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SUBCHAPTER B—OCEAN AND COASTAL RESOURCE MANAGEMENT

PART 921—NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM REGULATIONS

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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. Notwithstanding any financial assistance limits established by this Part, when financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, such assistance may be used to pay 100 percent of all actual costs of activities carrier out with this assistance, as long as such funds are available. 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.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12540, Mar. 17, 1997; 63 FR 26717, May 14, 1998]

§ 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. Notwithstanding the above, when financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, such assistance may be used to pay 100 percent of all actual costs of activities carried out with this assistance, as long as such funds are available. 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. Notwithstanding the above, when financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, such assistance may be used to pay 100 percent of all actual costs of activities carrier out with this assistance, as long as such funds are available.

[58 FR 38215, July 15, 1993, as amended at 63 FR 26717, May 14, 1998]

§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 percent of the costs of the lands, waters, and interests therein or $5,000,000, whichever amount is less, except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of all actual costs of activities carrier out with this assistance, as long as such funds are available.

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§ 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, except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100

percent of the costs. 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 percent of the costs of the lands, waters, and interests therein of $5,000,000, whichever amount is less, except when the financial assistance is provided from amounts recovered as result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of all actual costs of activities carrier out with this assistance, as long as such funds are available. 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.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12540, Mar. 17, 1997; 63 FR 26717, May 14, 1998]

§ 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 percent of the total cost of operating and managing the Reserve for any one year, except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of the costs. 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.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12541, Mar. 17, 1997]

§ 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 percent of the total cost of the project, consistent with § 921.81(e)(4) (''allowable costs''), except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of the costs.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12541, Mar. 17, 1997]

§ 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 percent of the total cost of the project, consistent with §921.81(e)(4) (''allowable costs''), except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of the 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.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12541, Mar. 17, 1997]

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 percent of the total cost of the project, consistent with §921.81(e)(4) (''allowable costs''),

except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of the 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.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12541, Mar. 17, 1997]

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.)

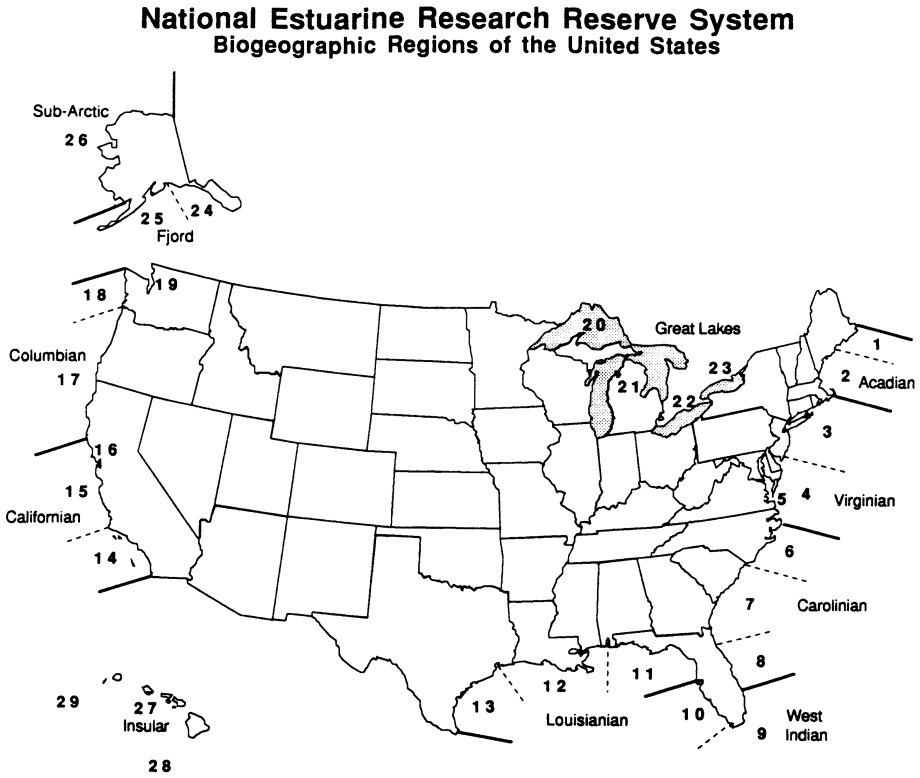
Sub-Arctic

26. Northern Alaska (Bristol Bay to Damarcation Point.)

Insular

27. Hawaiian Islands.
28. Western Pacific Island.
29. Eastern Pacific Island.

FIGURE 1



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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Subpart A—General

§ 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in Subparts A, D and E apply to all thirteen National Marine Sanctuaries for which site-specific regulations appear in Subparts F through R, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

[65 FR 39055, June 22, 2000]

§ 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 any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include ''submerged cultural resources'', and also include ''historical properties,'' as defined in the National Historic Preservation Act, as amended, 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*.

Sanctuary quality means any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

Sanctuary resource means any living or non-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. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource means an underwater cultural resource as defined at §922.191.

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 Samoa, 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, wound, 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.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997; 65 FR 39055, June 22, 2000]

§ 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 R is to implement the designations of the thirteen National Marine Sanctuaries for which site specific regulations appear in subparts F through R, 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. Additional purposes of the regulations implementing the designation of the Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries are found at §§ 922.160, and 922.180, respectively.

[65 FR 39055, June 22, 2000]

§ 922.41 Boundaries.

The boundary for each of the thirteen National Marine Sanctuaries covered by this part is described in subparts F through R, respectively.

[65 FR 39055, June 22, 2000]

§ 922.42 Allowed activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in Subparts F through R, subject to any emergency regulations promulgated pursuant to §§ 922.44, 922.111(c), 922.165, 922.186, or 922.196, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject to the provisions of section 312 of the National Marine Sanctuaries Act (NMSA), (16 U.S.C. 1431 *et seq.*). The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

[65 FR 39055, June 22, 2000]

§ 922.43 Prohibited or otherwise regulated activities.

Subparts F through R set forth site-specific regulations applicable to the activities specified therein.

[65 FR 39055, June 22, 2000]

§ 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 such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank, Florida Keys, Hawaiian Islands Humpback Whale, and Thunder Bay National Marine Sanctuaries. See §§ 922.111(c), 922.165, and 922.186, 922.196, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.

[65 FR 39055, June 22, 2000]

§ 922.45 Penalties.

(a) Each violation of the NMSA or FKNMSPA, 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.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

§ 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 P, and subpart R 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, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, 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, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the Director deems necessary to achieve the purposes for which the Sanctuary was designated.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997; 65 FR 39055, June 22, 2000]

§ 922.48 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by subparts F through O, if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O, as appropriate. For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by subpart P if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.166. For the Thunder Bay National Marine Sanctuary and Underwater Preserve, a person may conduct an activity prohibited by subpart R in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.195.

(b) Applications for permits to conduct activities otherwise prohibited by subparts F through O should be addressed to the Director and sent to the address specified in subparts F through O, or subpart R, as appropriate. 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, or subpart R, as appropriate. 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, subpart R 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.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997; 65 FR 39056, June 22, 2000]

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by subparts L through P, or subpart R, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in subpart P, 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 filing of the application or the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, whichever is later;

(2) The applicant complies with the other provisions of this § 922.49;

(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 reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for an authorization described in paragraph (a) of this section 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 subparts L through P, or subpart R, as appropriate.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address specified in subparts L through P, or subpart R, as appropriate. A copy of the application must accompany the notification.

(d) The Director may request additional information from the applicant as he or she deems reasonably necessary to determine whether to object to issuance of an authorization described in paragraph (a) of this section, or what terms and conditions are reasonably 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 pending review of the application and possible objection to issuance. Upon completion of review of the application and information received with respect thereto, the Director 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 reasonably necessary to protect Sanctuary resources and qualities, and reasons therefor.

(f) The Director may amend the terms and conditions deemed reasonably 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 § 922.49 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 or designee in accordance with the provisions of § 922.50.

[62 FR 4608, Jan. 30, 1997, as amended at 65 FR 39056, June 22, 2000]

§ 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 issued 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 P and subpart R, 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 P and subpart R, 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 § 922.50(a)(1)(i) and (ii). 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.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4608, Jan. 30, 1997; 65 FR 39056, June 22, 2000; 65 FR 60097, Oct. 10, 2000]

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 approximately 1,110 square nautical miles (nmi) of coastal and ocean waters, and the submerged lands thereunder, off the southern coast of California. The Sanctuary boundary begins at the Mean High Water Line of and extends seaward to a distance of approximately six nmi from 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 (the Islands). The seaward boundary coordinates are listed in appendix A to this subpart.

[74 FR 3260, Jan. 16, 2009]

§ 922.71 Definitions.

In addition to those definitions found at 15 CFR 922.3, the following definitions apply to this subpart:

Cruise ship means a vessel with 250 or more passenger berths for hire.

Graywater means galley, bath, or shower water.

Introduced species means any species (including but not limited to any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Motorized personal watercraft means a vessel, usually less than 16 feet in length, which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. The vessel is intended to be operated by a person or persons sitting, standing or kneeling on the vessel, rather than within the confines of the hull. The length is measured from end to end over the deck excluding sheer, meaning a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments, are not included in the measurement. Length is stated in feet and inches.

Oceangoing ship means a private, commercial, government, or military vessel of 300 gross registered tons or more, not including cruise ships.

Pelagic finfish are defined as: Northern anchovy (*Engraulis mordax*), barracudas (*Sphyraena spp.*), billfishes (family *Istiophoridae*), dolphinfish (*Coryphaena hippurus*), Pacific herring (*Clupea pallasi*), jack mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber japonicus*), salmon (*Oncorhynchus spp.*), Pacific sardine (*Sardinops sagax*), blue shark (*Prionace glauca*), salmon shark (*Lamna ditropis*), shortfin mako shark (*Isurus oxyrinchus*), thresher sharks (*Alopias spp.*), swordfish (*Xiphias gladius*), tunas (family *Scombridae*), and yellowtail (*Seriola lalandi*).

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

[74 FR 3260, Jan. 16, 2009]

§ 922.72 Prohibited or otherwise regulated activities—Sanctuary-wide.

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

(1) Exploring for, developing, or producing hydrocarbons within the Sanctuary, except pursuant to leases executed prior to March 30, 1981, and except the laying of pipeline pursuant to exploring for, developing, or producing hydrocarbons.

(2) Exploring for, developing, or producing minerals within the Sanctuary,

except producing by-products incidental to hydrocarbon production allowed by paragraph (a)(1) of this section.

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

(A) Fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or an oceangoing ship without sufficient holding tank capacity to hold sewage while within the Sanctuary, biodegradable effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1321 *et seq.* Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Biodegradable matter from:

(*1*) Vessel deck wash down;

(*2*) Vessel engine cooling water;

(*3*) Graywater from a vessel less than 300 gross registered tons;

(*4*) Graywater from an oceangoing ship without sufficient holding tank capacity to hold graywater while within the Sanctuary;

(D) Vessel engine or generator exhaust;

(E) Effluent routinely and necessarily discharged or deposited incidental to hydrocarbon exploration, development, or production allowed by paragraph (a)(1) of this section; or

(F) Discharge allowed under section 312(n) of the FWPCA.

(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)(3)(i)(B) through (F) of this section and fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity beyond the boundary of the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity there.

(4) Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing or placing any structure, material, or other matter on or in the submerged lands of the Sanctuary, except as incidental to and necessary to:

(i) Anchor a vessel;

(ii) Install an authorized navigational aid;

(iii) Conduct lawful fishing activity;

(iv) Lay pipeline pursuant to exploring for, developing, or producing hydrocarbons; or

(v) Explore for, develop, or produce hydrocarbons as allowed by paragraph (a)(1) of this section.

(5) Abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary.

(6) Except to transport persons or supplies to or from any Island, operating within one nmi of any Island any vessel engaged in the trade of carrying cargo, including, but not limited to, tankers and other bulk carriers and barges, any vessel engaged in the trade of servicing offshore installations, or any vessel of three hundred gross registered tons or more, except fishing or kelp harvesting vessels.

(7) Disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within one nautical mile of any Island, except to engage in kelp bed surveys or to transport persons or supplies to or from an Island. Failure to maintain a minimum altitude of 1,000 feet above ground level over such waters is presumed to disturb marine mammals or seabirds.

(8) Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess a Sanctuary historical resource.

(9) Taking any marine mammal, sea turtle, or seabird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any

regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(10) Possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird, except as authorized by the MMPA, ESA, MBTA, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(11) Marking, defacing, damaging, moving, removing, or tampering with any sign, notice, or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary.

(12) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(13) Operating a motorized personal watercraft within waters of the Sanctuary that are coextensive with the Channel Islands National Park, established by 16 U.S.C. 410(ff).

(b)(1) The prohibitions in paragraphs (a)(3) through (13) of this section and in § 922.73 do not apply to military activities carried out by DOD as of the effective date of these regulations and specifically identified in section 3.5.9 (Department of Defense Activities) of the Final Channel Islands National Marine Sanctuary Management Plan/Final Environmental Impact Statement (FMP/FEIS), Volume II: Environmental Impact Statement, 2008, authored and published by NOAA (''pre-existing activities''). Copies of the document are available from the Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109. Other military activities carried out by DOD may be exempted by the Director after consultation between the Director and DOD.

(2) A military activity carried out by DOD as of the effective date of these regulations and specifically identified in the section entitled ''Department of Defense Activities'' of the FMP/FEIS is not considered a pre-existing activity if:

(i) It is modified in such a way that requires the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, relevant to a Sanctuary resource or quality;

(ii) It is modified, including but not limited to changes in location or frequency, in such a way that its possible adverse effects on Sanctuary resources or qualities are significantly greater than previously considered for the unmodified activity;

(iii) It is modified, including but not limited to changes in location or frequency, in such a way that its possible adverse effects on Sanctuary resources or qualities are significantly different in manner than previously considered for the unmodified activity; or

(iv) There are new circumstances or information relevant to a Sanctuary resource or quality that were not addressed in the FMP/FEIS.

(3) In the event of destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an incident, including, but not limited to, discharges, deposits, and groundings, caused by a DOD activity, DOD, in coordination with the Director, must promptly prevent and mitigate further damage and must restore or replace the Sanctuary resource or quality in a manner approved by the Director.

(4) All DOD activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(c) The prohibitions in paragraphs (a)(3) through (10), (a)(12), and (a)(13) of this section and in § 922.73 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.74.

