

(c) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to valid law enforcement activities, or any activity necessary to respond to an emergency threatening life or the environment.

(d) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to any activity:

(1) Specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued pursuant to § 922.195 or a Special Use Permit issued pursuant to section 310 of the NMSA.

(2) Specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of these regulations, or by any valid right of subsistence use or access in existence on the effective date of these regulations, provided that the holder of such authorization or right complies with § 922.194 and § 922.47 and with any terms and conditions for the exercise of such authorization or right imposed by the Director as a condition of certification as he or she deems reasonably necessary to achieve the purposes for which the Sanctuary was designated.

§ 922.194 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.193 (a)(1) through (3) if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, *provided that*:

(1) for any State or local lease, permit, license, approval, or other authorization, or any right of subsistence use, the State Archaeologist certifies to the Director, within 90 days of the effective date of designation, that the activity authorized under the State or local lease, permit, license, approval, or other authorization, or any right of subsistence use, is being conducted consistent with the Programmatic

Agreement, in which case such activity shall be deemed to have met the requirements of this section and § 922.47; or

(2) In the case where either:

(i) The State Archaeologist does not certify that the activity authorized under a State or local lease, permit, license, approval, or other authorization, or right of subsistence use is being conducted consistent with the Programmatic Agreement; or

(ii) The activity is conducted pursuant only to a Federal permit, the holder of the authorization or right complies with paragraphs (b) through (k) of this section.

(b) For an activity described in paragraph (a)(2) of this section, the holder of the authorization or right may conduct the activity prohibited by § 922.193 (a)(1) through (3) *provided that*:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of § 922.194; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(c) The holder of an authorization or right described in paragraph (a)(2) of this section authorizing an activity prohibited by § 922.193 may conduct the activity without being in violation of applicable provisions of § 922.193, pending final agency action on his or her certification request, provided the holder is in compliance with this § 922.194.

(d) Any holder of an authorization or right described in paragraph (a)(2) of this section may request the Director to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited by § 922.193, thus requiring certification under this section.

(e) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary

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Manager, Thunder Bay National Marine Sanctuary and Underwater Preserve, 1305 East-West Highway, N/ORM, Silver Spring, Maryland, 20910. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(f) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(g) The Director may amend any certification made under this § 922.194 whenever additional information becomes available justifying such an amendment.

(h) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this § 922.194, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(i) Any time limit prescribed in or established under this § 922.194 may be extended by the Director for good cause.

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.50.

(k) Any amendment, renewal, or extension made after the effective date of Sanctuary designation, to a lease, permit, license, approval, other authorization or right is subject to the provisions of § 922.195 and § 922.49.

(l) For any activity authorized pursuant to § 922.193 (b), the holder of such license or permit shall notify the Director, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right.

§ 922.195 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.193 (a)(1) through (3), if conducted in accordance with the scope, purpose, terms and conditions of a State Permit *provided that*:

(1) The State Archaeologist certifies to NOAA that the activity authorized under the State Permit will be conducted consistent with the Programmatic Agreement, in which case such State Permit shall be deemed to have met the requirements of § 922.49; or

(2) In the case where the State Archaeologist does not certify that the activity to be authorized under a State Permit will be conducted consistent with the Programmatic Agreement, the person complies with the requirements of § 922.49 of this part.

(b) If no State Permit is required to conduct an activity prohibited by § 922.193 (a)(1) through (3) of this subpart, a person may conduct such activity if it is conducted in accordance with the scope, purpose, terms and conditions of a Federal permit, *provided that* the person complies with the provisions of § 922.49 of this part.

(c) In instances where the conduct of an activity is prohibited by § 922.193 (a)(1) through (3) of this subpart is not addressed under a State or other Federal lease, license, permit or other authorization, a person must obtain a Sanctuary permit from NOAA pursuant to § 922.48 (c) through (f) of this part and the Programmatic Agreement in order to conduct the activity.

(d) A permit for recovery of an underwater cultural resource may be issued if:

(1) The proposed activity satisfies the requirements for permits described under paragraphs (a) through (c) of this section;

(2) The recovery of the underwater cultural resource is in the public interest;

(3) Recovery of the underwater cultural resource is part of research to preserve historic information for public use; and

(4) Recovery of the underwater cultural resource is necessary or appropriate to protect the resource, preserve