on the day specified, for the office specified.

Subpart I—Uniform Procedures

§971.900 Applicability.

The regulations of this subpart govern the following hearings conducted by NOAA under this part and under 15 CFR part 970:

(a) All adjudicatory hearings required by section 116(b) of the Act to be held on the following actions upon a finding by the Administrator that one or more specific and material issues of fact exist which require resolution by formal process, including but not limited to:

(1) All applications for issuance or transfer of licenses or permits;

(2) All proposed TCRs on a license or permit; and

(3) All proposals to modify significantly a license or permit;

(b) Hearings conducted under section 105(b)(3) of the Act on objection by a licensee or permittee to any term, condition or restriction in a license or permit, or to modification thereto, where

the licensee or permittee demonstrates, after final action by the Administrator on the objection, that a dispute remains as to a material issue of fact;

(c) Hearings conducted in accordance with section 106(b) of the Act pursuant to a timely request by an applicant or a licensee or permittee for review of:

(1) A proposed denial of issuance or transfer of a license or permit; or

(2) A proposed suspension or modification of particular activities under a license or permit after a Presidential determination pursuant to section 106(a)(2)(B) of the Act;

(d) Hearings conducted in accordance with section 308(c) of the Act to amend regulations for the purpose of conservation of natural resources, protection of the environment, and safety of life and property at sea;

(e) Hearings conducted in accordance with § 971.302 or 15 CFR 970.407 on a proposal to deny certification of an application; and

(f) Hearings conducted in accordance with 15 CFR part 970, subpart C to determine priority of right among preenactment explorers.

§ 971.901 Formal hearing procedures.

(a) *General.* (1) All hearings described in § 971.900 are governed by subpart C of 15 CFR part 904, as modified by this section. The rules in this subpart take precedence over 15 CFR part 904, subpart C, to the extent there is a conflict.

(2) Hearings held under this section will be consolidated insofar as practicable with hearings held by other agencies.

(3) For the purposes of this subpart, *involved applicant, licensee or permittee* means an applicant, licensee or permittee the status of whose application, license, permit or activities conducted under the license or permit may be altered by the Administrator as a result of proceedings under this subpart.

(b) *Decision to hold a hearing.* Whenever the Administrator finds that a formal hearing is required by the provisions of this part or 15 CFR part 970, he will provide for a formal hearing. Upon deciding to hold a formal hearing, the Administrator will refer the proceeding to the Department of Commerce Office of Administrative Law Judges for assignment to an Administrative Law Judge to serve as presiding officer for the hearing.

(c) *Notice of formal hearing.* (1) The Administrator will publish notice of the formal hearing in the Federal Register at least 15 days before the beginning of the hearing, and will send written notice by registered or certified mail to any involved applicant, licensee or permittee and to all persons who submitted written comments upon the action in question, or who testified at any prior informal hearing on the action or who filed a request for the formal hearing under this part or 15 CFR part 970.

(2) Notice of a formal hearing will include, among other things:

(i) Time and place of the hearing and the name of the presiding judge, as determined under paragraph (b) of this section;

(ii) The name and address of the person(s) requesting the formal hearing or a statement that the formal hearing is being held by order of the Administrator;

(iii) The issues in dispute which are to be resolved in the formal hearing;

(iv) The due date for filing a written request to participate in the hearing in accordance with paragraphs (f)(2) and (f)(3) of this section; and

(v) Reference to any prior informal hearing from which the issues to be determined arose.

(d) *Powers and duties of the administrative law judge.* In addition to the powers enumerated in 15 CFR part 904. Subpart C, judges will have the power to:

(1) Regulate the course of the hearing and the conduct of the parties, interested persons and others submitting evidence, including but not limited to the power to require the submission of part or all of the evidence in written form if the judge determines a party will not be prejudiced thereby, and if otherwise in accordance with law;

(2) Rule upon requests submitted in accordance with paragraph (f)(2) of this section to participate as a party, or requests submitted in accordance with paragraph (f)(3) of this section to participate as an interested person in a proceeding, by allowing, denying, or limiting such participation; and

(3) Require at or prior to any hearing, the submission and exchange of evidence.

(e) *Argument.* At the close of the formal hearing, each party will be given the opportunity to submit written arguments on the issues before the judge.

(f) *Hearing participation.* (1) Parties to the formal hearing will include:

(i) The NOAA General Counsel;

(ii) Any involved applicant, licensee or permittee; and

(iii) Any other person determined by the judge, in accordance with paragraph (f)(2) below, to be eligible to participate as a full party.

(2) Any person desiring to participate as a party in a formal hearing must submit a request to the judge to be admitted as a party. The request must be submitted within ten days after the date of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. Such person will be allowed to participate if the judge finds that the interests of justice and a fair determination of the issues would be served by granting the request. The judge may entertain a request submitted after the expiration of the ten days, but such a request may only be granted upon an express finding on the record that:

(i) Special circumstances justify granting the request;

(ii) The interests of justice and a fair determination of the issues would be served by granting the request;

(iii) The requestor has consented to be bound by all prior written agreements and stipulations agreed to by the existing parties, and all prior orders entered in the proceedings; and

(iv) Granting the request will not cause undue delay or prejudice the rights of the existing parties.

(3)(i) Any interested person who desires to submit evidence in a formal hearing must submit a request within ten days after the dates of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. The judge may waive the ten day rule for good cause, such as if the interested person, making this request after the expiration of the ten days, the formal hearing, and the evidence he proposes to submit may significantly affect the outcome of the proceedings.

(ii) The judge may permit an interested person to submit evidence at any formal hearing if the judge determines that such evidence is relevant to facts in dispute concerning the issue(s) being adjudicated. The fact that an interested person may submit evidence under this paragraph at a hearing does not entitle the interested person to participate in other ways in the hearing unless allowed by the judge under paragraph (f)(3)(iii) below.

(iii) The judge may allow an interested person to submit oral testimony, oral arguments or briefs, or to cross-examine witnesses or participate in other ways, if the judge determines:

(A) That the interests of justice would be better served by allowing such participation by the interested person; and

(B) That there are compelling circumstances favoring such participation by the interested person.

(g) *Definition of issues.* (1) Whenever a formal hearing is conducted pursuant to this section the Administrator may certify the issues for decision to the judge, and if the issues are so certified, the formal hearing will be limited to those issues.

(2) Whenever a formal hearing is conducted pursuant to a request by an applicant, licensee or permittee for review of a denial of certification, issuance or transfer of a license or permit in accordance with section 106(a)(4) of the Act, or pursuant to an objection to any term, condition, or restriction in a permit in accordance with section 105(b)(3) or (c)(4) of the Act, no issues may be raised by any party or interested person that were not previously raised in the administrative proceedings on the action pursuant to any such section, unless the judge determines that good cause is shown for the failure to raise them. Good cause includes the case where the party seeking to raise the new issues shows that it could not reasonably have ascertained the issues at a prior stage in the administrative process, or that it could not have reasonably anticipated the relevance or materiality of the information sought to be introduced.

(h) *Decisions*—(1) *Proposed findings of fact and conclusions of law.* The judge will allow each party to file with the judge proposed findings of fact, and in appropriate cases conclusions of law, together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs must be filed within ten days after the hearing or within such additional time as the judge may allow. Such proposals and briefs must refer to all portions of the record and to all authorities relied upon in support of each proposal. Reply briefs must be submitted within ten days after receipt of the proposed findings and conclusions to which they respond, unless the judge allows additional time.

(2) *Recommended decision.* (i) As soon as practicable, but normally not later than 90 days after the conclusion of the formal hearing, the judge will evaluate the record of the formal hearing and prepare and file a recommended decision with the Administrator. The decision will contain findings of fact, when appropriate, conclusions regarding all material isuses of law, and a recommendation as to the appropriate action to be taken by the Administrator. The judge will serve a copy of the decision on each party and upon the Administrator.

(ii) Within thirty days after the date the recommended decision is served, any party may file with the Administrator exceptions to the recommended decision. The exceptions must refer to all portions of the record and to all authorities relied on in support of the exceptions.

(3) *Final decision.* (i) As soon as practicable, but normally not later than 60 days after receipt of the recommended decision, the Administrator will issue a final decision. The final decision will include findings of fact and conclusions regarding material issues of law or discretion, as well as reasons therefor. The final decision may accept or reject all or part of the recommended decision. The Administrator shall assure that the record shows the ruling on each exception presented.

(ii) With respect to hearings held pursuant to section 116(b), the Administrator may defer announcement of his findings of fact until the time he takes final action with respect to any action described in section 116(a).

(iii) The Administrator will base the final decision upon the record already made except that the Administrator may issue orders:

(A) Specifying the filing of supplemental briefs; or

(B) Remanding the matter to the judge for the receipt of further evidence, or otherwise assisting in the determination of the matter.

(i) *Filing and service of documents.* (1) Whenever the regulations in this subpart or an order issued hereunder require a document to be filed within a certain period of time, such document will be considered filed as of the date of the postmark, if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods will begin to run on the day following the date of the document, paper, or event which begins at the time period.

(2) All submissions must be signed by the person making the submission, or by the person's attorney or other authorized agent or representative.

(3) Service of a document must be made by delivering or mailing a copy of the document to the known address of the person being served.

(4) Whenever the regulations in this subpart require service of a document, such service may effectively be made on the agent for the service of process or on the attorney for the person to be served.