(d) The prohibitions in paragraphs (a)(3) through (11) and (a)(13) of this section and in § 922.73 do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

(e) The prohibitions in paragraphs (a)(3) through (11) and (a)(13) of this section and in § 922.73 do not apply to any activity necessary for valid law enforcement purposes in the Sanctuary.

[74 FR 3260, Jan. 16, 2009, as amended at 77 FR 3922, Jan. 26, 2012]

§ 922.73 Additional prohibited or otherwise regulated activities—marine reserves and marine conservation area.

(a) *Marine reserves.* Unless prohibited by 50 CFR part 660 (Fisheries off West Coast States), the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within a marine reserve described in appendix B to this subpart, except as specified in paragraphs (b) through (e) of § 922.72:

(1) Harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, or attempting any of these activities.

(2) Possessing fishing gear on board a vessel unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, except legally harvested fish on board a vessel at anchor or in transit.

(b) *Marine conservation area.* Unless prohibited by 50 CFR part 660 (Fisheries off West Coast States), the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the marine conservation area described in appendix C to this subpart, except as specified in paragraphs (b) through (e) of § 922.72:

(1) Harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, or attempting any of these activities, except:

(i) Recreational fishing for pelagic finfish; or

(ii) Commercial and recreational fishing for lobster.

(2) Possessing fishing gear on board a vessel, except legal fishing gear used to fish for lobster or pelagic finfish, unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, except legally harvested fish.

[74 FR 3260, Jan. 16, 2009]

§ 922.74 Permit procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 922.72(a)(3) through (10), (a)(12), and (a)(13), and § 922.73, if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a permit issued under § 922.48 and this section.

(b) The Director, at his or her sole discretion, may issue a permit, subject to terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.72(a)(3) through (10), (a)(12), and (a)(13), and § 922.73, if the Director finds that the activity:

(1) Is appropriate research designed to further understanding of Sanctuary resources and qualities;

(2) Will further the educational value of the Sanctuary;

(3) Will further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty;

(4) Will assist in managing the Sanctuary; or

(5) Will further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California.

(c) The Director may not issue a permit under § 922.48 and this section unless the Director also finds that:

(1) The proposed activity will have at most short-term and negligible adverse effects on Sanctuary resources and qualities;

(2) The applicant is professionally qualified to conduct and complete the proposed activity;

(3) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(4) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;

(5) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;

(6) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary, or cumulative effects of the activity, and the duration of such effects;

(7) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary as a source of recreation and as a source of educational and scientific information, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary and the duration of such effects;

(8) It is necessary to conduct the proposed activity within the Sanctuary;

(9) The reasonably expected end value of the proposed activity furthers Sanctuary goals and purposes and outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and

(10) Any other matters the Director deems appropriate do not make the issuance of a permit for the proposed activity inappropriate.

(d) *Applications*. (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Manager, Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109.

(2) In addition to the information listed in §922.48(b), all applications must include information the Director needs to make the findings in paragraphs (b) and (c) of this section.

(e) In addition to any other terms and conditions that the Director deems appropriate, a permit issued pursuant to this section must require that the permittee agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

[74 FR 3260, Jan. 16, 2009]

APPENDIX A TO SUBPART G OF PART 922—CHANNEL ISLANDS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

Point	Latitude (N)	Longitude (W)
1	33.94138	−119.27422
2	33.96776	−119.25010
3	34.02607	−119.23642
4	34.07339	−119.25686
5	34.10185	−119.29178
6	34.11523	−119.33040
7	34.11611	−119.39120
8	34.11434	−119.40212
9	34.11712	−119.42896
10	34.11664	−119.44844
11	34.13389	−119.48081
12	34.13825	−119.49198
13	34.14784	−119.51194
14	34.15086	−119.54670
15	34.15450	−119.54670
16	34.15450	−119.59170
17	34.15142	−119.61254
18	34.13411	−119.66024
19	34.14635	−119.69780
20	34.15988	−119.76688
21	34.15906	−119.77800
22	34.15928	−119.79327
23	34.16213	−119.80347
24	34.16962	−119.83643
25	34.17266	−119.85240
26	34.17588	−119.88903
27	34.17682	−119.93357
28	34.17258	−119.95830
29	34.13535	−120.01964
30	34.13698	−120.04206
31	34.12994	−120.08582
32	34.12481	−120.11104
33	34.12519	−120.16076
34	34.11008	−120.21190
35	34.11128	−120.22707
36	34.13632	−120.25292
37	34.15341	−120.28627
38	34.16408	−120.29310
39	34.17704	−120.30670
40	34.20492	−120.30670
41	34.20492	−120.38830
42	34.20707	−120.41801
43	34.20520	−120.42859
44	34.19254	−120.46041
45	34.20540	−120.50728
46	34.20486	−120.53987
47	34.18182	−120.60041
48	34.10208	−120.64208
49	34.08151	−120.63894
50	34.05848	−120.62862
51	34.01940	−120.58567
52	34.01349	−120.57464
53	33.98698	−120.56582
54	33.95039	−120.53282
55	33.92694	−120.46132
56	33.92501	−120.42170
57	33.91403	−120.37585
58	33.91712	−120.32506
59	33.90956	−120.30857
60	33.88976	−120.29540
61	33.84444	−120.25482
62	33.83146	−120.22927
63	33.81763	−120.20284
64	33.81003	−120.18731
65	33.79425	−120.13422
66	33.79379	−120.10207
67	33.79983	−120.06995
68	33.81076	−120.04351
69	33.81450	−120.03158
70	33.84125	−119.96508
71	33.84865	−119.92316
72	33.86993	−119.88330
73	33.86195	−119.88330
74	33.86195	−119.80000
75	33.86110	−119.79017
76	33.86351	−119.77130
77	33.85995	−119.74390
78	33.86233	−119.68783
79	33.87330	−119.65504
80	33.88594	−119.62617
81	33.88688	−119.59423
82	33.88809	−119.58278

Point	Latitude (N)	Longitude (W)
83	33.89414	−119.54861
84	33.90064	−119.51936
85	33.90198	−119.51609
86	33.90198	−119.43311
87	33.90584	−119.43311
88	33.90424	−119.42422
89	33.90219	−119.40730
90	33.90131	−119.38373
91	33.90398	−119.36333
92	33.90635	−119.35345
93	33.91304	−119.33280
94	33.91829	−119.32206
95	33.48250	−119.16874
96	33.44235	−119.16797
97	33.40555	−119.14878
98	33.39059	−119.13283
99	33.36804	−119.08891
100	33.36375	−119.06803
101	33.36241	−119.04812
102	33.36320	−119.03670
103	33.36320	−118.90879
104	33.47500	−118.90879
105	33.48414	−118.90712
106	33.52444	−118.91492
107	33.53834	−118.92271
108	33.58616	−118.99540
109	33.59018	−119.02374
110	33.58516	−119.06745
111	33.58011	−119.08521
112	33.54367	−119.14460
113	33.51161	−119.16367

[72 FR 29233, May 24, 2007]

APPENDIX B TO SUBPART G OF PART 922—MARINE RESERVE BOUNDARIES

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

B.1. RICHARDSON ROCK (SAN MIGUEL ISLAND) MARINE RESERVE

The Richardson Rock Marine Reserve (Richardson Rock) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–1, and the following textual description.

The Richardson Rock boundary extends from Point 1 to Point 2 along a straight line. It then extends from Point 2 to Point 3 along a straight line. The boundary then extends along a straight line from Point 3 to the 3 nmi State boundary established under the Submerged Lands Act (3 nmi State boundary) where a line defined by connecting Point 3 and Point 4 with a straight line intersects the 3 nmi State boundary. The boundary then extends northwestward and then eastward along the 3 nmi State boundary until it intersects the line defined by connecting Point 5 and Point 6 with a straight line. At that intersection, the boundary extends from the 3 nmi SLA boundary to Point 6 along a straight line.

TABLE B–1—RICHARDSON ROCK (SAN MIGUEL ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	34.17333 ° N	120.60483 ″ W
2	34.17333 ° N	120.47000 ″ W
3	34.12900 ° N	120.47000 ″ W
4	34.03685 ° N	120.52120 ″ W
5	34.03685 ° N	120.60483 ″ W
6	34.17333 ° N	120.60483 ″ W

B.2. HARRIS POINT (SAN MIGUEL ISLAND) MARINE RESERVE

The Harris Point Marine Reserve (Harris Point) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–2, and the following textual description.

The Harris Point boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary then follows the 3 nmi State boundary northwestward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–2—HARRIS POINT (SAN MIGUEL ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	34.20492 ° N	120.38830 ″ W
2	34.20492 ° N	120.30670 ″ W
3	34.10260 ° N	120.30670 ″ W
4	34.15200 ° N	120.38830 ″ W
5	34.20492 ° N	120.38830 ″ W

B.3. SOUTH POINT (SANTA ROSA ISLAND) MARINE RESERVE

The South Point Marine Reserve (South Point) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–3, and the following textual description.

The South Point boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary southeastward until it intersects the line defined by connecting Point 4 and Point 5 along a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–3—SOUTH POINT (SANTA ROSA ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	33.84000 ° N	120.10830 ″ W
2	33.84000 ° N	120.16670 ″ W
3	33.86110 ° N	120.16670 ″ W
4	33.84700 ° N	120.10830 ″ W
5	33.84000 ° N	120.10830 ″ W

B.4. GULL ISLAND (SANTA CRUZ ISLAND) MARINE RESERVE

The Gull Island Marine Reserve (Gull Island) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–4, and the following textual description.

The Gull Island boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary then follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–4—GULL ISLAND (SANTA CRUZ ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	33.86195 ° N	119.80000 ″ W
2	33.86195 ° N	119.88330 ″ W
3	33.92690 ° N	119.88330 ″ W
4	33.90700 ° N	119.80000 ″ W
5	33.86195 ° N	119.80000 ″ W

B.5. SCORPION (SANTA CRUZ ISLAND) MARINE RESERVE

The Scorpion Marine Reserve (Scorpion) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–5, and the following textual description.

The Scorpion boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary then follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–5—SCORPION (SANTA CRUZ ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	34.15450 ° N	119.59170 ″ W
2	34.15450 ° N	119.54670 ″ W
3	34.10140 ° N	119.54670 ″ W
4	34.10060 ° N	119.59170 ″ W
5	34.15450 ° N	119.59170 ″ W

B.6. FOOTPRINT MARINE RESERVE

The Footprint Marine Reserve (Footprint) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–6, and the following textual description.

The Footprint boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary northeastward and then southeastward until it intersects the line defined by connecting Point 4 and Point 5 along a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–6—FOOTPRINT MARINE RESERVE

Point	Latitude	Longitude
1	33.90198 ° N	119.43311 ″ W
2	33.90198 ° N	119.51609 ″ W
3	33.96120 ° N	119.51609 ″ W
4	33.95710 ° N	119.43311 ″ W
5	33.90198 ° N	119.43311 ″ W

B.7. ANACAPA ISLAND MARINE RESERVE

The Anacapa Island Marine Reserve (Anacapa Island) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–7, and the following textual description.

The Anacapa Island boundary extends from Point 1 to Point 2 along a straight line. It then extends to the 3 nmi State boundary where a line defined by connecting Point 2 and Pont 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–7—ANACAPA ISLAND MARINE RESERVE

Point	Latitude	Longitude
1	34.08330 ° N	119.41000 ″ W
2	34.08330 ° N	119.35670 ″ W
3	34.06450 ° N	119.35670 ″ W
4	34.06210 ° N	119.41000 ″ W
5	34.08330 ° N	119.41000 ″ W

B.8. SANTA BARBARA ISLAND MARINE RESERVE

The Santa Barbara Island Marine Reserve (Santa Barbara) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–8, and the following textual description.

The Santa Barbara boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary northeastward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line. The boundary then extends from Point 5 to Point 6 along a straight line.

TABLE B–8—SANTA BARBARA ISLAND MARINE RESERVE

Point	Latitude	Longitude
1	33.36320 ° N	118.90879 ″ W
2	33.36320 ° N	119.03670 ″ W
3	33.41680 ° N	119.03670 ″ W
4	33.47500 ° N	118.97080 ″ W
5	33.47500 ° N	118.90879 ″ W
6	33.36320 ° N	118.90879 ″ W

[72 FR 29233, May 24, 2007]

APPENDIX C TO SUBPART G OF PART 922—MARINE CONSERVATION AREA BOUNDARY

C.1. ANACAPA ISLAND MARINE CONSERVATION AREA

The Anacapa Island Marine Conservation Area (AIMCA) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table C–1, and the following textual description.

The AIMCA boundary extends from Point 1 to Point 2 along a straight line. It then extends to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE C–1—ANACAPA ISLAND MARINE CONSERVATION AREA

Point	Latitude	Longitude
1	34.08330 ° N	119.44500 ″ W
2	34.08330 ° N	119.41000 ″ W
3	34.06210 ° N	119.41000 ″ W
4	34.06300 ° N	119.44500 ″ W
5	34.08330 ° N	119.44500 ″ W

[72 FR 29233, May 24, 2007; 72 FR 42317, Aug. 2, 2007]

Subpart H—Gulf of the Farallones National Marine Sanctuary

SOURCE: 73 FR 70529, Nov. 20, 2008, unless otherwise noted.

§ 922.80 Boundary.

The Gulf of the Farallones National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 966 square nautical miles (nmi) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands (and Noonday Rock) off the northern coast of California. The northernmost extent of the Sanctuary boundary is a geodetic line extending westward from Bodega Head approximately 6 nmi to the northern boundary of the Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then turns southward to a point approximately 6 nmi off Point Reyes, California, where it then turns westward again out towards the 1,000-fathom isobath. The Sanctuary boundary then extends in a southerly direction adjacent to the 1,000-fathom isobath until it intersects the northern extent of the Monterey Bay National Marine Sanctuary (MBNMS). The Sanctuary boundary then follows the MBNMS boundary eastward and northward until it intersects the Mean High Water Line at Rocky Point, California. The Sanctuary boundary then follows the MHWL north until it intersects the Point Reyes National Seashore (PRNS) boundary. The Sanctuary boundary then approximates the PRNS boundary, as established at the time of designation of the Sanctuary, to the intersection of the PRNS boundary and the MHWL in Tomales Bay. The Sanctuary boundary then follows the MHWL up Tomales Bay and Lagunitas Creek to the Route 1 Bridge where the Sanctuary boundary crosses the Lagunitas

Creek and follows the MHWL until it intersects its northernmost extent near Bodega Head. The Sanctuary boundary includes Bolinas Lagoon, Estero de San Antonio (to the tide gate at Valley Ford Franklin School Road) and Estero Americano (to the bridge at Valley Ford Estero Road), as well as Bodega Bay, but not Bodega Harbor. Where the Sanctuary boundary crosses a waterway, the Sanctuary boundary excludes these waterways shoreward of the Sanctuary boundary line delineated by the coordinates provided. The precise seaward boundary coordinates are listed in appendix A to this subpart.

§ 922.81 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Areas of Special Biological Significance (ASBS) are those areas designated by California's State Water Resources Control Board as requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS are a subset of State Water Quality Protection Areas established pursuant to California Public Resources Code section 36700 *et seq*.

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

Clean means not containing detectable levels of harmful matter.

Cruise ship means a vessel with 250 or more passenger berths for hire.

Deserting means leaving a vessel aground or adrift without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification, after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts, or when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

Introduced species means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Motorized personal watercraft means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.

Routine maintenance means customary and standard procedures for maintaining docks or piers.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the submerged lands in the Sanctuary. Those species include, but are not limited to: *Zostera asiatica* and *Zostera marina*.

§ 922.82 Prohibited or otherwise regulated activities.

(a) 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, or producing oil or gas except that pipelines related to hydrocarbon operations adjacent to the Sanctuary may be placed at a distance greater than 2 nmi from

the Farallon Islands, Bolinas Lagoon and Areas of Special Biological Significance (ASBS) where certified to have no significant effect on Sanctuary resources in accordance with § 922.84.

(2) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(i) Fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(ii) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) that is approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

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

(iv) Vessel engine or generator exhaust.

(3) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(4) 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 for the exclusions listed in paragraphs (a)(2)(i) through (iv) and (a)(3) of this section.

(5) Constructing any structure other than a navigation aid on or in the submerged lands of the Sanctuary; placing or abandoning any structure on or in the submerged lands of the Sanctuary; or drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary in any way, except:

(i) By anchoring vessels (in a manner not otherwise prohibited by this part (see § 922.82(a)(16));

(ii) While conducting lawful fishing activities;

(iii) The laying of pipelines related to hydrocarbon operations in leases adjacent to the Sanctuary in accordance with paragraph (a)(1) of this section;

(iv) Routine maintenance and construction of docks and piers on Tomales Bay; or

(v) Mariculture activities conducted pursuant to a valid lease, permit, license or other authorization issued by the State of California.

(6) Operating any vessel engaged in the trade of carrying cargo within an area extending 2 nmi from the Farallon Islands, Bolinas Lagoon or any ASBS. This includes but is not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations, except to transport persons or supplies to or from the Islands or mainland areas adjacent to Sanctuary waters or any ASBS. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(7) Operation of motorized personal watercraft, except for the operation of motorized personal watercraft for emergency search and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions.

(8) Disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within one nautical mile of the Farallon Islands, Bolinas Lagoon, or any ASBS, except to transport persons or supplies to or from the Islands or for enforcement purposes. Failure to maintain a minimum altitude of 1,000 feet above ground level over such waters is presumed to disturb marine mammals or seabirds.

(9) Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource.

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except:

(i) Striped bass (*Morone saxatilis*) released during catch and release fishing activity; or

(ii) Species cultivated by mariculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California and in effect on the effective date of the final regulation.

(11) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act (ESA), as amended, 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(12) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle, or bird taken, except as authorized by the MMPA, ESA, MBTA, by any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(13) Attracting a white shark in the Sanctuary; or approaching within 50 meters of any white shark within the line approximating 2 nmi around the Farallon Islands. The coordinates for the line approximating 2 nmi around the Farallon Islands are listed in appendix B to this subpart.

(14) Deserting a vessel aground, at anchor, or adrift in the Sanctuary.

(15) Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(16) Anchoring a vessel in a designated seagrass protection zone in Tomales Bay, except as necessary for mariculture operations conducted pursuant to a valid lease, permit or license. The coordinates for the no-anchoring seagrass protection zones are listed in appendix C to this subpart.

(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 shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary 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.

[73 FR 70529, Nov. 20, 2008, as amended at 75 FR 53569, Sept. 1, 2010; 77 FR 3922, Jan. 26, 2012]

§ 922.83 Permit procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 922.82 if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under § 922.48 and this section.

(b) The Director, at his or her discretion, may issue a National Marine Sanctuary permit under this section, subject to terms and conditions as he or she deems appropriate, if the Director finds that the activity will:

(1) Further research or monitoring related to Sanctuary resources and qualities;

(2) Further the educational value of the Sanctuary;

(3) Further salvage or recovery operations; or

(4) Assist in managing the Sanctuary.

(c) In deciding whether to issue a permit, the Director shall consider factors such as:

(1) The applicant is qualified to conduct and complete the proposed activity;

(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;

(4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or

enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

(6) It is necessary to conduct the proposed activity within the Sanctuary;

(7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and

(8) Any other factors as the Director deems appropriate.

(d) *Applications.* (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gulf of the Farallones National Marine Sanctuary, 991 Marine Dr., The Presidio, San Francisco, CA 94129.

(2) In addition to the information listed in § 922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

(e) The permittee must agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

§ 922.84 Certification of other permits.

A permit, license, or other authorization allowing: the laying of any pipeline related to hydrocarbon operations in leases adjacent to the Sanctuary and placed at a distance greater than 2 nmi from the Farallon Islands, Bolinas Lagoon, and any ASBS must be 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. 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. 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. 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—GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID No. Sanctuary Boundary	Latitude	Longitude
1	38.29896	−123.05989
2	38.26390	−123.18138
3	38.21001	−123.11913
4	38.16576	−123.09207
5	38.14072	−123.08237
6	38.12829	−123.08742
7	38.10215	−123.09804
8	38.09069	−123.10387
9	38.07898	−123.10924
10	38.06505	−123.11711
11	38.05202	−123.12827
12	37.99227	−123.14137
13	37.98947	−123.23615
14	37.95880	−123.32312
15	37.90464	−123.38958
16	37.83480	−123.42579
17	37.76687	−123.42694
18	37.75932	−123.42686
19	37.68892	−123.39274
20	37.63356	−123.32819
21	37.60123	−123.24292
22	37.59165	−123.22641
23	37.56305	−123.19859
24	37.52001	−123.12879
25	37.50819	−123.09617
26	37.49418	−123.00770
27	37.50948	−122.90614
28	37.52988	−122.85988
29	37.57147	−122.80399
30	37.61622	−122.76937
31	37.66641	−122.75105
32	37.88225	−122.62753

[75 FR 53569, Sept. 1, 2010]

APPENDIX B TO SUBPART H OF PART 922—2 NMI FROM THE FARALLON ISLANDS BOUNDARY COORDINATES

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID No. (2 nmi from the Farallon Islands Boundary)	Latitude	Longitude
0	37.77670	−123.14954
1	37.78563	−123.14632
2	37.79566	−123.13764
3	37.80296	−123.12521
4	37.80609	−123.11189
5	37.80572	−123.09847
6	37.80157	−123.08484
7	37.79776	−123.07836
8	37.79368	−123.06992
9	37.78702	−123.06076
10	37.77905	−123.05474
11	37.77014	−123.05169
12	37.76201	−123.05151
13	37.75758	−123.05248
14	37.76078	−123.04115
15	37.76151	−123.02803
16	37.75898	−123.01527
17	37.75267	−123.00303
18	37.74341	−122.99425
19	37.73634	−122.99017
20	37.73036	−122.97601
21	37.72042	−122.96548
22	37.70870	−122.95890
23	37.69737	−122.95720
24	37.68759	−122.95882
25	37.67768	−122.96469
26	37.66905	−122.97427
27	37.66352	−122.98478
28	37.66037	−122.99741
29	37.66029	−123.00991
30	37.66290	−123.02133
31	37.67102	−123.03830
32	37.67755	−123.04612
33	37.68844	−123.05334
34	37.69940	−123.05567
35	37.71127	−123.06858
36	37.72101	−123.07329
37	37.73167	−123.07399
38	37.73473	−123.07340
39	37.73074	−123.08620
40	37.73010	−123.09787
41	37.73265	−123.11296
42	37.73685	−123.12315
43	37.74273	−123.13124
44	37.74725	−123.13762
45	37.75467	−123.14466
46	37.76448	−123.14917
47	37.77670	−123.14954

APPENDIX C TO SUBPART H OF PART 922—NO-ANCHORING SEAGRASS PROTECTION ZONES IN TOMALES BAY

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Table C–1: Zone 1:

Zone 1 is an area of approximately 39.9 hectares offshore south of Millerton Point. The eastern boundary is a straight line that connects points 1 and 2 listed in the coordinate table below. The southern boundary is a straight line that connects points 2 and 3, the western boundary is a straight line that connects points 3 and 4 and the northern boundary is a straight line that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 1 Point ID	Latitude	Longitude
1	38.10571	−122.84565
2	38.09888	−122.83603
3	38.09878	−122.84431
4	38.10514	−122.84904
5	Same as 1	Same as 1.

ZONE 2: Zone 2 is an area of approximately 50.3 hectares that begins just south of Marconi and extends approximately 3 kilometers south along the eastern shore of Tomales Bay. The eastern boundary is the mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line that connects point 2 to point 3. The western boundary is a series of straight lines that connect points 3 through 6 in sequence and then connects point 6 to point 1. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 2 Point ID	Latitude	Longitude
1	38.14071	−122.87440
2	38.11601	−122.85820
3	38.11386	−122.85851
4	38.11899	−122.86731
5	38.12563	−122.86480
6	38.12724	−122.86488
7	38.13326	−122.87178
8	Same as 1.	Same as 1.

ZONE 3: Zone 3 is an area of approximately 4.6 hectares that begins just south of Marshall and extends approximately 1 kilometer south along the eastern shore of Tomales Bay. The eastern boundary is the mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line that connects point 2 to point 3, the western boundary is a straight line that connects point 3 to point 4, and the northern boundary is a straight line that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 3 Point ID	Latitude	Longitude
1	38.16031	−122.89442
2	38.15285	−122.88991
3	38.15250	−122.89042
4	38.15956	−122.89573
5	Same as 1	Same as 1.

ZONE 4: Zone 4 is an area of approximately 61.8 hectares that begins just north of Nicks

Cove and extends approximately 5 kilometers south along the eastern shore of Tomales Bay to just south of Cypress Grove. The eastern boundary is the mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line that connects point 2 to point 3. The western boundary is a series of straight lines that connect points 3 through 9 in sequence. The northern boundary is a straight line that connects point 9 to point 10. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 4 Point ID	Latitude	Longitude
1	38.20073	−122.92181
2	38.16259	−122.89627
3	38.16227	−122.89650
4	38.16535	−122.90308
5	38.16869	−122.90475
6	38.17450	−122.90545
7	38.17919	−122.91021
8	38.18651	−122.91404
9	38.18881	−122.91740
10	38.20004	−122.92315
11	Same as 1	Same as 1

ZONE 5: Zone 5 is an area of approximately 461.4 hectares that begins east of Lawsons Landing and extends approximately 5 kilometers east and south along the eastern shore of Tomales Bay but excludes areas adjacent (approximately 600 meters) to the mouth of Walker Creek. The boundary follows the mean high water (MHW) mark from point 1 and trends in a southeast direction to point 2 listed in the coordinate table below. From point 2 the boundary trends westward in a straight line to point 3, then trends southward in a straight line to point 4 and then trends eastward in a straight line to point 5. The boundary follows the mean high water line from point 5 southward to point 6. The southern boundary is a straight line that connects point 6 to point 7. The eastern boundary is a series of straight lines that connect points 7 to 9 in sequence and then connects point 9 to point 10. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 5 Point ID	Latitude	Longitude
1	38.23122	−122.96300
2	38.21599	−122.93749
3	38.20938	−122.94153
4	38.20366	−122.93246
5	38.20515	−122.92453
6	38.20073	−122.92181
7	38.19405	−122.93477
8	38.20436	−122.94305
9	38.21727	−122.96225
10	Same as 1	Same as 1.

ZONE 6: Zone 6 is an area of approximately 3.94 hectares in the vicinity of Indian Beach along the western shore of Tomales Bay. The western boundary follows the mean high water (MHW) line from point 1 northward to point 2 listed in the coordinate table below. The northern boundary is a straight line that connects point 2 to point 3. The eastern boundary is a straight line that connects point 3 to point 4. The southern boundary is a straight line that connects point 4 to point 5. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 6 Point ID	Latitude	Longitude
1	38.13811	−122.89603
2	38.14040	−122.89676
3	38.14103	−122.89537
4	38.13919	−122.89391
5	Same as 1	Same as 1.

ZONE 7: Zone 7 is an area of approximately 32.16 hectares that begins just south of Pebble Beach and extends approximately 3 kilometers south along the western shore of Tomales Bay. The western boundary is the mean high water (MHW) line from point 1 to point 2 listed in the coordinate table below. The northern boundary is a straight line that connects point 2 to point 3. The eastern boundary is a series of straight lines that connect points 3 through 7 in sequence. The southern boundary is a straight line that connects point 7 to point 8. All coordinates are in the Geographic Coordinate System relative to the North American Datum of 1983.

Zone 7 Point ID	Latitude	Longitude
1	38.11034	−122.86544
2	38.13008	−122.88742
3	38.13067	−122.88620
4	38.12362	−122.87984
5	38.11916	−122.87491
6	38.11486	−122.86896
7	38.11096	−122.86468
8	Same as 1	Same as 1.

[73 FR 70529, Nov. 20, 2008, as amended at 75 FR 53569, Sept. 1, 2010]

Subpart I—Gray's Reef National Marine Sanctuary

SOURCE: 71 FR 60063, Oct. 12, 2006, unless otherwise noted.

§ 922.90 Boundary.

The Gray's Reef National Marine Sanctuary (Sanctuary) consists of approximately 16.68 square nautical miles of ocean waters and the submerged lands thereunder, off the coast of Georgia. The Sanctuary boundary includes all waters and submerged lands within

the geodetic lines connecting the following coordinates:

Datum: NAD83

Geographic Coordinate System

(1) N 31.362732 degrees W 80.921200 degrees
(2) N 31.421064 degrees W 80.921201 degrees
(3) N 31.421064 degrees W 80.828145 degrees
(4) N 31.362732 degrees W 80.828145 degrees
(5) N 31.362732 degrees W 80.921200 degrees

§ 922.91 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Handline means fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.

Rod and reel means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually or electrically.

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, partially disassembled, or stowed for transit.