(5) Refusal of service of a document by the person, his agent, or attorney will be deemed effective service of the document as of the date of such refusal.

(6) A certficate of the person serving the document by personal delivery or by mailing, setting forth the manner of the service, will be proof of the service.

Subpart J—Enforcement

§ 971.1000 General.

(a) *Purpose and scope.* (1) Section 302 of the Act authorizes the Administrator to assess a civil penalty, in an amount not to exceed $25,000 for each violation, against any person found to have committed an act prohibited by section 301 of the Act. Each day of a

continuing violation is a separate offense.

(2) Section 106 of the Act describes the circumstances under which the Administrator may suspend or revoke a license or permit, or suspend or modify activities under a license or permit, in addition to or in lieu of imposing of a civil penalty, or in addition to imposing a fine.

(3) Section 306 of the Act makes provisions of the customs laws relating to, among other things, the remission or mitigation of forfeitures, applicable to forfeitures of vessels and hard mineral resources. The Administrator is authorized to entertain petitions for administrative settlement of property seizures made under the Act which would otherwise proceed to judicial forfeiture.

(4) Section 114 of the Act authorizes the Administrator to place observers on vessels used by a licensee or permittee under the Act to monitor compliance and environmental effects of activities under the license or permit.

(5) Section 117 of the Act describes the circumstances under which a person may bring a civil action against an alleged violator or against the Administrator for failure to perform a nondiscretionary duty, and directs the Administrator to issue regulations governing procedures prerequisite to such a civil action.

(6) The regulations in this subpart provide uniform rules and procedures for the assessment of civil penalties (§971.1001–§971.1002), and license and permit sanctions (§971.1003); the remission or mitigation of forfeitures (§971.1004); observers (§971.1005); protection of certain information related to enforcement (§971.1006); and procedures requiring persons planning to bring a civil action under section 117 of the Act to give advance notice (§971.1007).

(b) *Filing and service of documents.* (1) Except as otherwise provided by this subpart, filing and service of documents required by this subpart will be in accordance with §971.901(i). The method for computing time periods set forth in §971.901(i) also applies to any action or event, such as payment of a civil penalty, required by this subpart to take place within a specified period of time.

(2) If an oral or written request is made to the Administrator within ten days after the expiration of a time period established in this subpart for the required filing of documents, the Administrator may permit a late filing if the Administrator finds reasonable grounds for an inability or failure to file within the time periods. All extensions will be in writing. Except as provided by this paragraph, by 15 CFR 904.102 or by order of an administrative law judge, no requests for an extension of time may be granted.

§971.1001 Assessment procedure.

Subpart B of 15 CFR part 904 governs the procedures for assessing a civil penalty under the Act, and the rights of any person against whom a civil penalty is assessed.

§971.1002 Hearing and appeal procedures.

(a) *Beginning of hearing procedures.* Following receipt of a written request for a hearing timely filed under 15 CFR 904.102, the Administrator will begin procedures under this section by forwarding the request, a copy of the NOVA, and any response thereto to the Department of Commerce, Office of Administrative Law Judges.

(b) Subpart C of 15 CFR part 904 governs the hearing and appeal procedures for civil penalties assessed under the Act.

§971.1003 License and permit sanctions.

(a) *Application of this section.* This section governs the suspension or revocation of any license or permit issued under the Act, or the suspension or modification of any particular activity or activities under a license or permit, which suspension, revocation or modification is undertaken in addition to, or in lieu of, imposing a civil penalty under this subpart, or in addition to imposing a fine.

(b) *Basis for sanctions.* The Administrator may act under this section with respect to a license or permit issued under the Act, or any particular activity or activities under such a license or permit, if the licensee or permittee substantially fails to comply with any provision of the Act, any regulation or

order issued under the Act, or any term, condition, or restriction in the license or permit.

(c) *Nature of sanctions.* In the Administrator's discretion and subject to the requirements of this section, the Administrator may take any of the following actions or combinations thereof with respect to a license or permit issued under the Act:

(1) Revoke the license or permit;

(2) Suspend the license or permit, either for a specified period of time or until certain stated requirements are met, or both; or

(3) Modify any activity under the license or permit, as by imposing additional requirements or restraints on the activity.

(d) *Notice of sanction.* (1) The Administrator will prepare a notice of sanction (NoS) setting forth the sanction to be imposed and the basis therefore. The NoS will state:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation, license or permit, or order allegedly violated;

(iii) The nature and duration of the proposed sanction;

(iv) The effective date of the sanction, which is 30 days after the date of the notice unless the Administrator establishes a different effective date under paragraph (d)(4) or paragraph (e) of this section;

(v) That the licensee or permittee has 30 calendar days from receipt of the notice in which to request or waive a hearing, under paragraph (f) of this section; and

(vi) The determination made by the Administrator under paragraph (e)(1) of this section, and any time period that the Administrator provides the licensee or permittee under paragraph (e)(1) to correct a deficiency.

(2) If a hearing is requested in a timely manner, the sanction becomes effective as provided in the final decision of the Administrator issued pursuant to paragraph (g) of this section, unless the Administrator provides otherwise under paragraph (d)(4) of this section.

(3) The NoS will be served personally or by registered or certified mail, return receipt requested, on the licensee or permittee. The Administrator will also publish in the FEDERAL REGISTER a notice of his intention to impose a sanction.

(4) The Administrator may make the sanction effective immediately or otherwise earlier than 30 days after the date of the NoS if the Administrator finds, and issues an emergency order summarizing such finding and the basis therefor, that an earlier date is necessary to:

(i) Prevent a significant adverse environmental effect; or

(ii) Preserve the safety of life and property at sea.

If the Administrator acts under this paragraph (d)(4), the Administrator will serve the emergency order as provided in paragraph (d)(3) of this section.

(5) The NoS will be accompanied by a copy of this subpart and the applicable provisions of 15 CFR part 904 and 15 CFR part 971, subpart I.

(e) *Opportunity to correct deficiencies.* (1) Prior to issuing the NoS, the Administrator will determine whether the reason for the proposed sanction is a deficiency which the licensee or permittee can correct. Such determination, and the basis therefor, will be set forth in the NoS.

(2) If the Administrator determines that the reason for the proposed sanction is a deficiency which the licensee or permittee can correct, the Administrator will allow the licensee or permittee a reasonable period of time, up to 180 days from the date of the NoS, to correct the deficiency. The NoS will state the effective date of the sanction, and that the sanction will take effect on that date unless the licensee or permittee corrects the deficiency within the time prescribed or unless the Administrator grants an extension of time to correct the deficiency under paragraph (e)(3) of this section.

(3) The licensee or permittee may, within the time period prescribed by the Administrator under paragraph (e)(2) of the section, request an extension of time to correct the deficiency. The Administrator may, for good cause shown, grant an extension. If the Administrator does not grant the request, either orally or in writing before the effective date of the sanction, the request will be considered denied.

(4) When the licensee or permittee believes that the deficiency has been corrected, the licensee or permittee shall so advise the Administrator in writing. The Administrator will, as soon as practicable, determine whether or not the deficiency has been corrected and advise the licensee or permittee of such determination.

(5) If the Administrator determines that the deficiency has not been corrected by the licensee or permittee within the time prescribed under paragraph (e)(2) or (e)(3) of this section, the Administrator may:

(i) Grant the licensee or permittee additional time to correct the deficiency, for good cause shown;

(ii) If no hearing has been timely requested under paragraph (f)(1) of this section, notify the licensee or permittee that the sanction will take effect as provided in paragraph (e)(2) or (e)(3) of this section; or

(iii) If a request for hearing has been timely filed under paragraph (f)(1) of this section, and hearing proceedings have not already begun, or if the Administrator determines under paragraph (f)(3) of this section to hold a hearing, notify the licensee or permittee of the Administrator's intention to proceed to a hearing on the matter.

(f) *Opportunity for hearing.* (1) The licensee or permittee has 30 days from receipt of the NoS to request a hearing. However, no hearing is required with respect to matters previously adjudicated in an administrative or judicial hearing in which the licensee or permittee has had an opportunity to participate.

(2) If the licensee or permittee requests a hearing, a written and dated request shall be served either in person or by certified or registered mail, return receipt requested, at the address specified in the NoS. The request shall either attach a copy of the relevant NoS or refer to the relevant NOAA case number.

(3) If no hearing is requested under paragraph (f)(2) of this section, the Administrator may nonetheless order a hearing if the Administrator determines that there are material issues of fact, law, or equity to be further explored.

(g) *Hearing and decision.* (1) If a timely request for a hearing under paragraph (f) of this section is received, or if the Administrator orders a hearing under paragraph (f)(3) of this section, the Administrator will promptly begin proceedings under this section by forwarding the request, a copy of the NoS and any response thereto to the Department of Commerce Office of Administrative Law Judges which will docket the matter for hearing. Written notice of the referral will promptly be given to the licensee or permittee, with the name and address of the attorney representing the Administrator in the proceedings (the agency representative). Thereafter, all pleading and other documents must be filed directly with the Department of Commerce Office of Administrative Law Judges, and a copy must be served on the opposing party (respondent or agency representative).

(2) Except as provided in this section, the hearing and appeal procedures in 15 CFR part 904, subpart C apply to any hearing held under this section.