§ 922.92 Prohibited or otherwise regulated activities—Sanctuary-wide.

(a) Except as specified in paragraphs (b) through (d) of this section and in § 922.94 regarding additional prohibitions in the research area, 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 into, or otherwise altering in any way the submerged lands of the Sanctuary (including bottom formations).

(2) Constructing any structure other than a navigation aid, or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands of the Sanctuary.

(3) Discharging or depositing any material or other matter except:

(i) Fish or fish parts, bait, or chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling water.

(4) Operating a watercraft other than in accordance with the Federal rules and regulations that would apply if there were no Sanctuary.

(5)(i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead, within the Sanctuary by any means except by use of rod and reel, and handline gear;

(ii) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the Sanctuary has been collected from the Sanctuary.

(6) Using any fishing gear within the Sanctuary except rod and reel, and handline gear, or for law enforcement purposes.

(7) Using underwater any explosives, or devices that produce electric charges underwater.

(8) Breaking, cutting, damaging, taking, or removing any bottom formation.

(9) Moving, removing, damaging, or possessing, or attempting to move, remove, damage, or possess, any Sanctuary historical resource.

(10) Anchoring any vessel in the Sanctuary, except as provided in § 922.92 when responding to an emergency threatening life, property, or the environment.

(11) Possessing or carrying any fishing gear within the Sanctuary except:

(i) Rod and reel, and handline gear;

(ii) Fishing gear other than rod and reel, handline gear, and spearfishing gear, provided that it is stowed on a vessel and not available for immediate use;

(iii) Spearfishing gear provided that it is stowed on a vessel, not available for immediate use, and the vessel is passing through the Sanctuary without interruption; and

(iv) For law enforcement purposes.

(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 and § 922.94. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in this section and in § 922.94 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.93.

(d) The prohibitions in this section and in § 922.94 do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

[76 FR 63832, Oct. 14, 2011]

§ 922.93 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.92(a)(1) through (10) and § 922.94 if conducted in accordance within the 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, National Marine Sanctuary Program, ATTN: Manager, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

(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 § 922.92(a)(1) through (10). The Director must also find that the activity will:

(1) Further research related to the resources and qualities of the Sanctuary;

(2) Further the educational, natural, or historical resource value of the Sanctuary;

(3) Further salvage or recovery operations in connection with a recent air or marine casualty; or

(4) Assist in managing the Sanctuary.

(d) The Director shall not issue a permit unless the Director also finds that:

(1) The applicant is professionally qualified to conduct and complete the proposed activity;

(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(3) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;

(4) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to the activity's impacts on Sanctuary resources and qualities;

(5) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(6) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary as a source of recreation, or as a source of educational or scientific information considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

(7) It is necessary to conduct the proposed activity within the Sanctuary to achieve its purposes;

(8) The reasonably expected end value of the activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse impacts on Sanctuary resources and qualities from the conduct of the activity; and

(9) There are no other factors that make the issuance of a permit for the activity inappropriate.

(e) 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.

(f) The Director shall, 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.

(g) The Director may, inter alia, make it a condition of any permit issued to require the submission of one or more reports of the status and progress of such activity.

(h) 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.

[71 FR 60063, Oct. 12, 2006, as amended at 76 FR 63832, Oct. 14, 2011]

§ 922.94 Prohibited or otherwise regulated activities—Research area.

In addition to the prohibitions set out in § 922.92, which apply throughout the Sanctuary, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the research area described in Appendix A to this subpart.

(a)(1) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead.

(2) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the research area has been collected from the research area.

(b) Using any fishing gear, or possessing, or carrying any fishing gear unless such gear is stowed and not available for immediate use while on board a vessel transiting through the research area without interruption or for valid law enforcement purposes.

(c) Diving.

(d) Stopping a vessel in the research area.

[76 FR 63832, Oct. 14, 2011]

Appendix A to Subpart I of Part 922—Boundary Coordinates for the Gray's Reef National Marine Sanctuary Research Area

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

The research area boundary is defined by the coordinates provided in Table 1 and the following textual description. The research area boundary extends from Point 1, the southwest corner of the sanctuary, to Point 2 along a straight line following the western boundary of the Sanctuary. It then extends along a straight line from Point 2 to Point 3, which is on the eastern boundary of GRNMS. The boundary then follows the eastern boundary line of the sanctuary southward until it intersects the line of the southern boundary of GRNMS at Point 4, the southeastern corner of the sanctuary. The last straight line is defined by connecting Point 4 and Point 5, along the southern boundary of the GRNMS.

Table 1—Coordinates for the Research Area

Point ID	Latitude (north, in degrees)	Longitude (west, in degrees)
1	N 31.362732	W 80.921200
2	N 31.384444	W 80.921200
3	N 31.384444	W 80.828145
4	N 31.362732	W 80.828145
5	N 31.362732	W 80.921200

[76 FR 63832, Oct. 14, 2011]

Subpart J—National Marine Sanctuary of American Samoa

Source: 77 FR 43962, July 26, 2012, unless otherwise noted.

§ 922.100 Scope of regulations.

The provisions of this subpart J apply only to the waters of the United States and the Territory of American Samoa that are located within the boundary of the National Marine Sanctuary of American Samoa (Sanctuary). Neither the provisions of this subpart J nor any permit issued under its 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 comprised of six distinct units, forming a network of marine protected areas around the islands of the Territory of American Samoa. Tables containing the exact coordinates of each point described below can be found in Appendix to Subpart J—National Marine Sanctuary of American Samoa Boundary Coordinates.

(a) *Fagatele Bay Unit*. The Fagatele Bay Unit 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 line of Fagatele Bay until the point at which it intersects the seaward boundary of the Sanctuary as defined by a straight line between Fagatele Point (−14.36527, −170.76932) and Steps Point (−14.37291, −170.76056) from the point at which it intersects the mean high high water line seaward.

(b) *Fagalua/Fogama'a Unit*. The landward boundary of the Fagalua/Fogama'a Unit is defined by the mean high high water line of Fagalua/Fogama'a until the point at which it intersects the seaward boundary of the Fagalua/Fogama'a Unit as defined by a straight line between Steps Point (−14.37307, −170.75852) and Sail Rock Point (−14.36534, −170.74119) from the point at which it intersects the mean high high water line seaward.

(c) *Aunu'u Unit*. The Aunu'u Unit is comprised of two adjacent zones.

(1) *Zone A*. The Aunu'u Unit boundary for Zone A is defined by the coordinates provided in Table 1 and the following textual description. The Zone A boundary extends from Point 1, the northwest corner of the unit, southward to Point 2 along a straight line following the western boundary of the unit, which is aligned with Taugamalama Point on Tutuila. It then extends northeastward in a multipart line along the deepest seaward edge of Nafanua Bank from Point 2 to Point 3 and then to Point 4, which lies on the southern boundary of Zone B. The boundary then follows a straight line westward towards Point 5 until it intersects the mean high high water line at the southern tip of Ma'ama'a Cove. The landward boundary of Zone A is defined by the mean high high water line from this intersection point at the southern tip of Ma'ama'a Cove to the intersection of the mean high high water line and the straight line between Point 6 and Point 7 at Salevatia Point. From this intersection point at Salevatia Point, the boundary extends straight west to Point 7, which has the exact same coordinates as Point 1.

(2) *Zone B*. The Aunu'u Unit boundary for Zone B is defined by the coordinates provided in Table 2 and the following textual description. The Zone B boundary extends from Point 1, the northeast corner of the unit, southward along a straight line following the eastern boundary of the unit to Point 2, which is on the southern boundary of the unit. The southern boundary then follows a line westward towards Point 3 until it intersects the mean high high water line at the southern tip of Ma'ama'a Cove Point. The landward boundary of Zone B is defined by the mean high high water line from this intersection point at the southern tip of Ma'ama'a Cove around the volcanic crater to the intersection of the mean high high water line and the straight line between Point 4 and Point 5. From here, the boundary extends seaward straight north to Point 5. The northern border, the last straight line, is defined by connecting Point 5 and Point 6, along the northern boundary of the unit, which is aligned with Matuli Point on Tutuila. Point 6 has the exact same coordinates at Point 1.

(d) *Swains Island Unit*. The Swains Island Unit boundary is defined by the coordinates provided in Table 3 and the following textual description. The landward boundary of the Swains Island Unit is the mean high high water line. The seaward boundary of the Swains Island Unit is the territorial water boundary 3 nautical miles from the mean high high water line that surrounds the island. Within that area surrounding the island, there are two areas excluded from the sanctuary boundaries. The first excluded are extends from Point 1 along the mean high high water line northward along the western coast of the island to Point 2.

From Point 2, the boundary extends offshore in a line perpendicular to the coast to Point 3. From Point 3, the boundary extends south-southwest to Point 4, and from Point 4 the boundary extends south-southeast to Point 5. From there, the boundary extends landward in a straight line to Point 6. The second excluded area extends from Point 7 along the mean high high water line northeastward along the southeastern coast to Point 8. From Point 8, the boundary extends offshore in a perpendicular line to the coast to Point 9. From Point 9, the boundary extends south-southwest to Point 10. From there, the boundary extends landward in a straight line to Point 11.

(e) *Muliāva Unit*. The Muliāva Unit boundary is defined by the coordinates provided in Table 4 and the following textual description. The landward boundary of the Muliāva Unit is the extreme low water line, which adjoins the boundary of the Rose Atoll National Wildlife Refuge. The Muliāva Unit seaward boundary extends from Point 1, the southwest corner of the unit, to Point 2 along a straight line northward following the western boundary of the unit. From Point 2, the line extends in a straight line westward to Point 3. It then extends along a straight line northward to Point 4. From Point 4, the line extends in a straight line eastward to Point 5. From Point 5, the line extends along a straight line northward to Point 6. It then extends along a straight line eastward from Point 6 to Point 7, which is on the eastern boundary of the unit. The boundary then follows a straight line southward until it intersects the line of the southern boundary of the unit at Point 8, the southeastern corner of the unit. The last straight line is defined by connecting Point 8 and Point 9, which has the exact same coordinates as Point 1, along the southern boundary of the unit.

(f) *Ta'u Unit*. The Ta'u Unit boundary is defined by the coordinates provided in Table 5 and the following textual description. The Ta'u Unit boundary extends from Point 1, Vaita Point, along the mean high high water line southward along the western coast to Point 2, Si'ufa'alele Point. From Point 2, the boundary extends offshore 0.25 miles to Point 3 to become conterminous with the offshore boundary of the National Park of American Samoa. From Point 3 the boundary continues to follow the coastline 0.25 miles offshore until it reaches Point 4, which is directly south of Si'u Point. From Point 4, the boundary extends due south to Point 5. From Point 5, the boundary extends due west to Point 6, forming the southern border of the unit. From Point 6, the boundary extends due north until it reaches Point 7, directly west and one mile offshore from Point 8, which is Point 1, also known as Vaita Point.

§922.102 Definitions.

In addition to those definitions found at §922.3, the following definitions apply to this subpart:

Clean means not containing detectable levels of harmful matter.

Fishing means the catching, taking, or harvesting of marine species; the attempted catching, taking, or harvesting of marine species; any other activity which can reasonably be expected to result in the catching, taking, or harvesting of marine species; or any operation at sea in support of, or in preparation for, any activity described in this definition.

Harmful matter means any substance, or combination of substances that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed at 40 CFR 302.4 pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act.

Introduced species means any species (including, but not limited to, any of its biological matter capable of propagation) that is nonnative to the ecosystem(s) protected by the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Live rock means any Coral, basalt rock, or other natural structure with

any living organisms growing in or on the Coral, basalt rock, or structure.

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

§ 922.103 Prohibited or otherwise regulated activities—Sanctuary-wide.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Introducing or releasing introduced species from within or into the sanctuary.

(2) Anchoring a vessel.

(3) Deserting a vessel aground, adrift, or at anchor.

(4) Leaving harmful matter on an abandoned or deserted vessel or structure.

(5) Operating a vessel at a speed exceeding three knots when closer than 200 feet (60.96 meters) of another vessel displaying a dive flag.

(6) Operating a vessel in a manner which causes the vessel to strike or otherwise cause damage to Sanctuary resources.

(7) Diving, snorkeling, or conducting diving or snorkeling operations from a vessel not in compliance with applicable U.S. Coast Guard navigation rules governing the display of lights and signals, and not flying in a conspicuous manner the international code flag alpha ''A'' or the standard red-and-white U.S. ''diver down'' flag.

(8) Discharging, or depositing from within or into the Sanctuary, any material or other matter, except clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, anchor wash, or vessel engine or generator exhaust.

(9) 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 paragraph (a)(8) of this section and § 922.105(c).

(10) Sand mining, dredging, filling, dynamiting, or otherwise disturbing or altering the seabed.

(11) Removing, damaging, or tampering with any historical or cultural resource.

(12) Taking any marine mammal, sea turtle, or seabird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(13) 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.

(14) 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.

(15) Abandoning a structure, material, or other matter on or in the submerged lands of the Sanctuary.

(b) The prohibitions in paragraphs (a)(1) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity necessary for national defense.

(c) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

(d) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity necessary for valid law enforcement purposes in the Sanctuary.

(e) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.107.

§ 922.104 Prohibited or otherwise regulated activities—Sanctuary-wide except in the Muliāva Unit.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within any unit of the Sanctuary except the Muliāva Unit:

(1) Gathering, taking, breaking, cutting, damaging, destroying, or possessing any giant clam [*Tridacna spp.*], live coral, bottom formation including live rock and crustose coralline algae.

(2) Possessing or using poisons, electrical charges, explosives, or similar environmentally destructive methods of fishing or harvesting.

(3) 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 while utilizing SCUBA equipment.

(4) Possessing or using a seine, trammel, drift gill net, or any type of fixed net.

(5) Disturbing the benthic community by bottom trawling.

(b) There shall be a rebuttable presumption that any items listed in paragraph (a) of this section found in the possession of a person within the Sanctuary have been used, collected, or removed within or from the Sanctuary.

§ 922.105 Prohibited or otherwise regulated activities—Unit-specific.

In addition to the prohibitions set forth in § 922.103 and § 922.104, the following regulations apply to activities conducted within specified Sanctuary units described in the appendix to this subpart.

(a) The following activities are prohibited in the Fagatele Bay Unit:

(1) Harvesting, catching, removing, taking, injuring, destroying, collecting, moving, possessing or causing the loss of any Sanctuary resource, including but not limited to fishing, or attempting any of these activities.

(2) Possessing fishing gear unless such gear is stowed and not available for immediate use.

(b) The following activities are prohibited in the Aunu'u Unit:

(1) In Zone A: Fishing from a vessel without providing notification to the Sanctuary Superintendent or his/her designee in the village of Aunu'u prior to each fishing trip.

(2) In Zone B:

(i) Fishing for bottom-dwelling species or otherwise harvesting, catching, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any bottom-dwelling species, or attempting any of these activities. Surface fishing for pelagic species, including trolling, is allowed.

(ii) Disturbing the benthic community.

(iii) Possessing any Sanctuary resource, except legally harvested fish on board a vessel.

(c) In the Muliāva Unit:

(1) The prohibitions in paragraphs (a)(2) through (7) and (a)(9) through (15) of § 922.103 do not apply to scientific exploration or research activities conducted by or for the Department of Commerce or the Department of the Interior.

(2) Notwithstanding the prohibition in § 922.103(a)(8), the following vessels may discharge treated waste from a U.S. Coast Guard approved Type I, II, or III Marine Sanitation device 12 nautical miles seaward of the Rose Atoll National Wildlife Refuge:

(i) Vessels engaged in scientific exploration or research activities conducted by or for the Department of Commerce or the Department of the Interior; or

(ii) All other vessels engaged in scientific exploration or research activities, if authorized under a permit issued in consultation with the U.S. Fish and Wildlife Service and in accordance with § 922.48 and § 922.107.

§ 922.106 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 Department of Commerce (ASDOC) will assist NOAA in the administration of the Sanctuary, and act as the lead territorial agency, in conformance with the terms of designation, these regulations, and the terms and provisions of any grant or cooperative agreement.

§ 922.107 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director, in consultation with the ASDOC, in accordance with this section and § 922.48, may conduct an activity otherwise prohibited by § 922.103, § 922.104, and § 922.105 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;

(3) Intended to further the management of the Sanctuary; or

(4) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office National Marine Sanctuaries; ATTN: Sanctuary Superintendent, American Samoa 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.

APPENDIX TO SUBPART J OF PART 922—AMERICAN SAMOA NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

(a) Fagatele Bay

No coordinates are needed in addition to those described in § 922.101(a).

(b) Fagalua/Fogama'a

No coordinates are needed in addition to those described in § 922.101(b).

(c) Aunu'u (Zones A, B)

The Aunu'u Unit is comprised of two adjacent zones, described in § 922.101(c), for which the point coordinates are provided in following tables 1 and 2.

TABLE 1—COORDINATES FOR THE AUNU'U UNIT, ZONE A

Point ID	Latitude (south)	Longitude (west)
1	14.286 S	170.577 W
2	14.304 S	170.577 W
3	14.302 S	170.566 W
4	14.286 S	170.533 W
5	14.286 S	170.546 W
6	14.286 S	170.562 W
7	14.286 S	170.577 W

TABLE 2—COORDINATES FOR THE AUNU'U UNIT, ZONE B

Point ID	Latitude (south)	Longitude (west)
1	14.270 S	170.496 W
2	14.286 S	170.496 W
3	14.286 S	170.546 W
4	14.280 S	170.550 W
5	14.270 S	170.550 W
6	14.270 S	170.551 W

(d) Swains Island

The Swains Island Unit boundary is defined by the coordinates provided in Table 3 and the textual description in § 922.101(d).

TABLE 3—COORDINATES FOR THE SWAINS ISLAND UNIT

Point ID	Latitude (south)	Longitude (west)
1	11.058639	171.08865
2	11.051669	171.089494

TABLE 3—COORDINATES FOR THE SWAINS ISLAND UNIT—Continued

Point ID	Latitude (south)	Longitude (west)
3	11.048561	171.092686
4	11.054867	171.094453
5	11.060239	171.092825
6	11.058639	171.08865
7	11.063967	171.075989
8	11.058622	171.068617
9	11.062167	171.066222
10	11.067414	171.073639
11	11.063967	171.075989

(e) Muliāva

The Muliāva Unit boundary is defined by the coordinates provided in Table 4 and the textual description in §922.101(e).

TABLE 4—COORDINATES FOR THE MULIĀVA UNIT

Point ID	Latitude (south)	Longitude (west)
1	15.387 S	169.012 W
2	14.271 S	169.012 W
3	14.271 S	169.121 W
4	14.150 S	169.121 W
5	14.150 S	169.012 W
6	13.698 S	169.012 W
7	13.698 S	167.283 W
8	15.387 S	167.283 W
9	15.387 S	169.12

(f) Ta'u Unit

The Ta'u Unit boundary is defined by the coordinates provided in Table 5 and the textual description in §922.101(f).

TABLE 5—COORDINATES FOR THE TA'U UNIT

Point ID	Latitude (south)	Longitude (west)
1	14.24889 S	169.503056 W
2	14.273056 S	169.488056 W
3	14.277222 S	169.488056 W
4	14.261111 S	169.429167 W
5	14.293889 S	169.429167 W
6	14.293889 S	169.519722 W
7	14.24889 S	169.519722 W
8	14.24889 S	169.503056 W

Subpart K—Cordell Bank National Marine Sanctuary

SOURCE: 73 FR 70533, Nov. 20, 2008, unless otherwise noted.

§922.110 Boundary.

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 399 square nautical miles (nmi) of ocean waters, and submerged lands thereunder, off the northern coast of California approximately 50 miles west-northwest of San Francisco, California. The Sanctuary boundary extends westward (approximately 250 degrees) from the northwestern most point of the Gulf of the Farallones National Marine Sanctuary (GFNMS) to the 1,000 fathom isobath northwest of Cordell Bank. The Sanctuary boundary then generally follows this isobath in a southerly direction to the westernmost point of the GFNMS boundary. The Sanctuary boundary then follows the GFNMS boundary again to the northwestern corner of the GFNMS. The exact boundary coordinates are listed in appendix A to this subpart.

§922.111 Definitions.

In addition to the definitions found in §922.3, the following definitions apply to this subpart:

Clean means not containing detectable levels of harmful matter.

Cruise ship means a vessel with 250 or more passenger berths for hire.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C.

Introduced species means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

§922.112 Prohibited or otherwise regulated activities.

(a) 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) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(A) Fish, fish parts, or chumming materials (bait), used in or resulting from lawful fishing activity within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

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

(D) Vessel engine or generator exhaust.

(ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(iii) 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 as listed in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank. This prohibition does not apply to use of bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States). The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart. 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.

(3) Exploring for, or developing or producing, oil, gas, or minerals in any area of the Sanctuary.

(4)(i) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or other matter on or in the submerged lands. This prohibition does not apply to use of bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States). The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart.

(ii) In the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or matter on the submerged lands except as incidental and necessary for anchoring any vessel or lawful use of any fishing gear during normal fishing activities. The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(6) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle or bird taken, except as authorized by the MMPA, ESA, MBTA, by any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(7) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary 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 §922.113.

(c) 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.

(d) 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.

[73 FR 70533, Nov. 20, 2008, as amended at 75 FR 53570, Sept. 1, 2010]

§922.113 Permit procedures and issuance criteria.

(a) A person may conduct an activity prohibited by §922.112 if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued under §922.48 and this section.

(b) The Director, at his or her discretion, may issue a national marine sanctuary permit under this section, subject to terms and conditions, as he or she deems appropriate, if the Director finds that the activity will:

(1) Further research or monitoring related to Sanctuary resources and qualities;

(2) Further the educational value the Sanctuary;

(3) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or

(4) Assist in managing the Sanctuary.

(c) In deciding whether to issue a permit, the Director shall consider such factors as:

(1) The applicant is qualified to conduct and complete the proposed activity;

(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;

(4) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(5) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

(6) It is necessary to conduct the proposed activity within the Sanctuary;

(7) The reasonably expected end value of the proposed activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity; and

(8) Any other factors as the Director deems appropriate.

(d) *Applications.* (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.

(2) In addition to the information listed in §922.48(b), all applications must include information to be considered by the Director in paragraph (b) and (c) of this section.

(e) The permittee must agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

APPENDIX A TO SUBPART K OF PART 922—CORDELL BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

SANCTUARY BOUNDARY COORDINATES

Point ID No.	Latitude	Longitude
1	38.26390	−123.18138
2	38.13219	−123.64265
3	38.11256	−123.63344
4	38.08289	−123.62065
5	38.07451	−123.62162
6	38.06188	−123.61546
7	38.05308	−123.60549
8	38.04614	−123.60611
9	38.03409	−123.59904
10	38.02419	−123.59864
11	38.02286	−123.61531
12	38.01987	−123.62450
13	38.01366	−123.62494
14	37.99847	−123.61331
15	37.98678	−123.59988
16	37.97761	−123.58746
17	37.96683	−123.57859
18	37.95528	−123.56199
19	37.94901	−123.54777
20	37.93858	−123.54701
21	37.92288	−123.54360
22	37.90725	−123.53937
23	37.88541	−123.52967
24	37.87637	−123.52192
25	37.86189	−123.52197
26	37.84988	−123.51749
27	37.82296	−123.49280
28	37.81365	−123.47906
29	37.81026	−123.46897
30	37.80094	−123.47313
31	37.79487	−123.46721
32	37.78383	−123.45466
33	37.78109	−123.44694
34	37.77033	−123.43466
35	37.76687	−123.42694
36	37.83480	−123.42579
37	37.90464	−123.38958
38	37.95880	−123.32312
39	37.98947	−123.23615
40	37.99227	−123.14137
41	38.05202	−123.12827
42	38.06505	−123.11711
43	38.07898	−123.10924
44	38.09069	−123.10387
45	38.10215	−123.09804
46	38.12829	−123.08742
47	38.14072	−123.08237
48	38.16576	−123.09207
49	38.21001	−123.11913
50	38.26390	−123.18138

APPENDIX B TO SUBPART K OF PART 922—LINE REPRESENTING THE 50-FATHOM ISOBATH SURROUNDING CORDELL BANK

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

CORDELL BANK FIFTY FATHOM LINE

Point ID No.	Latitude	Longitude
1	37.96034	−123.40371
2	37.96172	−123.42081
3	37.99110	−123.44379
4	38.00406	−123.46443
5	38.01637	−123.46076
6	38.04684	−123.47920
7	38.07106	−123.48754
8	38.07588	−123.47195
9	38.06451	−123.46146
10	38.07123	−123.44467
11	38.04446	−123.40286
12	38.01442	−123.38588
13	37.98859	−123.37533
14	37.97071	−123.38605

Subpart L—Flower Garden Banks National Marine Sanctuary

§ 922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (the Sanctuary) consists of three separate areas of ocean waters over and surrounding the East and West Flower Garden Banks and Stetson Bank, 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 (nmi) south-southwest of Cameron, Louisiana, and encompasses 19.20 nmi2. The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.50 nmi2. The area designated at Stetson Bank is located approximately 70 nmi southeast of Galveston, Texas, and encompasses 0.64 nmi2. The three areas encompass a total of 42.34 nmi2 (145.09 square kilometers). The boundary coordinates for each area are listed in appendix A to this subpart.

[65 FR 81178, Dec. 22, 2000]

§ 922.121 Definitions.

As used in this subpart:

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

beings (e.g., swimmers, divers, boaters, kayakers, surfers).

Clean means not containing detectable levels of harmful matter.

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

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed at 40 CFR 302.4 pursuant to 42 U.S.C. 9601(14) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

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

[77 FR 25068, Apr. 27, 2012]

§922.122 Prohibited or otherwise regulated activities.

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

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

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

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

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

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

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

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

marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

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

(D) Engine exhaust;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

or qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. New activities with the potential for significant adverse impacts on Sanctuary resources or qualities may be exempted from the prohibitions in paragraphs (a)(2) through (11) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities.

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

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

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

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

[77 FR 25069, Apr. 27, 2012]

§922.123 Permit procedures and criteria.

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

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

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

(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.

[60 FR 66877, Dec. 27, 1995, as amended at 65 FR 81178, Dec. 22, 2000; 77 FR 25070, Apr. 27, 2012]

Appendix A to Subpart L of Part 922—Flower Garden Banks National Marine Sanctuary Boundary Coordinates

This appendix contains a second set of boundary coordinates using the geographic positions of the North American Datum of 1983 (NAD 83). FGBNMS coordinates are now provided in both North American Datum of 1927 (NAD 27) and NAD 83.

Point	Latitude (N)	Longitude (W)
East Flower Garden Bank: (NAD 27)		
E–1	27° 52′ 53.82718″	93° 37′ 41.30310″
E–2	27° 53′ 34.83434″	93° 38′ 23.35445″
E–3	27° 55′ 13.64286″	93° 38′ 40.34368″
E–4	27° 57′ 30.71927″	93° 38′ 33.26982″
E–5	27° 58′ 27.66896″	93° 37′ 46.12447″
E–6	27° 59′ 01.41554″	93° 35′ 31.74954″
E–7	27° 59′ 00.50888″	93° 35′ 09.69198″
E–8	27° 55′ 22.38258″	93° 34′ 14.79162″
E–9	27° 54′ 04.05605″	93° 34′ 18.88720″
E–10	27° 53′ 26.70972″	93° 35′ 05.00978″
E–11	27° 52′ 52.06998″	93° 36′ 57.23078″
West Flower Garden Bank: (NAD 27)		
W–1	27° 49′ 10.16324″	93° 50′ 45.27154″
W–2	27° 50′ 12.35976″	93° 52′ 10.47158″
W–3	27° 51′ 12.82777″	93° 52′ 51.63488″
W–4	27° 51′ 32.41145″	93° 52′ 50.66983″
W–5	27° 52′ 49.88791″	93° 52′ 24.77053″
W–6	27° 55′ 00.93450″	93° 49′ 43.68090″
W–7	27° 54′ 58.33040″	93° 48′ 37.54501″
W–8	27° 54′ 35.26067″	93° 47′ 10.34866″
W–9	27° 54′ 14.80334″	93° 46′ 49.28963″
W–10	27° 53′ 35.63704″	93° 46′ 51.25825″
W–11	27° 52′ 57.34474″	93° 47′ 15.26428″
W–12	27° 50′ 40.26361″	93° 47′ 22.14179″
W–13	27° 49′ 10.89894″	93° 48′ 42.72307″
Stetson Bank: (NAD 27)		
S–1	28° 09′ 30.06738″	94° 18′ 31.34461″
S–2	28° 10′ 09.24374″	94° 18′ 29.57042″
S–3	28° 10′ 06.88036″	94° 17′ 23.26201″
S–4	28° 09′ 27.70425″	94° 17′ 25.04315″