(3) If the proposed sanction is the result of a correctable deficiency, the hearing will proceed concurrently with any attempt to correct the deficiency unless the parties agree otherwise or the Administrative Law Judge orders differently.

(4) As soon as practicable, but normally not later than 90 days after the conclusion of the formal hearing, the judge will file with the Administrator a recommended decision prepared in accordance with §971.901(h)(2).

(5) The Administrator will issue a final decision in accordance with §971.901(h)(3). The decision will be a final order of the Administrator.

(6) The Administrator will serve notice of the final decision on the licensee or permittee in the manner described by paragraph (d)(3) of this section.

§971.1004 Remission or mitigation of forfeitures.

(a) Authorized enforcement officers are empowered by section 304 of the Act to seize any vessel (together with its gear, furniture, appurtenances, stores, and cargo) which reasonably appears to have been used in violation of

the Act, if necessary to prevent evasion of the enforcement of this Act, or of any regulation, order or license or permit issued pursuant to the Act. Enforcement agents may also seize illegally recovered or processed hard mineral resources, as well as other evidence related to a violation. Section 306 of the Act provides for the judicial forfeiture of vessels and hard mineral resources.

(b) Subpart F of 15 CFR part 904 governs procedures regarding seized property that is subject to forfeiture or has been forfeited under the Act, including the remission or mitigation of forfeitures.

(c) Unless otherwise directed in a notice concerning the seized property, a petition for relief from forfeiture under the Act and pursuant to 15 CFR 904.506(b) shall be addressed to the Administrator and filed with the Ocean Minerals and Energy Division at the address specified in § 971.200(b).

§ 971.1005 Observers.

(a) *Purpose of observers.* Each licensee and permittee shall allow, at such times and to such extent as the Administrator deems reasonable and necessary, an observer (as used in this section, the term ''observer'' means ''one or more observers'') duly authorized by the Administrator to board and accompany any vessel used by the licensee or permittee in exploration or commercial recovery activities (hereafter referred to in this section as a ''vessel''), for the purpose of observing, evaluating and reporting on:

(1) The effectiveness of the terms, conditions, and restrictions of the license or permit;

(2) Compliance with the Act, regulations and orders issued under the Act, and the license or permit terms, conditions, and restrictions; and

(3) The environmental and other effects of the licensee's or permittee's activities under the license or permit.

(b) *Notice to licensee or permittee.* (1) If the Administrator plans to place an observer aboard a vessel, the Administrator will so notify the affected licensee or permittee.

(2) The Administrator normally will issue any such notice as far in advance of placement of the observer as is practicable.

(3) *Contents of notice.* The notice given by the Administrator will include, among other things:

(i) The name of the observer, if known at the time notice is issued;

(ii) The length of time which the observer likely will be aboard the vessel;

(iii) Information concerning activities the observer is likely to conduct, such as:

(A) Identification of special activities that the observer will monitor;

(B) Planned tests of equipment used for monitoring;

(C) Activities of the observer that are likely to require assistance from the vessel's personnel or crew or use of the vessel's equipment; and

(D) Planned tests of alternative operating procedures or technologies for mitigation of environmental effects.

(iv) Information concerning the equipment that will be brought aboard the vessel, such as a description of the monitoring equipment, and any special requirements concerning the handling, storage, location or operation of, or the power supply for, the equipment.

(c) *Initial monitoring period.* The Administrator shall require the placement of an observer on each permittee's mining vessel(s) at least once during the initial year of the permittee's commercial recovery activities.

(d) *Licensee's and permittee's responsibilities for observer placement.* (1) Upon request by the Administrator, a licensee or permittee shall facilitate observer placement by promptly notifying the Administrator regarding the timing of planned system tests and the departure date of the next voyage, or, if the vessel is at sea, suggesting a time and method for transporting the observer to the vessel.

(2) In addition, the licensee or permittee shall notify NOAA of the date of departure of planned cruises 60 days in advance of ship departure from port for purposes of NOAA's determination of whether to place Federal observers onboard. If cruise plans are changed by more than 30 days from the date stated by the exploration or commercial recovery plan, the licensee or permittee shall notify NOAA as soon as such

changes are made, or 90 days prior to the previously scheduled departure.

(e) *Duties of licensee, permittee, owner or operator.* Each licensee, permittee, owner or operator of a vessel aboard which an observer is assigned shall:

(1) Allow the observer access to and use of the vessel's communications equipment and personnel when the observer deems such access necessary for the transmission and receipt of messages;

(2) Allow the observer access to and use of the vessel's navigation equipment and personnel when the observer deems such access necessary to determine the vessel's location;

(3) Provide all other reasonable cooperation and assistance to enable the observer to carry out the observer's duties; and

(4) Provide temporary accommodations and food to the observer aboard the vessel which are equivalent to those provided to officers of the vessel.

(f) *Reasonableness of observer activities.* (1) To the maximum extent practicable, observation duties will be planned and carried out in a manner that minimizes interference with the licensee's or permittee's activities under the license or permit.

(2) The Administrator will assure that equipment brought aboard a vessel by the observer is reasonable as to size, weight, and electric power and storage requirements, taking into consideration the necessity of the equipment for carrying out the observer's functions.

(3) The observer will have no authority over the operation of the vessel or its activities, or the officers, crew, or personnel of the vessel. The observer will comply with all rules and regulations issued by the licensee or permittee, and all orders of the Master or senior operations official, with respect to ensuring safe operation of the vessel and the safety of its personnel.

(g) *Non-interference with observer.* Licensees, permittees and other persons are reminded that the Act (see, for example, sections 301(3) and 301(4)) makes it unlawful for any person subject to section 301 of the Act to interfere with any observer in the performance of the observer's duties.

(h) *Confidentiality of information.* NOAA recognizes the possibility that an observer, in performing observer functions, will record information which the licensee or permittee considers to be proprietary. NOAA intends to protect such information consistent with applicable law. The Administrator may in appropriate cases provide the licensee or permittee an opportunity:

(1) To review those parts of the observer's report which may contain proprietary information; and

(2) To request confidential treatment of such information under §971.802.

§971.1006 Proprietary enforcement information.

(a) Proprietary and privileged information seized or maintained under Title III of the Act concerning a person or vessel engaged in commercial recovery will not be made available for general or public use or inspection.

(b) Although presentation of evidence in a proceeding under this subpart is not deemed general or public use of information, the Administrator will, consistent with due process, move to have records sealed, under 15 CFR part 904 subpart C, or other applicable provisions of law, in any administrative or judicial proceeding where the use of proprietary or privileged information is required to serve the purpose of the Act.

§971.1007 Advance notice of civil actions.

(a) *Actions against alleged violators.* (1) No civil action may be filed in a United States District Court under section 117 of the Act against any person for alleged violation of the Act, or any regulation, or license or permit term, condition, or restriction issued under the Act, until 60 days after the Administrator and any alleged violator receive written and dated notice of alleged violation.

(2) The notice shall contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation or license or permit allegedly violated; and

(iii) Any documentary or other evidence of the alleged violation.

(b) *Action against the Administrator.* (1) No civil action may be filed in a United States District Court under section 117 of the Act against the Administrator for an alleged failure to perform any act or duty under the Act which is not discretionary until 60 days after receipt by the Administrator of a written and dated notice of intent to file the action.

(2) The notice shall contain:

(i) A specific reference to the provisions of the Act, regulation or permit believed to require the Administrator to perform a nondiscretionary act or duty;

(ii) A precise description of the nondiscretionary act or duty believed to be required by such provision;

(iii) A concise statement of the facts believed to show a failure to perform the act or duty; and

(iv) Any documentary or other evidence of the alleged failure to perform the act or duty.

SUBCHAPTER E—OIL POLLUTION ACT REGULATIONS

PART 990—NATURAL RESOURCE DAMAGE ASSESSMENTS

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AUTHORITY: 33 U.S.C. 2701 *et seq.*

SOURCE: 61 FR 500, Jan. 5, 1996, unless otherwise noted.

Subpart A—Introduction

§990.10 Purpose.

The goal of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, is to make the environment and public whole for injuries to natural resources and services resulting from an incident involving a discharge or substantial threat of a discharge of oil (incident).

This goal is achieved through the return of the injured natural resources and services to baseline and compensation for interim losses of such natural resources and services from the date of the incident until recovery. The purpose of this part is to promote expeditious and cost-effective restoration of natural resources and services injured as a result of an incident. To fulfill this purpose, this part provides a natural resource damage assessment process for developing a plan for restoration of the injured natural resources and services and pursuing implementation or funding of the plan by responsible parties. This part also provides an administrative process for involving interested parties in the assessment, a range of assessment procedures for identifying and evaluating injuries to natural resources and services, and a means for selecting restoration actions from a reasonable range of alternatives.

§990.11 Scope.

The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides for the designation of federal, state, and, if designated by the Governor of the state, local officials to act on behalf of the public as trustees for natural resources and for the designation of Indian tribe and foreign officials to act as trustees for natural resources on behalf

of, respectively, the tribe or its members and the foreign government. This part may be used by these officials in conducting natural resource damage assessments when natural resources and/or services are injured as a result of an incident involving an actual or substantial threat of a discharge of oil. This part is not intended to affect the recoverability of natural resource damages when recoveries are sought other than in accordance with this part.

§ 990.12 Overview.

This part describes three phases of a natural resource damage assessment. The Preassessment Phase, during which trustees determine whether to pursue restoration, is described in subpart D of this part. The Restoration Planning Phase, during which trustees evaluate information on potential injuries and use that information to determine the need for, type of, and scale of restoration, is described in subpart E of this part. The Restoration Implementation Phase, during which trustees ensure implementation of restoration, is described in subpart F of this part.

§ 990.13 Rebuttable presumption.

Any determination or assessment of damages to natural resources made by a Federal, State, or Indian trustee in accordance with this part shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under OPA.

§ 990.14 Coordination.

(a) *Trustees.* (1) If an incident affects the interests of multiple trustees, the trustees should act jointly under this part to ensure that full restoration is achieved without double recovery of damages. For joint assessments, trustees must designate one or more Lead Administrative Trustee(s) to act as coordinators.

(2) If there is a reasonable basis for dividing the natural resource damage assessment, trustees may act independently under this part, so long as there is no double recovery of damages.

(3) Trustees may develop pre-incident or incident-specific memoranda of understanding to coordinate their activities.

(b) *Response agencies.* Trustees must coordinate their activities conducted concurrently with response operations with response agencies consistent with the NCP and any pre-incident plans developed under § 990.15(a) of this part. Trustees may develop pre-incident memoranda of understanding to coordinate their activities with response agencies.

(c) *Responsible parties*—(1) *Invitation.* Trustees must invite the responsible parties to participate in the natural resource damage assessment described in this part. The invitation to participate should be in writing, and a written response by the responsible parties is required to confirm the desire to participate.

(2) *Timing.* The invitation to participate should be extended to known responsible parties as soon as practicable, but not later than the delivery of the ''Notice of Intent to Conduct Restoration Planning,'' under § 990.44 of this part, to the responsible party.

(3) *Agreements.* Trustees and responsible parties should consider entering into binding agreements to facilitate their interactions and resolve any disputes during the assessment. To maximize cost-effectiveness and cooperation, trustees and responsible parties should attempt to develop a set of agreed-upon facts concerning the incident and/or assessment.

(4) *Nature and extent of participation.* If the responsible parties accept the invitation to participate, the scope of that participation must be determined by the trustees, in light of the considerations in paragraph (c)(5) of this section. At a minimum, participation will include notice of trustee determinations required under this part, and notice and opportunity to comment on documents or plans that significantly affect the nature and extent of the assessment. Increased levels of participation by responsible parties may be developed at the mutual agreement of the trustees and the responsible parties. Trustees will objectively consider all written comments provided by the responsible parties, as well as any other recommendations or proposals that the responsible parties submit in writing to the Lead Administrative Trustee. Submissions by the responsible parties

will be included in the administrative record. Final authority to make determinations regarding injury and restoration rest solely with the trustees. Trustees may end participation by responsible parties who, during the conduct of the assessment, in the sole judgment of the trustees, cause interference with the trustees' ability to fulfill their responsibilities under OPA and this part.

(5) *Considerations.* In determining the nature and extent of participation by the responsible parties or their representatives, trustees may consider such factors as:

(i) Whether the responsible parties have been identified;

(ii) The willingness of responsible parties to participate in the assessment;

(iii) The willingness of responsible parties to fund assessment activities;

(iv) The willingness and ability of responsible parties to conduct assessment activities in a technically sound and timely manner and to be bound by the results of jointly agreed upon studies;

(v) The degree of cooperation of the responsible parties in the response to the incident; and

(vi) The actions of the responsible parties in prior assessments.

(6) *Request for alternative assessment procedures.* (i) The participating responsible parties may request that trustees use assessment procedures other than those selected by the trustees if the responsible parties:

(A) Identify the proposed procedures to be used that meet the requirements of §990.27 of this part, and provide reasons supporting the technical adequacy and appropriateness of such procedures for the incident and associated injuries;

(B) Advance to the trustees the trustees' reasonable estimate of the cost of using the proposed procedures; and

(C) Agree not to challenge the results of the proposed procedures. The request from the responsible parties may be made at any time, but no later than, fourteen (14) days of being notified of the trustees' proposed assessment procedures for the incident or the injury.

(ii) Trustees may reject the responsible parties' proposed assessment procedures if, in the sole judgment of the trustees, the proposed assessment procedures:

(A) Are not technically feasible;

(B) Are not scientifically or technically sound;

(C) Would inadequately address the natural resources and services of concern;

(D) Could not be completed within a reasonable time frame; or

(E) Do not meet the requirements of §990.27 of this part.

(7) *Disclosure.* Trustees must document in the administrative record and Restoration Plan the invitation to the responsible parties to participate, and briefly describe the nature and extent of the responsible parties' participation. If the responsible parties' participation is terminated during the assessment, trustees must provide a brief explanation of this decision in the administrative record and Restoration Plan.

(d) *Public.* Trustees must provide opportunities for public involvement after the trustees' decision to develop restoration plans or issuance of any notices to that effect, as provided in §990.55 of this part. Trustees may also provide opportunities for public involvement at any time prior to this decision if such involvement may enhance trustees' decisionmaking or avoid delays in restoration.

§990.15 Considerations to facilitate restoration.

In addition to the procedures provided in subparts D through F of this part, trustees may take other actions to further the goal of expediting restoration of injured natural resources and services, including:

(a) *Pre-incident planning.* Trustees may engage in pre-incident planning activities. Pre-incident plans may identify natural resource damage assessment teams, establish trustee notification systems, identify support services, identify natural resources and services at risk, identify area and regional response agencies and officials, identify available baseline information, establish data management systems, and identify assessment funding

issues and options. Potentially responsible parties, as well as all other members of the public interested in and capable of participating in assessments, should be included in pre-incident planning to the fullest extent practicable.

(b) *Regional Restoration Plans.* Where practicable, incident-specific restoration plan development is preferred, however, trustees may develop Regional Restoration Plans. These plans may be used to support a claim under § 990.56 of this part. Regional restoration planning may consist of compiling databases that identify, on a regional or watershed basis, or otherwise as appropriate, existing, planned, or proposed restoration projects that may provide appropriate restoration alternatives for consideration in the context of specific incidents.

Subpart B—Authorities

§ 990.20 Relationship to the CERCLA natural resource damage assessment regulations.

(a) *General.* Regulations for assessing natural resource damages resulting from hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, and the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1321 *et seq.*, are codified at 43 CFR part 11. The CERCLA regulations originally applied to natural resource damages resulting from oil discharges as well as hazardous substance releases. This part supersedes 43 CFR part 11 with regard to oil discharges covered by OPA.

(b) *Assessments commenced before February 5, 1996.* If trustees commenced a natural resource damage assessment for an oil discharge under 43 CFR part 11 prior to February 5, 1996 they may complete the assessment in compliance with 43 CFR part 11, or they may elect to use this part, and obtain a rebuttable presumption.

(c) *Oil and hazardous substance mixtures.* For natural resource damages resulting from a discharge or release of a mixture of oil and hazardous substances, trustees must use 43 CFR part 11 in order to obtain a rebuttable presumption.

§ 990.21 Relationship to the NCP.

This part provides procedures by which trustees may determine appropriate restoration of injured natural resources and services, where such injuries are not fully addressed by response actions. Response actions and the coordination with damage assessment activities are conducted pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300.

§ 990.22 Prohibition on double recovery.

When taking actions under this part, trustees are subject to the prohibition on double recovery, as provided in 33 U.S.C. 2706(d)(3) of OPA.

§ 990.23 Compliance with NEPA and the CEQ regulations.

(a) *General.* The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* and Council on Environmental Quality (CEQ) regulations implementing NEPA, 40 CFR chapter V, apply to restoration actions by federal trustees, except where a categorical exclusion or other exception to NEPA applies. Thus, when a federal trustee proposes to take restoration actions under this part, it must integrate this part with NEPA, the CEQ regulations, and NEPA regulations promulgated by that federal trustee agency. Where state NEPA-equivalent laws may apply to state trustees, state trustees must consider the extent to which they must integrate this part with their NEPA-equivalent laws. The requirements and process described in this section relate only to NEPA and federal trustees.

(b) *NEPA requirements for federal trustees.* NEPA becomes applicable when federal trustees propose to take restoration actions, which begins with the development of a Draft Restoration Plan under § 990.55 of this part. Depending upon the circumstances of the incident, federal trustees may need to consider early involvement of the public in restoration planning in order to meet their NEPA compliance requirements.

(c) *NEPA process for federal trustees.* Although the steps in the NEPA process may vary among different federal trustees, the process will generally involve the need to develop restoration

plans in the form of an Environmental Assessment or Environmental Impact Statement, depending upon the trustee agency's own NEPA regulations.

(1) *Environmental Assessment.* (i) *Purpose.* The purpose of an Environmental Assessment (EA) is to determine whether a proposed restoration action will have a significant (as defined under NEPA and §1508.27 of the CEQ regulations) impact on the quality of the human environment, in which case an Environmental Impact Statement (EIS) evaluating the impact is required. In the alternative, where the impact will not be significant, federal trustees must issue a Finding of No Significant Impact (FONSI) as part of the restoration plans developed under this part. If significant impacts to the human environment are anticipated, the determination to proceed with an EIS may be made as a result, or in lieu, of the development of the EA.