Point	Latitude (N)	Longitude (W)
East Flower Garden Bank: (NAD 83)		
E–1	27° 52′ 54.84288″	93° 37′ 41.84187″
E–2	27° 53′ 35.80428″	93° 38′ 23.89520″
E–3	27° 55′ 14.61048″	93° 38′ 40.88638″
E–4	27° 57′ 31.68349″	93° 38′ 33.81421″
E–5	27° 58′ 28.63153″	93° 37′ 46.66809″
E–6	27° 59′ 02.37658″	93° 35′ 32.28918″
E–7	27° 59′ 01.46983″	93° 35′ 10.23088″
E–8	27° 55′ 23.34849″	93° 34′ 15.32560″
E–9	27° 54′ 05.02387″	93° 34′ 19.42020″
E–10	27° 53′ 27.67871″	93° 35′ 05.54379″
E–11	27° 52′ 53.04047″	93° 36′ 57.76805″
West Flower Garden Bank: (NAD 83)		
W–1	27° 49′ 11.14452″	93° 50′ 45.83401″
W–2	27° 50′ 13.34001″	93° 52′ 11.03791″
W–3	27° 51′ 13.80672″	93° 52′ 52.20349″
W–4	27° 51′ 33.38988″	93° 52′ 51.23867″
W–5	27° 52′ 50.86415″	93° 52′ 25.33954″
W–6	27° 55′ 01.90633″	93° 49′ 44.24605″
W–7	27° 54′ 59.30189″	93° 48′ 38.10780″
W–8	27° 54′ 36.23221″	93° 47′ 10.90806″
W–9	27° 54′ 15.77527″	93° 46′ 49.84801″
W–10	27° 53′ 36.60997″	93° 46′ 51.81616″
W–11	27° 52′ 58.31880″	93° 47′ 15.82251″
W–12	27° 50′ 41.24120″	93° 47′ 22.69837″
W–13	27° 49′ 11.87936″	93° 48′ 43.28125″
Stetson Bank: (NAD 83)		
S–1	28° 09′ 31.02671″	94° 18′ 31.98164″
S–2	28° 10′ 10.20196″	94° 18′ 30.20776″
S–3	28° 10′ 07.83821″	94° 17′ 23.89688″
S–4	28° 09′ 28.66320″	94° 17′ 25.67770″

[65 FR 81178, Dec. 22, 2000]

APPENDIX B TO SUBPART L OF PART 922—COORDINATES FOR THE DEPARTMENT OF THE INTERIOR TOPOGRAPHIC LEASE STIPULATIONS FOR OCS LEASE SALE 171

ALIQUOT PART DESCRIPTION OF BIOLOGICAL STIPULATION AREA EAST GARDEN BANK

Block A–366 Texas Leasing Map No. 7C (High Island Area East Addition South Extension)

SE¼, SW¼; S½, NE¼, SE¼; SE¼, NW¼, SE¼; S½, SE¼.

Block A–376

W½, NW¼, SW¼; SW¼, SW¼, 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; 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,
NE¼, SW¼; NW¼, NE¼, SW¼; NE¼, NW¼, SW¼; NE¼,
SE¼, SW¼, NE¼; NE¼, NE¼, SE¼; W½, NE¼, SE¼; NW¼,

Block A–389

NE¼, NW¼; NW¼, NW¼; SW¼, NW¼; NE¼, SE¼, NW¼; W½,
SE¼, NW¼; N½, NW¼, SW¼.

ALIQUOT PART DESCRIPTION OF BIOLOGICAL STIPULATION AREA WEST GARDEN BANK

Block A–383 Texas Leasing Map No. 7C (High Island Area East Addition South Extension)

E½, SE¼, SE¼; SW¼, 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; NW¼, 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 134 Official Protraction Diagram NG15–02 (Garden Banks)

That portion of the block north of a line connecting a point on the east boundary of Block 134, X=1,378,080.00′, Y=10,096,183.00′, with a point on the west boundary of Block 134, X=1,367,079,385′, Y=10,096,183.000′, defined under the Universal Transverse Mercator grid system.

Block 135 Official Protraction Diagram NG15–02 (Garden Banks)

That portion of the block northwest of a line connecting the southeast corner of Texas Leasing Map No. 7C, Block A–398, X=1,383,293.840′, Y=10,103,281.930′, with a point on the west boundary of Official Protraction Diagram NG15–02, Block 135, X=1,378,080.000′, Y=10,096,183.000′, defined under the Universal Transverse Mercator grid system.

[65 FR 81180, Dec. 22, 2000]

Subpart M—Monterey Bay National Marine Sanctuary

SOURCE: 73 FR 70535, Nov. 20, 2008, unless otherwise noted.

§ 922.130 Boundary.

The Monterey Bay National Marine Sanctuary (Sanctuary) consists of two separate areas. (a) The first area consists of an area of approximately 4016 square nautical miles (nmi) of coastal and ocean waters, and submerged lands thereunder, in and surrounding Monterey Bay off the central coast of California. The northern terminus of the Sanctuary boundary is located along the southern boundary of the Gulf of the Farallones National Marine Sanctuary (GFNMS) beginning at Rocky Point just south of Stinson Beach in Marin County. The Sanctuary boundary follows the GFNMS boundary westward to a point approximately 29 nmi offshore from Moss Beach in San Mateo County. The Sanctuary boundary then extends southward in a series of arcs,

which generally follow the 500 fathom isobath, to a point approximately 27 nmi offshore of Cambria, in San Luis Obispo County. The Sanctuary boundary then extends eastward towards shore until it intersects the Mean High Water Line (MHWL) along the coast near Cambria. The Sanctuary boundary then follows the MHWL northward to the northern terminus at Rocky Point. The shoreward Sanctuary boundary excludes a small area between Point Bonita and Point San Pedro. Pillar Point Harbor, Santa Cruz Harbor, Monterey Harbor, and Moss Landing Harbor are all excluded from the Sanctuary shoreward from the points listed in appendix A except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge, and west of the tide gate at Elkhorn Road and toward the center channel from the MHWL is included within the Sanctuary, excluding areas within the Elkhorn Slough National Estuarine Research Reserve. Exact coordinates for the seaward boundary and harbor exclusions are provided in appendix A to this subpart.

(b) The Davidson Seamount Management Zone is also part of the Sanctuary. This area, bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, consists of approximately 585 square nmi of ocean waters and the submerged lands thereunder. The shoreward boundary of this portion of the Sanctuary is located approximately 65 nmi off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the Davidson Seamount Management Zone boundary are provided in appendix F to this subpart.

§ 922.131 Definitions.

In addition to those definitions found at 15 CFR 922.3, the following definitions apply to this subpart:

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

Clean means not containing detectable levels of harmful matter.

Cruise ship means a vessel with 250 or more passenger berths for hire.

Davidson Seamount Management Zone means the area bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, and consists of approximately 585 square nmi of ocean waters and the submerged lands thereunder. The shoreward boundary of this portion of the Sanctuary is located approximately 65 nmi off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the Davidson Seamount Management Zone boundary are provided in appendix F to this subpart.

Deserting means leaving a vessel aground or adrift without notification to the Director of the vessel going aground or becoming adrift within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification, after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts, or when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

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.

Hand tool means a hand-held implement, utilized for the collection of jade pursuant to 15 CFR 922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar, or abalone iron). Pneumatic, mechanical, electrical, hydraulic, or explosive tools are, therefore, examples of what does not meet this definition.

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

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

Introduced species means: Any species (including but not limited to any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Motorized personal watercraft (MPWC) means any vessel, propelled by machinery, that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the vessel, in contrast to the conventional manner, where the operator stands or sits inside the vessel; any vessel less than 20 feet in length overall as manufactured and propelled by machinery and that has been exempted from compliance with the U.S. Coast Guard's Maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183, except submarines; or any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

§ 922.132 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (e) 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, except: Jade may be collected (meaning removed) from the area bounded by the 35.92222 N latitude parallel (coastal reference point: Beach access stairway at south Sand Dollar Beach), the 35.88889 N latitude parallel (coastal reference point: Westernmost tip of Cape San Martin), and from the mean high tide line seaward to the 90-foot isobath (depth line) (the ''authorized area'') provided that:

(i) Only jade already loose from the submerged lands of the Sanctuary may be collected;

(ii) No tool may be used to collect jade except:

(A) A hand tool (as defined at 15 CFR 922.131) to maneuver or lift the jade or scratch the surface of a stone as necessary to determine if it is jade;

(B) A lift bag or multiple lift bags with a combined lift capacity of no more than two hundred pounds; or

(C) A vessel (except for motorized personal watercraft) (see paragraph (a)(7) of this section) to provide access to the authorized area;

(iii) Each person may collect only what that person individually carries; and

(iv) For any loose piece of jade that cannot be collected under paragraphs (a)(1) (ii) and (iii) of this section, any person may apply for a permit to collect such a loose piece by following the procedures in 15 CFR 922.133.

(2)(i) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter, except:

(A) Fish, fish parts, chumming materials, or bait used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activities within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

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

(D) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(E) Vessel engine or generator exhaust; or

(F) 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. Authorized disposal sites within the Sanctuary are described in appendix C to this subpart.

(ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(iii) 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 (E) and (a)(2)(ii) of this section and dredged material deposited at the authorized disposal sites described in appendix D 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) Possessing, moving, removing, or injuring, or attempting to possess, 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 lawful fishing activities.

(4) Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary, except as incidental and necessary to:

(i) Conduct lawful fishing activities;

(ii) Anchor a vessel;

(iii) Conduct aquaculture or kelp harvesting;

(iv) Install an authorized navigational aid;

(v) Conduct harbor maintenance in an area necessarily associated with a Federal Project in existence on January 1, 1993, including dredging of entrance channels and repair, replacement, or rehabilitation of breakwaters and jetties;

(vi) Construct, repair, replace, or rehabilitate a dock or pier; or

(vii) Collect jade pursuant to paragraph (a)(1) of this section, provided that there is no constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary, other than temporary placement of an authorized hand tool as provided in paragraph (a)(1) of this section. The exceptions listed in paragraphs (a)(4)(ii) through (a)(4)(vii) of this section do not apply within the Davidson Seamount Management Zone.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(6) Disturbing marine mammals or seabirds by flying motorized aircraft, except as necessary for valid law enforcement purposes, at less than 1,000 feet above any of the four zones within the Sanctuary described in Appendix B to this subpart. Failure to maintain a minimum altitude of 1,000 feet above ground level above any such zone is presumed to disturb marine mammals or seabirds.

(7) Operating motorized personal watercraft within the Sanctuary except within the five designated zones and access routes within the Sanctuary described in appendix E to this subpart. Zone Five (at Pillar Point) exists only when a High Surf Warning has been issued by the National Weather Service and is in effect for San Mateo County, and only during December, January, and February.

(8) Possessing within the Sanctuary (regardless of where taken, moved, or removed from), any marine mammal, sea turtle, or bird, except as authorized by the MMPA, ESA, MBTA, by any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as

necessary for valid law enforcement purposes.

(9) Deserting a vessel aground, at anchor, or adrift in the Sanctuary.

(10) Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(11)(i) Moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take, collect, catch, harvest, disturb, break, cut, or otherwise injure, any Sanctuary resource located more that 3,000 feet below the sea surface within the Davidson Seamount Management Zone. This prohibition does not apply to fishing below 3000 feet within the Davidson Seamount Management Zone, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States).

(ii) Possessing any Sanctuary resource the source of which is more than 3,000 feet below the sea surface within the Davidson Seamount Management Zone. This prohibition does not apply to possession of fish resulting from fishing below 3000 feet within the Davidson Seamount Management Zone, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States).

(12) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(13) Attracting any white shark within the Sanctuary.

(14) 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)(2) through (11) of this section do not apply to an activity necessary to respond to an emergency threatening life, property, or the environment.

(c)(1) All Department of Defense activities must 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 (12) 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, Monterey, CA 93940.) For purposes of the Davidson Seamount Management Zone, these activities are listed in the 2008 Final Environmental Impact Statement. New activities may be exempted from the prohibitions in paragraphs (a)(2) through (12) of this section by the Director after consultation between the Director and the Department of Defense.

(2) In the event of destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an incident, including but not limited to discharges, deposits, and groundings, caused by a Department of Defense activity, the Department of Defense, in coordination with the Director, must promptly prevent and mitigate further damage and must restore or replace the Sanctuary resource or quality in a manner approved by the Director.

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, and paragraphs (a)(2) through (11) and (a)(13) of this section, do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 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 (a)(8) of this section do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation (January 1, 1993) and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with 15 CFR 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 of Sanctuary designation.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit under 15 CFR 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, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to 15 CFR 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 within the Sanctuary shall be invalid.

[73 FR 70535, Nov. 20, 2008, as amended at 75 FR 53571, Sept. 1, 2010; 77 FR 3922, Jan. 26, 2012]

§ 922.133 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.132(a)(1) as it pertains to jade collection in the Sanctuary, § 922.132(a)(2) through (11), and § 922.132(a)(13), if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a permit issued under this section and 15 CFR 922.48.

(b) The Director, at his or her sole discretion, may issue a permit, subject to terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.132(a)(1) as it pertains to jade collection in the Sanctuary, § 922.132(a)(2) through (11), and § 922.132(a)(13), if the Director finds that the activity will have at most short-term and negligible adverse effects on Sanctuary resources and qualities and:

(1) Is research designed to further understanding of Sanctuary resources and qualities;

(2) Will further the educational, natural, or historical value of the Sanctuary;

(3) Will further salvage or recovery operations within or near the Sanctuary in connection with a recent air or marine casualty;

(4) Will assist in managing the Sanctuary;

(5) Will further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California; or

(6) Will allow the removal, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, of loose jade from the Jade Cove area under § 922.132(a)(1)(iv).

(c) In deciding whether to issue a permit, the Director shall consider such factors as:

(1) Will the activity be conducted by an applicant that is professionally qualified to conduct and complete the activity;

(2) Will the activity be conducted by an applicant with adequate financial resources available to conduct and complete the activity;

(3) Is the activity proposed for no longer than necessary to achieve its stated purpose;

(4) Must the activity be conducted within the Sanctuary;

(5) Will the activity be conducted using methods and procedures that are appropriate to achieve the goals of the proposed activity, especially in relation to the potential effects of the proposed activity on Sanctuary resources and qualities;

(6) Will the activity be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any potential indirect, secondary, or cumulative effects of the activity, and the duration of such effects;

(7) Will the activity be conducted in a manner compatible with the value of the Sanctuary as a source of recreation

and as a source of educational and scientific information, considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary and the duration of such effects; and

(8) Does the reasonably expected end value of the activity to the furtherance of the Sanctuary goals and objectives outweigh any potential adverse effects on Sanctuary resources and qualities from the conduct of the activity.