(ii) *General steps.* (A) If the trustees decide to pursue an EA, the trustees may issue a Notice of Intent to Prepare a Draft Restoration Plan/EA, or proceed directly to developing a Draft Restoration Plan/EA.

(B) The Draft Restoration Plan/EA must be made available for public review before concluding a FONSI or proceeding with an EIS.

(C) If a FONSI is concluded, the restoration planning process should be no different than under §990.55 of this part, except that the Draft Restoration Plan/EA will include the FONSI analysis.

(D) The time period for public review on the Draft Restoration Plan/EA must be consistent with the federal trustee agency's NEPA requirements, but should generally be no less than thirty (30) calendar days.

(E) The Final Restoration Plan/EA must consider all public comments on the Draft Restoration Plan/EA and FONSI.

(F) The means by which a federal trustee requests, considers, and responds to public comments on the Draft Restoration Plan/EA and FONSI must also be consistent with the federal agency's NEPA requirements.

(2) *Environmental Impact Statement.* (i) *Purpose.* The purpose of an Environmental Impact Statement (EIS) is to involve the public and facilitate the decisionmaking process in the federal trustees' analysis of alternative approaches to restoring injured natural resources and services, where the impacts of such restoration are expected to have significant impacts on the quality of the human environment.

(ii) *General steps.* (A) If trustees determine that restoration actions are likely to have a significant (as defined under NEPA and §1508.27 of the CEQ regulations) impact on the environment, they must issue a Notice of Intent to Prepare a Draft Restoration Plan/EIS. The notice must be published in the FEDERAL REGISTER.

(B) The notice must be followed by formal public involvement in the development of the Draft Restoration Plan/EIS.

(C) The Draft Restoration Plan/EIS must be made available for public review for a minimum of forty-five (45) calendar days. The Draft Restoration Plan/EIS, or a notice of its availability, must be published in the FEDERAL REGISTER.

(D) The Final Restoration Plan/EIS must consider all public comments on the Draft Restoration Plan/EIS, and incorporate any changes made to the Draft Restoration Plan/EIS in response to public comments.

(E) The Final Restoration Plan/EIS must be made publicly available for a minimum of thirty (30) calendar days before a decision is made on the federal trustees' proposed restoration actions (Record of Decision). The Final Restoration Plan/EIS, or a notice of its availability, must be published in the FEDERAL REGISTER.

(F) The means by which a federal trustee agency requests, considers, and responds to public comments on the Final Restoration Plan/EIS must also be consistent with the federal agency's NEPA requirements.

(G) After appropriate public review on the Final Restoration Plan/EIS is completed, a Record of Decision (ROD) is issued. The ROD summarizes the trustees' decisionmaking process after consideration of any public comments relative to the proposed restoration actions, identifies all restoration alternatives (including the preferred alternative(s)), and their environmental

consequences, and states whether all practicable means to avoid or minimize environmental harm were adopted (e.g., monitoring and corrective actions). The ROD may be incorporated with other decision documents prepared by the trustees. The means by which the ROD is made publicly available must be consistent with the federal trustee agency's NEPA requirements.

(d) *Relationship to Regional Restoration Plans or an existing restoration project.* If a Regional Restoration Plan or existing restoration project is proposed for use, federal trustees may be able to tier their NEPA analysis to an existing EIS, as described in §§1502.20 and 1508.28 of the CEQ regulations.

§ 990.24 Compliance with other applicable laws and regulations.

(a) *Worker health and safety.* When taking actions under this part, trustees must comply with applicable worker health and safety considerations specified in the NCP for response actions.

(b) *Natural Resources protection.* When acting under this part, trustees must ensure compliance with any applicable consultation, permitting, or review requirements, including but not limited to: the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*; the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 *et seq.*; the Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.*; the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.*; the National Historic Preservation Act, 12 U.S.C. 470 *et seq.*; the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*; and the Archaeological Resources Protection Act, 16 U.S.C. 470 *et seq.*

§ 990.25 Settlement.

Trustees may settle claims for natural resource damages under this part at any time, provided that the settlement is adequate in the judgment of the trustees to satisfy the goal of OPA and is fair, reasonable, and in the public interest, with particular consideration of the adequacy of the settlement to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources and services. Sums recovered in settlement of such claims, other than reimbursement of trustee costs, may only be expended in accordance with a restoration plan, which may be set forth in whole or in part in a consent decree or other settlement agreement, which is made available for public review.

§ 990.26 Emergency restoration.

(a) Trustees may take emergency restoration action before completing the process established under this part, provided that:

(1) The action is needed to minimize continuing or prevent additional injury;

(2) The action is feasible and likely to minimize continuing or prevent additional injury; and

(3) The costs of the action are not unreasonable.

(b) If response actions are still underway, trustees, through their Regional Response Team member or designee, must coordinate with the On-Scene Coordinator (OSC) before taking any emergency restoration actions. Any emergency restoration actions proposed by trustees should not interfere with on-going response actions. Trustees must explain to response agencies through the OSC prior to implementation of emergency restoration actions their reasons for believing that proposed emergency restoration actions will not interfere with on-going response actions.

(c) Trustees must provide notice to identified responsible parties of any emergency restoration actions and, to the extent time permits, invite their participation in the conduct of those actions as provided in §990.14(c) of this part.

(d) Trustees must provide notice to the public, to the extent practicable, of these planned emergency restoration actions. Trustees must also provide public notice of the justification for, nature and extent of, and results of emergency restoration actions within a reasonable time frame after completion of such actions. The means by which this notice is provided is left to the discretion of the trustee.

§ 990.27 Use of assessment procedures.

(a) *Standards for assessment procedures.* Any procedures used pursuant to this part must comply with all of the

following standards if they are to be in accordance with this part:

(1) The procedure must be capable of providing assessment information of use in determining the type and scale of restoration appropriate for a particular injury;

(2) The additional cost of a more complex procedure must be reasonably related to the expected increase in the quantity and/or quality of relevant information provided by the more complex procedure; and

(3) The procedure must be reliable and valid for the particular incident.

(b) *Assessment procedures available.* (1) The range of assessment procedures available to trustees includes, but is not limited to:

(i) Procedures conducted in the field;

(ii) Procedures conducted in the laboratory;

(iii) Model-based procedures, including type A procedures identified in 43 CFR part 11, subpart D, and compensation formulas/schedules; and

(iv) Literature-based procedures.

(2) Trustees may use the assessment procedures in paragraph (b)(1) of this section alone, or in any combination, provided that the standards in paragraph (a) of this section are met, and there is no double recovery.

(c) *Selecting assessment procedures.* (1) When selecting assessment procedures, trustees must consider, at a minimum:

(i) The range of procedures available under paragraph (b) of this section;

(ii) The time and cost necessary to implement the procedures;

(iii) The potential nature, degree, and spatial and temporal extent of the injury;

(iv) The potential restoration actions for the injury; and

(v) The relevance and adequacy of information generated by the procedures to meet information requirements of restoration planning.

(2) If a range of assessment procedures providing the same type and quality of information is available, the most cost-effective procedure must be used.

Subpart C—Definitions

§990.30 Definitions.

For the purpose of this rule, the term:

Baseline means the condition of the natural resources and services that would have existed had the incident not occurred. Baseline data may be estimated using historical data, reference data, control data, or data on incremental changes (e.g., number of dead animals), alone or in combination, as appropriate.

Cost-effective means the least costly activity among two or more activities that provide the same or a comparable level of benefits, in the judgment of the trustees.

CEQ regulations means the Council on Environmental Quality regulations implementing NEPA, 40 CFR chapter V.

Damages means damages specified in section 1002(b) of OPA (33 U.S.C. 1002(b)), and includes the costs of assessing these damages, as defined in section 1001(5) of OPA (33 U.S.C. 2701(5)).

Discharge means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping, as defined in section 1001(7) of OPA (33 U.S.C. 2701(7)).

Exclusive Economic Zone means the zone established by Presidential Proclamation 5030 of March 10, 1983 (3 CFR, 1984 Comp., p. 22), including the ocean waters of the areas referred to as ''eastern special areas'' in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, as defined in section 1001(8) of OPA (33 U.S.C. 2701(8)).

Exposure means direct or indirect contact with the discharged oil.

Facility means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling

stock, or pipeline used for one or more of these purposes, as defined in section 1001(9) of OPA (33 U.S.C. 2701(9)).

Fund means the Oil Spill Liability Trust Fund, established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509), as defined in section 1001(11) of OPA (33 U.S.C. 2701(11)).

Incident means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines or the Exclusive Economic Zone, as defined in section 1001(14) of OPA (33 U.S.C. 2701(14)).

Indian tribe (or tribal) means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe, as defined in section 1001(15) of OPA (33 U.S.C. 2701(15)).

Injury means an observable or measurable adverse change in a natural resource or impairment of a natural resource service. Injury may occur directly or indirectly to a natural resource and/or service. Injury incorporates the terms ''destruction,'' ''loss,'' and ''loss of use'' as provided in OPA.

Lead Administrative Trustee(s) (or LAT) means the trustee(s) who is selected by all participating trustees whose natural resources or services are injured by an incident, for the purpose of coordinating natural resource damage assessment activities. The LAT(s) should also facilitate communication between the OSC and other natural resource trustees regarding their activities during the response phase.

NCP means the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan) codified at 40 CFR part 300, which addresses the identification, investigation, study, and response to incidents, as defined in section 1001(19) of OPA (33 U.S.C. 2701(19)).