(d) For jade collection, preference will be given for applications proposing to collect loose pieces of jade for research or educational purposes.

(e) The Director may consider such other factors as he or she deems appropriate.

(f) *Applications*. (1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, CA 93940.

(2) In addition to the information listed in 15 CFR 922.48(b), all applications must include information the Director needs to make the findings in paragraph (b) of this section and information to be considered by the Director pursuant to paragraph (c) of this section.

(g) In addition to any other terms and conditions that the Director deems appropriate, a permit issued pursuant to this section must require that the permittee agree to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

§ 922.134 Notification and review.

(a) [Reserved]

(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 section 13377 of the California Water Code; and

(ii) Waste Discharge Requirements issued by the State of California under section 13263 of the California Water Code.

(2) The MOA specifies how the process of 15 CFR 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

Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID No.	Latitude	Longitude
Seaward Boundary		
1	37.88225	−122.62753
2	37.66641	−122.75105
3	37.61622	−122.76937
4	37.57147	−122.80399
5	37.52988	−122.85988
6	37.50948	−122.90614
7	37.49418	−123.00770
8	37.50819	−123.09617
9	37.52001	−123.12879
10	37.45304	−123.14009
11	37.34316	−123.13170
12	37.23062	−123.10431
13	37.13021	−123.02864
14	37.06295	−122.91261
15	37.03509	−122.77639
16	36.92155	−122.80595
17	36.80632	−122.81564
18	36.69192	−122.80539
19	36.57938	−122.77416
20	36.47338	−122.72568
21	36.37242	−122.65789
22	36.27887	−122.57410
23	36.19571	−122.47699
24	36.12414	−122.36527
25	36.06864	−122.24438
26	36.02451	−122.11672
27	35.99596	−121.98232
28	35.98309	−121.84069
29	35.98157	−121.75634
30	35.92933	−121.71119
31	35.83773	−121.71922
32	35.72063	−121.71216
33	35.59497	−121.69030
34	35.55327	−121.63048
35	35.55483	−121.10399
36	37.59421	−122.52001
37	37.61367	−122.61673
38	37.76694	−122.65011
39	37.81777	−122.53008
Harbor Exclusions		
40	37.49414	−122.48483
41	37.49540	−122.48576
42	36.96082	−122.00175
43	36.96143	−122.00112
44	36.80684	−121.79145
45	36.80133	−121.79047
46	36.60837	−121.88970
47	36.60580	−121.88965

[75 FR 53571, Sept. 1, 2010]

APPENDIX B 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 to 3 nautical miles (nmi) offshore between a line extending from Point Santa Cruz on a southwesterly bearing of 220° true and a line extending from 2.0 nmi north of Pescadero Point on a southwesterly bearing of 240° true;

(2) From mean high water to 3 nmi offshore between a line extending from the Carmel River mouth on a westerly bearing of 270° true and a line extending due west along latitude parallel 35.55488 N off of Cambria;

(3) From mean high water and within a 5 nmi seaward arc drawn from a center point of 36.80129 N, 121.79034 W (the end of the Moss Landing ocean pier as it appeared on the most current NOAA nautical charts as of January 1, 1993); and

(4) Over the Sanctuary's jurisdictional waters of Elkhorn Slough east of the Highway One bridge to Elkhorn Road.

[75 FR 53571, Sept. 1, 2010]

APPENDIX C TO SUBPART M OF PART 922—DREDGED MATERIAL DISPOSAL SITES WITHIN THE SANCTUARY

[Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

Point ID No.	Latitude	Longitude
Santa Cruz Harbor/Twin Lakes Dredge Disposal Site		
1	36.9625	−122.00056
2	36.9625	−121.99861
3	36.96139	−121.99833
4	36.96139	−122.00083
SF–12 Dredge Disposal Site		
1	36.80207	−121.79207
2	36.80157	−121.79218
3	36.80172	−121.79325
4	36.80243	−121.79295
SF–14 Dredge Disposal Site		
(circle with 500 yard radius)		
1	36.79799	−121.81907
Monterey Harbor/Wharf II Dredge Disposal Site		
1	36.60297	−121.88942
2	36.60283	−121.88787
3	36.60092	−121.88827
4	36.60120	−121.88978

APPENDIX D TO SUBPART M OF PART 922—DREDGED MATERIAL DISPOSAL SITES ADJACENT TO THE MONTEREY BAY NATIONAL MARINE SANCTUARY

[Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the 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 ID No.	Latitude	Longitude
1	37.76458	−122.56900
2	37.74963	−122.62281
3	37.74152	−122.61932
4	37.75677	−122.56482
5	37.76458	−122.56900

APPENDIX E TO SUBPART M OF PART 922—MOTORIZED PERSONAL WATERCRAFT ZONES AND ACCESS ROUTES WITHIN THE SANCTUARY

[Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

The five zones and access routes are:

(1) The approximately one [1.0] nmi^2 area off Pillar Point Harbor from harbor launch ramps, through the harbor entrance to the northern boundary of Zone One:

Point ID No.	Latitude	Longitude
1 (flashing 5-second breakwater entrance light and horn located at the seaward end of the outer west breakwater).	37.49395	−122.48477
2 (bell buoy)	37.48167	−122.48333
3	37.48000	−122.46667
4	37.49333	−122.46667

(2) The approximately five [5.0] nmi^2 area off of Santa Cruz Small Craft Harbor from harbor launch ramps, through the harbor entrance, and then along a 100-yard wide access route southwest along a bearing of approximately 196° true (180° magnetic) to the red and white whistle buoy at 36.93833 N, 122.01000 W. Zone Two is bounded by:

Point ID No.	Latitude	Longitude
1	36.91667	−122.03333
2	36.91667	−121.96667
3	36.94167	−121.96667
4	36.94167	−122.03333

(3) The approximately six [6.0] nmi^2 area off of Moss Landing Harbor from harbor launch ramps, through harbor entrance, and

then along a 100-yard wide access route southwest along a bearing of approximately 230° true (215° magnetic) to the red and white bell buoy at the eastern boundary of Zone Three bounded by:

Point ID No.	Latitude	Longitude
1	36.83333	−121.82167
2	36.83333	−121.84667
3	36.77833	−121.84667
4	36.77833	−121.81667
5 (red and white bell buoy).	36.79833	−121.80167
6	36.81500	−121.80333

(4) The approximately five [5.0] nmi² 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 northeast along a bearing of approximately 15° true (0° magnetic) to the southern boundary of Zone Four bounded by:

Point ID No.	Latitude	Longitude
1	36.64500	−121.92333
2	36.61500	−121.87500
3	36.63833	−121.85500
4	36.66667	−121.90667

(5) The approximately one-tenth [0.10] nmi² area near Pillar Point from the Pillar Point Harbor entrance along a 100-yard wide access route southeast along a bearing of approximately 174° true (159° magnetic) to the green bell buoy (identified as ''Buoy 3'') at 37.48154 N, 122.48156 W and then along a 100-yard wide access route northwest along a bearing of approximately 284° true (269° magnetic) to the green gong buoy (identified as ''Buoy 1'') at 37.48625 N, 122.50603 W, the southwest boundary of Zone Five. Zone Five exists only when a High Surf Warning has been issued by the National Weather Service and is in effect for San Mateo County and only during December, January, and February. Zone Five is bounded by:

Point ID No.	Latitude	Longitude
1 (gong buoy identified as "Buoy 1").	37.48625	−122.50603
2	37.49305	−122.50603
3 (Sail Rock)	37.49305	−122.50105
4	37.48625	−122.50105

[75 FR 53571, Sept. 1, 2010]

APPENDIX F TO SUBPART M OF PART 922—DAVIDSON SEAMOUNT MANAGEMENT ZONE

[Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

Point ID No.	Latitude	Longitude
1	35.90000	−123.00000
2	35.90000	−122.50000
3	35.50000	−122.50000
4	35.50000	−123.00000

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 × 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 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)(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 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 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 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 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
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 2,408 square nautical miles (nmi) 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.

[60 FR 66877, Dec. 27, 1995, as amended at 76 FR 67360, Nov. 1, 2011]

§ 922.151 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Clean means not containing detectable levels of harmful matter.

Cruise ship means a vessel with 250 or more passenger berths for hire.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

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.

Lawful fishing means fishing authorized by a tribal, State or Federal entity with jurisdiction over the activity.

Treaty means a formal agreement between the United States Government and an Indian tribe.

[76 FR 67360, Nov. 1, 2011]

§ 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 or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from lawful 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 the Quillayute River Navigation Project.

(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) Discharging or depositing, from within or into the Sanctuary, any materials or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, engine exhaust, or anchor wash.

(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 lawful fishing operations.

(5) Drilling into, dredging or otherwise altering the submerged lands of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the submerged lands of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Lawful fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with the Quillayute River Navigation Project, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties, and related beach nourishment;

(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.

(6) 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.

(7) Disturbing marine mammals or seabirds by flying motorized aircraft at less than 2,000 feet over the waters within one nautical mile of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuges or within one nautical mile 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. Failure to maintain a minimum altitude of 2,000 feet above

ground level over any such waters is presumed to disturb marine mammals or seabirds.

(8) 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.

(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.

(b) The prohibitions in paragraph (a)(2) through (5), (7), and (8) 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 (5), (7), and (8) 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 (8) 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 (8) 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 (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 922.153 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 (8) 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; the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to the Quillayute River Navigation Project; 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.

[76 FR 67360, Nov. 1, 2011, as amended at 77 FR 3922, Jan. 26, 2012]

§ 922.153 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.152(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 National Marine Sanctuaries; *Attn:* Superintendent, Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362–2925.

(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 § 922.152(a)(2) through (8), 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 connections with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or be issued to an American Indian tribe adjacent to the Sanctuary, and/or its designee as certified by the governing body of the tribe, to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights, the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of tribal members. For the purpose of this part, American Indian tribes adjacent to the sanctuary mean the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation. 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 American Indian tribes. Where the issuance or denial of a permit is requested by the governing body of an American 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 these regulations. In addition, the Director may consider such other factors as he or she deems appropriate.

[76 FR 67361, Nov. 1, 2011]

§ 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″

Subpart P—Florida Keys National Marine Sanctuary

SOURCE: 62 FR 32161, June 12, 1997, unless otherwise noted.

§ 922.160 Purpose.

(a) The purpose of the regulations in this subpart is to implement the comprehensive management plan for the Florida Keys National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary is designated, in order to protect, preserve and manage the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area. In particular, the regulations in this part are intended to protect, restore, and enhance the living resources of the Sanctuary, to contribute to the maintenance of natural assemblages of living resources for future generations, to provide places for species dependent on such living resources to survive and propagate, to facilitate to the extent compatible with the primary objective of resource protection all public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities, to reduce conflicts between such compatible uses, and to achieve the other policies and purposes of the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act.

(b) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the regulations in their entirety with any proposed changes thereto, including those regulations in subparts A and E of this part that apply to the Sanctuary. The Governor of the State of Florida will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary.

§ 922.161 Boundary.

The Sanctuary consists of an area of approximately 2900 square nautical miles (9,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. Appendix I to this subpart sets forth the precise Sanctuary boundary.

[66 FR 4369, Jan. 17, 2001]

§ 922.162 Definitions.

(a) The following definitions apply to the Florida Keys National Marine Sanctuary regulations. To the extent that a definition appears in § 922.3 and this section, the definition in this section governs.

Acts means the Florida Keys National Marine Sanctuary and Protection Act, as amended, (FKNMSPA) (Pub. L. 101–

605), and the National Marine Sanctuaries Act (NMSA), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, (MPRSA) (16 U.S.C. 1431 *et seq.*).

Adverse effect means any factor, force, or action that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms any Sanctuary resource, as defined in section 302(8) of the NMSA (16 U.S.C. 1432(8)) and in this section, or any of the qualities, values, or purposes for which the Sanctuary is designated.

Airboat means a vessel operated by means of a motor driven propeller that pushes air for momentum.

Areas To Be Avoided means the areas in which vessel operations are prohibited pursuant to section 6(a)(1) of the FKNMSPA (see §922.164(a)). Appendix VII to this subpart sets forth the geographic coordinates of these areas, including any modifications thereto made in accordance with section 6(a)(3) of the FKNMSPA.

Closed means all entry or use is prohibited.

Coral means but is not limited to the corals of the Class Hydrozoa (stinging and hydrocorals); Class Anthozoa, Subclass Hexacorallia, Order Scleractinia (stony corals); Class Anthozoa, Subclass Ceriantipatharia, Order Antipatharia (black corals); and Class Anthozoa, Subclass Ocotocorallia, Order Gorgonacea, species *Gorgonia ventalina* and *Gorgonia flabellum* (sea fans).

Coral area means marine habitat where coral growth abounds including patch reefs, outer bank reefs, deep-water banks, and hardbottoms.

Coral reefs means the hard bottoms, deep-water banks, patch reefs, and outer bank reefs.

Ecological Reserve means an area of the Sanctuary consisting of contiguous, diverse habitats, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary. Appendix IV to this subpart sets forth the geographic coordinates of these areas.

Existing Management Area means an area of the Sanctuary that is within or is a resource management area established by NOAA or by another Federal authority of competent jurisdiction as of the effective date of these regulations where protections above and beyond those provided by Sanctuary-wide prohibitions and restrictions are needed to adequately protect resources. Appendix II to this subpart sets forth the geographic coordinates of these areas.

Exotic species means a species of plant, invertebrate, fish, amphibian, reptile or mammal whose natural zoogeographic range would not have included the waters of the Atlantic Ocean, Caribbean, or Gulf of Mexico without passive or active introduction to such area through anthropogenic means.

Fish means finfish, mollusks, crustaceans, and all forms of marine animal and plant life other than marine mammals and birds.

Fishing means:

(1) The catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or any operation at sea in support of, or in preparation for, any activity described in this subparagraph (1).

(2) Such term does not include any scientific research activity which is conducted by a scientific research vessel.

Hardbottom means a submerged marine community comprised of organisms attached to exposed solid rock substrate. Hardbottom is the substrate to which corals may attach but does not include the corals themselves.

Idle speed only/no-wake means a speed at which a boat is operated that is no greater than 4 knots or does not produce a wake.