Natural resource damage assessment (or assessment) means the process of collecting and analyzing information to evaluate the nature and extent of injuries resulting from an incident, and determine the restoration actions needed to bring injured natural resources and services back to baseline and make the environment and public whole for interim losses.

Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the Exclusive Economic Zone), any state or local government or Indian tribe, or any foreign government, as defined in section 1001(20) of OPA (33 U.S.C. 2701(20)).

Navigable waters means the waters of the United States, including the territorial sea, as defined in section 1001(21) of OPA (33 U.S.C. 2701(21)).

NEPA means the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

Oil means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. However, the term does not include petroleum, including crude oil or any fraction thereof, that is specifically listed or designated as a hazardous substance under 42 U.S.C. 9601(14)(A) through (F), as defined in section 1001(23) of OPA (33 U.S.C. 2701(23)).

On-Scene Coordinator (or OSC) means the official designated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct response actions under the NCP, or the government official designated by the lead response agency to coordinate and direct response actions under the NCP.

OPA means the Oil Pollution Act of 1990, 33 U.S.C. 2701 *et seq.*

Pathway means any link that connects the incident to a natural resource and/or service, and is associated with an actual discharge of oil.

Person means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate

body, as defined in section 1001(27) of OPA (33 U.S.C. 2701(27)).

Public vessel means a vessel owned or bareboat chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce, as defined in section 1001(29) of OPA (33 U.S.C. 2701(29)).

Reasonable assessment costs means, for assessments conducted under this part, assessment costs that are incurred by trustees in accordance with this part. In cases where assessment costs are incurred but trustees do not pursue restoration, trustees may recover their reasonable assessment costs provided that they have determined that assessment actions undertaken were premised on the likelihood of injury and need for restoration. Reasonable assessment costs also include: administrative, legal, and enforcement costs necessary to carry out this part; monitoring and oversight costs; and costs associated with public participation.

Recovery means the return of injured natural resources and services to baseline.

Response (or *remove* or *removal*) means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches, as defined in section 1001(30) of OPA (33 U.S.C. 2701(30)).

Responsible party means:

(a) *Vessels.* In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(b) *Onshore facilities.* In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(c) *Offshore facilities.* In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(d) *Deepwater ports.* In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), the licensee.

(e) *Pipelines.* In the case of a pipeline, any person owning or operating the pipeline.

(f) *Abandonment.* In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility, as defined in section 1001(32) of OPA (33 U.S.C. 2701(32)).

Restoration means any action (or alternative), or combination of actions (or alternatives), to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and services. Restoration includes:

(a) *Primary restoration,* which is any action, including natural recovery, that returns injured natural resources and services to baseline; and

(b) *Compensatory restoration,* which is any action taken to compensate for interim losses of natural resources and services that occur from the date of the incident until recovery.

Services (or *natural resource services*) means the functions performed by a natural resource for the benefit of another natural resource and/or the public.

Trustees (or *natural resource trustees*) means those officials of the federal and state governments, of Indian tribes, and of foreign governments, designated under 33 U.S.C. 2706(b) of OPA.

United States and *State* means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin

Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States, as defined in section 1001(36) of OPA (33 U.S.C. 2701(36)).

Value means the maximum amount of goods, services, or money an individual is willing to give up to obtain a specific good or service, or the minimum amount of goods, services, or money an individual is willing to accept to forgo a specific good or service. The total value of a natural resource or service includes the value individuals derive from direct use of the natural resource, for example, swimming, boating, hunting, or birdwatching, as well as the value individuals derive from knowing a natural resource will be available for future generations.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel, as defined in section 1001(37) of OPA (33 U.S.C. 2701(37)).

Subpart D—Preassessment Phase

§ 990.40 Purpose.

The purpose of this subpart is to provide a process by which trustees determine if they have jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so.

§ 990.41 Determination of jurisdiction.

(a) *Determination of jurisdiction.* Upon learning of an incident, trustees must determine whether there is jurisdiction to pursue restoration under OPA. To make this determination, trustees must decide if:

(1) An incident has occurred, as defined in § 990.30 of this part;

(2) The incident is not:

(i) Permitted under a permit issued under federal, state, or local law; or

(ii) From a public vessel; or

(iii) From an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651, *et seq.*; and

(3) Natural resources under the trusteeship of the trustee may have been, or may be, injured as a result of the incident.

(b) *Proceeding with preassessment.* If the conditions listed in paragraph (a) of this section are met, trustees may proceed under this part. If one of the conditions is not met, trustees may not take additional action under this part, except action to finalize this determination. Trustees may recover all reasonable assessment costs incurred up to this point provided that conditions in paragraphs (a)(1) and (a)(2) of this section were met and actions were taken with the reasonable belief that natural resources or services under their trusteeship might have been injured as a result of the incident.

§ 990.42 Determination to conduct restoration planning.

(a) *Determination on restoration planning.* If trustees determine that there is jurisdiction to pursue restoration under OPA, trustees must determine whether:

(1) Injuries have resulted, or are likely to result, from the incident;

(2) Response actions have not adequately addressed, or are not expected to address, the injuries resulting from the incident; and

(3) Feasible primary and/or compensatory restoration actions exist to address the potential injuries.

(b) *Proceeding with preassessment.* If the conditions listed in paragraph (a) of this section are met, trustees may proceed under § 990.44 of this part. If one of these conditions is not met, trustees may not take additional action under this part, except action to finalize this determination. However, trustees may recover all reasonable assessment costs incurred up to this point.

§ 990.43 Data collection.

Trustees may conduct data collection and analyses that are reasonably related to Preassessment Phase activities. Data collection and analysis during the Preassessment Phase must be coordinated with response actions such that collection and analysis does not interfere with response actions. Trustees may collect and analyze the following types of data during the Preassessment Phase:

(a) Data reasonably expected to be necessary to make a determination of jurisdiction under § 990.41 of this part,

or a determination to conduct restoration planning under §990.42 of this part;

(b) Ephemeral data; and

(c) Information needed to design or implement anticipated assessment procedures under subpart E of this part.

§990.44 Notice of Intent to Conduct Restoration Planning.

(a) *General.* If trustees determine that all the conditions under §990.42(a) of this part are met and trustees decide to proceed with the natural resource damage assessment, they must prepare a Notice of Intent to Conduct Restoration Planning.

(b) *Contents of the notice.* The Notice of Intent to Conduct Restoration Planning must include a discussion of the trustees' analyses under §§990.41 and 990.42 of this part. Depending on information available at this point, the notice may include the trustees' proposed strategy to assess injury and determine the type and scale of restoration. The contents of a notice may vary, but will typically discuss:

(1) The facts of the incident;

(2) Trustee authority to proceed with the assessment;

(3) Natural resources and services that are, or are likely to be, injured as a result of the incident;

(4) Potential restoration actions relevant to the expected injuries; and

(5) If determined at the time, potential assessment procedures to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources and services.

(c) *Public availability of the notice.* Trustees must make a copy of the Notice of Intent to Conduct Restoration Planning publicly available. The means by which the notice is made publicly available and whether public comments are solicited on the notice will depend on the nature and extent of the incident and various information requirements, and is left to the discretion of the trustees.

(d) *Delivery of the notice to the responsible parties.* Trustees must send a copy of the notice to the responsible parties, to the extent known, in such a way as will establish the date of receipt, and invite responsible parties' participation in the conduct of restoration planning. Consistent with §990.14(c) of this part, the determination of the timing, nature, and extent of responsible party participation will be determined by the trustees on an incident-specific basis.

§990.45 Administrative record.

(a) If trustees decide to proceed with restoration planning, they must open a publicly available administrative record to document the basis for their decisions pertaining to restoration. The administrative record should be opened concurrently with the publication of the Notice of Intent to Conduct Restoration Planning. Depending on the nature and extent of the incident and assessment, the administrative record should include documents relied upon during the assessment, such as:

(1) Any notice, draft and final restoration plans, and public comments;

(2) Any relevant data, investigation reports, scientific studies, work plans, quality assurance plans, and literature; and

(3) Any agreements, not otherwise privileged, among the participating trustees or with the responsible parties.

(b) Federal trustees should maintain the administrative record in a manner consistent with the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06.

Subpart E—Restoration Planning Phase

§990.50 Purpose.

The purpose of this subpart is to provide a process by which trustees evaluate and quantify potential injuries (injury assessment), and use that information to determine the need for and scale of restoration actions (restoration selection).

§990.51 Injury assessment—injury determination.

(a) *General.* After issuing a Notice of Intent to Conduct Restoration Planning under §990.44 of this part, trustees must determine if injuries to natural resources and/or services have resulted from the incident.

(b) *Determining injury.* To make the determination of injury, trustees must evaluate if:

(1) The definition of injury has been met, as defined in § 990.30 of this part; and

(2)(i) An injured natural resource has been exposed to the discharged oil, and a pathway can be established from the discharge to the exposed natural resource; or

(ii) An injury to a natural resource or impairment of a natural resource service has occurred as a result of response actions or a substantial threat of a discharge of oil.

(c) *Identifying injury.* Trustees must determine whether an injury has occurred and, if so, identify the nature of the injury. Potential categories of injury include, but are not limited to, adverse changes in: survival, growth, and reproduction; health, physiology and biological condition; behavior; community composition; ecological processes and functions; physical and chemical habitat quality or structure; and public services.

(d) *Establishing exposure and pathway.* Except for injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil, trustees must establish whether natural resources were exposed, either directly or indirectly, to the discharged oil from the incident, and estimate the amount or concentration and spatial and temporal extent of the exposure. Trustees must also determine whether there is a pathway linking the incident to the injuries. Pathways may include, but are not limited to, the sequence of events by which the discharged oil was transported from the incident and either came into direct physical contact with a natural resource, or caused an indirect injury.

(e) *Injuries resulting from response actions or incidents involving a substantial threat of a discharge.* For injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil, trustees must determine whether an injury or an impairment of a natural resource service has occurred as a result of the incident.

(f) *Selection of injuries to include in the assessment.* When selecting potential injuries to assess, trustees should consider factors such as:

(1) The natural resources and services of concern;

(2) The procedures available to evaluate and quantify injury, and associated time and cost requirements;

(3) The evidence indicating exposure;

(4) The pathway from the incident to the natural resource and/or service of concern;

(5) The adverse change or impairment that constitutes injury;

(6) The evidence indicating injury;

(7) The mechanism by which injury occurred;

(8) The potential degree, and spatial and temporal extent of the injury;

(9) The potential natural recovery period; and

(10) The kinds of primary and/or compensatory restoration actions that are feasible.

§ 990.52 Injury assessment—quantification.

(a) *General.* In addition to determining whether injuries have resulted from the incident, trustees must quantify the degree, and spatial and temporal extent of such injuries relative to baseline.

(b) *Quantification approaches.* Trustees may quantify injuries in terms of:

(1) The degree, and spatial and temporal extent of the injury to a natural resource;

(2) The degree, and spatial and temporal extent of injury to a natural resource, with subsequent translation of that adverse change to a reduction in services provided by the natural resource; or

(3) The amount of services lost as a result of the incident.

(c) *Natural recovery.* To quantify injury, trustees must estimate, quantitatively or qualitatively, the time for natural recovery without restoration, but including any response actions. The analysis of natural recovery may consider such factors as:

(1) The nature, degree, and spatial and temporal extent of injury;

(2) The sensitivity and vulnerability of the injured natural resource and/or service;

(3) The reproductive and recruitment potential;

(4) The resistance and resilience (stability) of the affected environment;

(5) The natural variability; and

(6) The physical/chemical processes of the affected environment.

§990.53 Restoration selection—developing restoration alternatives.

(a) *General.* (1) If the information on injury determination and quantification under §§990.51 and 990.52 of this part and its relevance to restoration justify restoration, trustees may proceed with the Restoration Planning Phase. Otherwise, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to this point.

(2) Trustees must consider a reasonable range of restoration alternatives before selecting their preferred alternative(s). Each restoration alternative is comprised of primary and/or compensatory restoration components that address one or more specific injury(ies) associated with the incident. Each alternative must be designed so that, as a package of one or more actions, the alternative would make the environment and public whole. Only those alternatives considered technically feasible and in accordance with applicable laws, regulations, or permits may be considered further under this part.

(b) *Primary restoration.* (1) *General.* For each alternative, trustees must consider primary restoration actions, including a natural recovery alternative.

(2) *Natural recovery.* Trustees must consider a natural recovery alternative in which no human intervention would be taken to directly restore injured natural resources and services to baseline.

(3) *Active primary restoration actions.* Trustees must consider an alternative comprised of actions to directly restore the natural resources and services to baseline on an accelerated time frame. When identifying such active primary restoration actions, trustees may consider actions that:

(i) Remove conditions that would prevent or limit the effectiveness of any restoration action (e.g., residual sources of contamination);

(ii) May be necessary to return the physical, chemical, and/or biological conditions necessary to allow recovery or restoration of the injured natural resources (e.g., replacing substrate or vegetation, or modifying hydrologic conditions); or

(iii) Return key natural resources and services, and would be an effective approach to achieving or accelerating a return to baseline (e.g., replacing essential species, habitats, or public services that would facilitate the replacement of other, dependent natural resource or service components).

(c) *Compensatory restoration.* (1) *General.* For each alternative, trustees must also consider compensatory restoration actions to compensate for the interim loss of natural resources and services pending recovery.

(2) *Compensatory restoration actions.* To the extent practicable, when evaluating compensatory restoration actions, trustees must consider compensatory restoration actions that provide services of the same type and quality, and of comparable value as those injured. If, in the judgment of the trustees, compensatory actions of the same type and quality and comparable value cannot provide a reasonable range of alternatives, trustees should identify actions that provide natural resources and services of comparable type and quality as those provided by the injured natural resources. Where the injured and replacement natural resources and services are not of comparable value, the scaling process will involve valuation of lost and replacement services.

(d) *Scaling restoration actions.* (1) *General.* After trustees have identified the types of restoration actions that will be considered, they must determine the scale of those actions that will make the environment and public whole. For primary restoration actions, scaling generally applies to actions involving replacement and/or acquisition of equivalent of natural resources and/or services.

(2) *Resource-to-resource and service-to-service scaling approaches.* When determining the scale of restoration actions that provide natural resources and/or services of the same type and quality, and of comparable value as those lost, trustees must consider the use of a resource-to-resource or service-to-service scaling approach. Under this approach,

trustees determine the scale of restoration actions that will provide natural resources and/or services equal in quantity to those lost.

(3) *Valuation scaling approach.* (i) Where trustees have determined that neither resource-to-resource nor service-to-service scaling is appropriate, trustees may use the valuation scaling approach. Under the valuation scaling approach, trustees determine the amount of natural resources and/or services that must be provided to produce the same value lost to the public. Trustees must explicitly measure the value of injured natural resources and/or services, and then determine the scale of the restoration action necessary to produce natural resources and/or services of equivalent value to the public.

(ii) If, in the judgment of the trustees, valuation of the lost services is practicable, but valuation of the replacement natural resources and/or services cannot be performed within a reasonable time frame or at a reasonable cost, as determined by § 990.27(a)(2) of this part, trustees may estimate the dollar value of the lost services and select the scale of the restoration action that has a cost equivalent to the lost value. The responsible parties may request that trustees value the natural resources and services provided by the restoration action following the process described in § 990.14(c) of this part.

(4) *Discounting and uncertainty.* When scaling a restoration action, trustees must evaluate the uncertainties associated with the projected consequences of the restoration action, and must discount all service quantities and/or values to the date the demand is presented to the responsible parties. Where feasible, trustees should use risk-adjusted measures of losses due to injury and of gains from the restoration action, in conjunction with a riskless discount rate representing the consumer rate of time preference. If the streams of losses and gains cannot be adequately adjusted for risks, then trustees may use a discount rate that incorporates a suitable risk adjustment to the riskless rate.

§ 990.54 Restoration selection—evaluation of alternatives.

(a) *Evaluation standards.* Once trustees have developed a reasonable range of restoration alternatives under § 990.53 of this part, they must evaluate the proposed alternatives based on, at a minimum:

(1) The cost to carry out the alternative;

(2) The extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses;

(3) The likelihood of success of each alternative;

(4) The extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative;

(5) The extent to which each alternative benefits more than one natural resource and/or service; and

(6) The effect of each alternative on public health and safety.

(b) *Preferred restoration alternatives.* Based on an evaluation of the factors under paragraph (a) of this section, trustees must select a preferred restoration alternative(s). If the trustees conclude that two or more alternatives are equally preferable based on these factors, the trustees must select the most cost-effective alternative.

(c) *Pilot projects.* Where additional information is needed to identify and evaluate the feasibility and likelihood of success of restoration alternatives, trustees may implement restoration pilot projects. Pilot projects should only be undertaken when, in the judgment of the trustees, these projects are likely to provide the information, described in paragraph (a) of this section, at a reasonable cost and in a reasonable time frame.

§ 990.55 Restoration selection—developing restoration plans.

(a) *General.* OPA requires that damages be based upon a plan developed with opportunity for public review and comment. To meet this requirement, trustees must, at a minimum, develop a Draft and Final Restoration Plan,

with an opportunity for public review of and comment on the draft plan.

(b) *Draft Restoration Plan.* (1) The Draft Restoration Plan should include:

(i) A summary of injury assessment procedures used;

(ii) A description of the nature, degree, and spatial and temporal extent of injuries resulting from the incident;

(iii) The goals and objectives of restoration;

(iv) The range of restoration alternatives considered, and a discussion of how such alternatives were developed under §990.53 of this part, and evaluated under §990.54 of this part;

(v) Identification of the trustees' tentative preferred alternative(s);

(vi) A description of past and proposed involvement of the responsible parties in the assessment; and

(vii) A description of monitoring for documenting restoration effectiveness, including performance criteria that will be used to determine the success of restoration or need for interim corrective action.

(2) When developing the Draft Restoration Plan, trustees must establish restoration objectives that are specific to the injuries. These objectives should clearly specify the desired outcome, and the performance criteria by which successful restoration will be judged. Performance criteria may include structural, functional, temporal, and/or other demonstrable factors. Trustees must, at a minimum, determine what criteria will:

(i) Constitute success, such that responsible parties are relieved of responsibility for further restoration actions; or

(ii) Necessitate corrective actions in order to comply with the terms of a restoration plan or settlement agreement.

(3) The monitoring component to the Draft Restoration Plan should address such factors as duration and frequency of monitoring needed to gauge progress and success, level of sampling needed to detect success or the need for corrective action, and whether monitoring of a reference or control site is needed to determine progress and success. Reasonable monitoring and oversight costs cover those activities necessary to gauge the progress, performance, and success of the restoration actions developed under the plan.

(c) *Public review and comment.* The nature of public review and comment on the Draft and Final Restoration Plans will depend on the nature of the incident and any applicable federal trustee NEPA requirements, as described in §§990.14(d) and 990.23 of this part.

(d) *Final Restoration Plan.* Trustees must develop a Final Restoration Plan that includes the information specified in paragraph (a) of this section, responses to public comments, if applicable, and an indication of any changes made to the Draft Restoration Plan.

§990.56 Restoration selection—use of a Regional Restoration Plan or existing restoration project.

(a) *General.* Trustees may consider using a Regional Restoration Plan or existing restoration project where such a plan or project is determined to be the preferred alternative among a range of feasible restoration alternatives for an incident, as determined under §990.54 of this part. Such plans or projects must be capable of fulfilling OPA's intent for the trustees to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources and services and compensate for interim losses.

(b) *Existing plans or projects*—(1) *Considerations.* Trustees may select a component of a Regional Restoration Plan or an existing restoration project as the preferred alternative, provided that the plan or project:

(i) Was developed with public review and comment or is subject to public review and comment under this part;

(ii) Will adequately compensate the environment and public for injuries resulting from the incident;

(iii) Addresses, and is currently relevant to, the same or comparable natural resources and services as those identified as having been injured; and

(iv) Allows for reasonable scaling relative to the incident.

(2) *Demand.* (i) If the conditions of paragraph (b)(1) of this section are met, the trustees must invite the responsible parties to implement that component of the Regional Restoration Plan

or existing restoration project, or advance to the trustees' reasonable estimate of the cost of implementing that component of the Regional Restoration Plan or existing restoration project.

(ii) If the conditions of paragraph (b)(1) of this section are met, but the trustees determine that the scale of the existing plan or project is greater than the scale of compensation required by the incident, trustees may only request funding from the responsible parties equivalent to the scale of the restoration determined to be appropriate for the incident of concern. Trustees may pool such partial recoveries until adequate funding is available to successfully implement the existing plan or project.

(3) *Notice of Intent To Use a Regional Restoration Plan or Existing Restoration Project.* If trustees intend to use an appropriate component of a Regional Restoration Plan or existing restoration project, they must prepare a Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project. Trustees must make a copy of the notice publicly available. The notice must include, at a minimum:

(i) A description of the nature, degree, and spatial and temporal extent of injuries; and

(ii) A description of the relevant component of the Regional Restoration Plan or existing restoration project; and

(iii) An explanation of how the conditions set forth in paragraph (b)(1) of this section are met.

Subpart F—Restoration Implementation Phase

§ 990.60 Purpose.

The purpose of this subpart is to provide a process for implementing restoration.

§ 990.61 Administrative record.

(a) *Closing the administrative record for restoration planning.* Within a reasonable time after the trustees have completed restoration planning, as provided in §§ 990.55 and 990.56 of this part, they must close the administrative record. Trustees may not add documents to the administrative record once it is closed, except where such documents:

(1) Are offered by interested parties that did not receive actual or constructive notice of the Draft Restoration Plan and the opportunity to comment on the plan;

(2) Do not duplicate information already contained in the administrative record; and

(3) Raise significant issues regarding the Final Restoration Plan.

(b) *Opening an administrative record for restoration implementation.* Trustees may open an administrative record for implementation of restoration, as provided in § 990.45 of this part. The costs associated with the administrative record are part of the costs of restoration. Ordinarily, the administrative record for implementation of restoration should document, at a minimum, all Restoration Implementation Phase decisions, actions, and expenditures, including any modifications made to the Final Restoration Plan.

§ 990.62 Presenting a demand.

(a) *General.* After closing the administrative record for restoration planning, trustees must present a written demand to the responsible parties. Delivery of the demand should be made in a manner that establishes the date of receipt by the responsible parties.

(b) *When a Final Restoration Plan has been developed.* Except as provided in paragraph (c) of this section and in § 990.14(c) of this part, the demand must invite the responsible parties to either:

(1) Implement the Final Restoration Plan subject to trustee oversight and reimburse the trustees for their assessment and oversight costs; or

(2) Advance to the trustees a specified sum representing trustee assessment costs and all trustee costs associated with implementing the Final Restoration Plan, discounted as provided in § 990.63(a) of this part.

(c) *Regional Restoration Plan or existing restoration project.* When the trustees use a Regional Restoration Plan or an existing restoration project under § 990.56 of this part, the demand will invite the responsible parties to implement a component of a Regional Restoration Plan or existing restoration

project, or advance the trustees' estimate of damages based on the scale of the restoration determined to be appropriate for the incident of concern, which may be the entire project or a portion thereof.

(d) *Response to demand.* The responsible parties must respond within ninety (90) calendar days in writing by paying or providing binding assurance they will reimburse trustees' assessment costs and implement the plan or pay assessment costs and the trustees' estimate of the costs of implementation.

(e) *Additional contents of demand.* The demand must also include:

(1) Identification of the incident from which the claim arises;

(2) Identification of the trustee(s) asserting the claim and a statement of the statutory basis for trusteeship;

(3) A brief description of the injuries for which the claim is being brought;

(4) An index to the administrative record;

(5) The Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project; and

(6) A request for reimbursement of:

(i) Reasonable assessment costs, as defined in §990.30 of this part and discounted as provided in §990.63(b) of this part;

(ii) The cost, if any, of conducting emergency restoration under §990.26 of this part, discounted as provided in §990.63(b) of this part; and

(iii) Interest on the amounts recoverable, as provided in section 1005 of OPA (33 U.S.C. 2705), which allows for prejudgment and post-judgment interest to be paid at a commercial paper rate, starting from thirty (30) calendar days from the date a demand is presented until the date the claim is paid.

§990.63 Discounting and compounding.

(a) *Estimated future restoration costs.* When determining estimated future costs of implementing a Final Restoration Plan, trustees must discount such future costs back to the date the demand is presented. Trustees may use a discount rate that represents the yield on recoveries available to trustees. The price indices used to project future inflation should reflect the major components of the restoration costs.

(b) *Past assessment and emergency restoration costs.* When calculating the present value of assessment and emergency restoration costs already incurred, trustees must compound the costs forward to the date the demand is presented. To perform the compounding, trustees may use the actual U.S. Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis. For costs incurred by state or tribal trustees, trustees may compound using parallel state or tribal borrowing rates.

(c) Trustees are referred to Appendices B and C of OMB Circular A–94 for information about U.S. Treasury rates of various maturities and guidance in calculation procedures. Copies of Appendix C, which is regularly updated, and of the Circular are available from the OMB Publications Office (202–395–7332).

§990.64 Unsatisfied demands.

(a) If the responsible parties do not agree to the demand within ninety (90) calendar days after trustees present the demand, the trustees may either file a judicial action for damages or seek an appropriation from the Oil Spill Liability Trust Fund, as provided in section 1012(a)(2) of OPA (33 U.S.C. 2712(a)(2)).

(b) Judicial actions and claims must be filed within three (3) years after the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project is made publicly available, in accordance with 33 U.S.C. 2717(f)(1)(B) and 2712(h)(2).

§990.65 Opening an account for recovered damages.

(a) *General.* Sums recovered by trustees in satisfaction of a natural resource damage claim must be placed in a revolving trust account. Sums recovered for past assessment costs and emergency restoration costs may be used to reimburse the trustees. All other sums must be used to implement the Final Restoration Plan or all or an appropriate component of a Regional Restoration Plan or an existing restoration project.

(b) *Joint trustee recoveries.* (1) *General.* Trustees may establish a joint account for damages recovered pursuant to joint assessment activities, such as an account under the registry of the applicable federal court.

(2) *Management.* Trustees may develop enforceable agreements to govern management of joint accounts, including agreed-upon criteria and procedures, and personnel for authorizing expenditures out of such joint accounts.

(c) *Interest-bearing accounts.* Trustees may place recoveries in interest-bearing revolving trust accounts, as provided by section 1006(f) of OPA (33 U.S.C. 2706(f)). Interest earned on such accounts may only be used for restoration.

(d) *Escrow accounts.* Trustees may establish escrow accounts or other investment accounts.

(e) *Records.* Trustees must maintain appropriate accounting and reporting procedures to document expenditures from accounts established under this section.

(f) *Oil Spill Liability Trust Fund.* Any sums remaining in an account established under this section that are not used either to reimburse trustees for past assessment and emergency restoration costs or to implement restoration must be deposited in the Oil Spill Liability Trust Fund, as provided by section 1006(f) of OPA (33 U.S.C. 2706(f)).

§ 990.66 Additional considerations.

(a) Upon settlement of a claim, trustees should consider the following actions to facilitate implementation of restoration:

(1) Establish a trustee committee and/or memorandum of understanding or other agreement to coordinate among affected trustees, as provided in § 990.14(a)(3) of this part;

(2) Develop more detailed workplans to implement restoration;

(3) Monitor and oversee restoration; and

(4) Evaluate restoration success and the need for corrective action.

(b) The reasonable costs of such actions are included as restoration costs.