Idle speed only/no-wake zone means a portion of the Sanctuary where the speed at which a boat is operated may be no greater than 4 knots or may not produce a wake.

Length overall (LOA) or *length* means, as used in § 922.167 with respect to a vessel, the horizontal distance, rounded to the nearest foot (with 0.5 ft and above rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.

Live rock means any living marine organism or an assemblage thereof attached to a hard substrate, including dead coral or rock but not individual mollusk shells (e.g., scallops, clams, oysters). Living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to: sea anemones (Phylum Cnidaria: Class Anthozoa: Order Actinaria); sponges (Phylum Porifera); tube worms (Phylum Annelida), including fan worms, feather duster worms, and Christmas tree worms; bryozoans (Phylum Bryzoa); sea squirts (Phylum Chordata); and marine algae, including Mermaid's fan and cups (Udotea spp.), corraline algae, green feather, green grape algae (Caulerpa spp.) and watercress (Halimeda spp.).

Marine life species means any species of fish, invertebrate, or plant included in sections (2), (3), or (4) of Rule 46–42.001, Florida Administrative Code, reprinted in appendix VIII to this subpart.

Military activity means an activity conducted by the Department of Defense with or without participation by foreign forces, other than civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers.

No-access buffer zone means a portion of the Sanctuary where vessels are prohibited from entering regardless of the method of propulsion.

No motor zone means an area of the Sanctuary where the use of internal combustion motors is prohibited. A vessel with an internal combustion motor may access a no motor zone only through the use of a push pole, paddle, sail, electric motor or similar means of operation but is prohibited from using it's internal combustion motor.

Not available for immediate use means not readily accessible for immediate use, e.g., by being stowed unbaited in a cabin, locker, rod holder, or similar storage area, or by being securely covered and lashed to a deck or bulkhead.

Officially marked channel means a channel marked by Federal, State of Florida, or Monroe County officials of competent jurisdiction with navigational aids except for channels marked idle speed only/no wake.

Personal watercraft means any jet or air-powered watercraft operated by standing, sitting, or kneeling on or behind the vessel, in contrast to a conventional boat, where the operator stands or sits inside the vessel, and that uses an inboard engine to power a water jet pump for propulsion, instead of a propeller as in a conventional boat.

Prop dredging means the use of a vessel's propulsion wash to dredge or otherwise alter the seabed of the Sanctuary. Prop dredging includes, but is not limited to, the use of propulsion wash deflectors or similar means of dredging or otherwise altering the seabed of the Sanctuary. Prop dredging does not include the disturbance to bottom sediments resulting from normal vessel propulsion.

Prop scarring means the injury to seagrasses or other immobile organisms attached to the seabed of the Sanctuary caused by operation of a vessel in a manner that allows its propeller or other running gear, or any part thereof, to cause such injury (e.g., cutting seagrass rhizomes). Prop scarring does not include minor disturbances to bottom sediments or seagrass blades resulting from normal vessel propulsion.

Residential shoreline means any manmade or natural:

(1) Shoreline,

(2) Canal mouth,

(3) Basin, or

(4) Cove adjacent to any residential land use district, including improved subdivision, suburban residential or suburban residential limited, sparsely settled, urban residential, and urban residential mobile home under the Monroe County land development regulations.

Sanctuary means the Florida Keys National Marine Sanctuary.

Sanctuary Preservation Area means an area of the Sanctuary that encompasses a discrete, biologically important area, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Appendix V to this subpart sets forth the geographic coordinates of these areas.

Sanctuary wildlife means any species of fauna, including avifauna, that occupy or utilize the submerged resources of the Sanctuary as nursery areas, feeding grounds, nesting sites, shelter, or other habitat during any portion of their life cycles.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: Thalassia testudinum (turtle grass); Syringodium filiforme (manatee grass); Halodule wrightii (shoal grass); Halophila decipiens, H. engelmannii, H. johnsonii; and Ruppia maritima.

Special-use Area means an area of the Sanctuary set aside for scientific research and educational purposes, recovery or restoration of Sanctuary resources, monitoring, to prevent use or user conflicts, to facilitate access and use, or to promote public use and understanding of Sanctuary resources. Appendix VI to this subpart sets forth the geographic coordinates of these areas.

Stem means the foremost part of a vessel, consisting of a section of timber or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end.

Stern means the aftermost part of the vessel.

Tank vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(1) Is a United States flag vessel;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States [46 U.S.C. 2101].

Traditional fishing means those commercial or recreational fishing activities that were customarily conducted within the Sanctuary prior to its designation as identified in the Environmental Impact Statement and Management Plan for this Sanctuary.

Tropical fish means any species included in section (2) of Rule 46–42.001, Florida Administrative Code, reproduced in appendix VIII to this subpart, or any part thereof.

Vessel means a watercraft of any description, including, but not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes while maneuvering on the water, capable of being used as a means of transportation in/on the waters of the Sanctuary. For purposes of this part, the terms ''vessel,'' ''watercraft,'' and ''boat'' have the same meaning.

Wildlife Management Area means an area of the Sanctuary established for the management, protection, and preservation of Sanctuary wildlife resources, including such an area established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted to minimize disturbances to Sanctuary wildlife; to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. Appendix III to this subpart lists these areas and their access restrictions.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 *et seq*. and 16 U.S.C. 1431 *et seq*.

[62 FR 32161, June 12, 1997, as amended at 66 FR 4369, Jan. 17, 2001; 74 FR 38094, July 31, 2009]

§ 922.163 Prohibited activities—Sanctuary-wide.

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

(1) *Mineral and hydrocarbon exploration, development and production.* Exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary.

(2) *Removal of, injury to, or possession of coral or live rock.* (i) Moving, removing, taking, harvesting, damaging, disturbing, touching, breaking, cutting, or otherwise injuring, or possessing (regardless of where taken from) any living or dead coral, or coral formation, or attempting any of these activities, except as permitted under 50 CFR part 622.

(ii) Harvesting, or attempting to harvest, any live rock from the Sanctuary, or possessing (regardless of where taken from) any live rock within the Sanctuary, except as authorized by a permit for the possession or harvest from aquaculture operations in the Exclusive Economic Zone, issued by the National Marine Fisheries Service pursuant to applicable regulations under the appropriate Fishery Management Plan, or as authorized by the applicable State authority of competent jurisdiction within the Sanctuary for live rock cultured on State submerged lands leased from the State of Florida, pursuant to applicable State law. *See* § 370.027, Florida Statutes and implementing regulations.

(3) *Alteration of, or construction on, the seabed.* Drilling into, dredging, or otherwise altering the seabed of the Sanctuary, or engaging in prop-dredging; 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 in a manner not otherwise prohibited by this part (see §§ 922.163(a)(5)(ii) and 922.164(d)(1)(v));

(ii) Traditional fishing activities not otherwise prohibited by this part;

(iii) Installation and maintenance of navigational aids by, or pursuant to valid authorization by, any Federal, State, or local authority of competent jurisdiction;

(iv) Harbor maintenance in areas necessarily associated with Federal water resource development projects in existence on July 1, 1997, including maintenance dredging of entrance channels and repair, replacement, or rehabilitation of breakwaters or jetties;

(v) Construction, repair, replacement, or rehabilitation of docks, seawalls, breakwaters, piers, or marinas with less than ten slips authorized by any valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(4) *Discharge or deposit of materials or other matter.* (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 or produced incidental to and while conducting a traditional fishing activity in the Sanctuary;

(B) Water generated by routine vessel operations (e.g., deck wash down and graywater as defined in section 312 of the FWPCA), excluding oily wastes from bilge pumping; or

(C) Cooling water from vessels or engine exhaust;

(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:

(A) Those listed in paragraph (a)(4)(i)(A) through (a)(4)(i)(C) of this section;

(B) Sewage incidental to vessel use and generated by a marine sanitation device approved in accordance with section 312 of the Federal Water Pollution Control Act (FWPCA), as amended, 33 U.S.C. 1322 *et seq.;*

(C) Those authorized under Monroe County land use permits; or

(D) Those authorized under State permits.

(5) *Operation of vessels.* (i) Operating a vessel in such a manner as to strike or otherwise injure coral, seagrass, or any other immobile organism attached to the seabed, including, but not limited to, operating a vessel in such a manner as to cause prop-scarring.

(ii) Having a vessel anchored on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen.

(iii) Except in officially marked channels, operating a vessel at a speed greater than 4 knots or in manner which creates a wake:

(A) Within an area designated idle speed only/no wake;

(B) Within 100 yards of navigational aids indicating emergent or shallow reefs (international diamond warning symbol);

(C) Within 100 yards of the red and white ''divers down'' flag (or the blue and white ''alpha'' flag in Federal waters);

(D) Within 100 yards of residential shorelines; or

(E) Within 100 yards of stationary vessels.

(iv) Operating a vessel in such a manner as to injure or take wading, roosting, or nesting birds or marine mammals.

(v) Operating a vessel in a manner which endangers life, limb, marine resources, or property.

(vi) Having a marine sanitation device that is not secured in a manner that prevents discharges or deposits of treated and untreated sewage. Acceptable methods include, but are not limited to, all methods that have been approved by the U.S. Coast Guard (at 33 CFR 159.7(b) and (c)).

(6) *Conduct of diving/snorkeling without flag*. Diving or snorkeling without flying in a conspicuous manner the red and white ''divers down'' flag (or the blue and white ''alpha'' flag in Federal waters).

(7) *Release of exotic species*. Introducing or releasing an exotic species of plant, invertebrate, fish, amphibian, or mammals into the Sanctuary.

(8) *Damage or removal of markers*. Marking, defacing, or damaging in any way or displacing, removing, or tampering with any official signs, notices, or placards, whether temporary or permanent, or with any navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment.

(9) *Movement of, removal of, injury to, or possession of Sanctuary historical resources*. Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess, a Sanctuary historical resource.

(10) *Take or possession of protected wildlife*. 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*.

(11) *Possession or use of explosives or electrical charges*. Possessing, or using explosives, except powerheads, or releasing electrical charges within the Sanctuary.

(12) *Harvest or possession of marine life species*. Harvesting, possessing, or landing any marine life species, or part thereof, within the Sanctuary, except in accordance with rules 68B–42 of the Florida Administrative Code, and such rules shall apply mutatis mutandis (with necessary editorial changes) to all Federal and State waters within the Sanctuary.

(13) *Interference with law enforcement*. Interfering with, obstructing, delaying or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Acts or any regulation or permit issued under the Acts.

(b) Notwithstanding the prohibitions in this section and in §922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a National Marine Sanctuary permit issued pursuant to §922.166.

(c) Notwithstanding the prohibitions in this section and in §922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of these regulations, 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 reasonably necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.

(d)(1) All military activities shall be carried out in a manner that avoids to the maximum extent practical any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraph (a) of this section and § 922.164 do not apply to existing classes of military activities which were conducted prior to the effective date of these regulations, as identified in the Environmental Impact Statement and Management Plan for the Sanctuary. New military activities in the Sanctuary are allowed and may be exempted from the prohibitions in paragraph (a) of this section and in § 922.164 by the Director after consultation between the Director and the Department of Defense pursuant to section 304(d) of the NMSA. When a military activity is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA, or it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality not previously considered in a previous consultation under section 304(d) of the NMSA, the activity is considered a new activity for purposes of this paragraph. 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 practical 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 the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to prevent, respond to or mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(e) The following prohibitions do not apply to Federal, State and local officers while performing enforcement duties in their official capacities or responding to emergencies that threaten life, property, or the environment:

(1) Those contained in paragraph (a)(4) of this section only as it pertains to discharges of sewage incidental to vessel use and generated by a marine sanitation device approved in accordance with section 312 of the Federal Water Pollution Control Act (FWPCA), as amended, 33 U.S.C. 1322 *et seq.;* and

(2) Those contained in paragraph (a)(5) of this section.

(f) Notwithstanding paragraph (b) of this section and paragraph (a) of § 922.168, in no event may the Director issue a permit under § 922.166 authorizing, or otherwise approve, the exploration for, leasing, development, or production of minerals or hydrocarbons within the Sanctuary, the disposal of dredged material within the Sanctuary other than in connection with beach renourishment or Sanctuary restoration projects, or the discharge of untreated or primary treated sewage (except by a certification, pursuant to § 922.167, of a valid authorization in existence on the effective date of these regulations), and any purported authorizations issued by other authorities after the effective date of these regulations for any of these activities within the Sanctuary shall be invalid.

(g) Any amendment to these regulations shall not take effect in Florida State waters until approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. Any fishery regulations in the Sanctuary shall not take effect in Florida State waters until established by the Florida Marine Fisheries Commission.

[62 FR 32161, June 12, 1997, as amended at 74 FR 38094, July 31, 2009; 75 FR 72659, Nov. 26, 2010]

§ 922.164 Additional activity regulations by Sanctuary area.

In addition to the prohibitions set forth in § 922.163, which apply throughout the Sanctuary, the following regulations apply with respect to activities

conducted within the Sanctuary areas described in this section and in Appendix (II) through (VII) to this subpart. Activities located within two or more overlapping Sanctuary areas are concurrently subject to the regulations applicable to each overlapping area.

(a) *Areas to be avoided.* Operating a tank vessel or a vessel greater than 50 meters in registered length is prohibited in all areas to be avoided, except if such vessel is a public vessel and its operation is essential for national defense, law enforcement, or responses to emergencies that threaten life, property, or the environment. Appendix VII to this subpart sets forth the geographic coordinates of these areas.

(b) *Existing management areas*—(1) *Key Largo and Looe Key Management Areas.* The following activities are prohibited within the Key Largo and Looe Key Management Areas (also known as the Key Largo and Looe Key National Marine Sanctuaries) described in appendix II to this subpart:

(i) Removing, taking, damaging, harmfully disturbing, breaking, cutting, spearing or similarly injuring any coral or other marine invertebrate, or any plant, soil, rock, or other material, except commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand or by hand gear which is consistent with these regulations and the applicable regulations implementing the applicable Fishery Management Plan.

(ii) Taking any tropical fish.

(iii) Fishing with wire fish traps, bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or nets.

(iv) Fishing with, carrying or possessing, except while passing through without interruption or for law enforcement purposes: pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring-loaded guns or similar devices known as spearguns.

(2) *Great White Heron and Key West National Wildlife Refuge Management Areas.* Operating a personal watercraft, operating an airboat, or water skiing except within Township 66 South, Range 29 East, Sections 5, 11, 12 and 14; Township 66 South, Range 28 East, Section 2; Township 67 South, Range 26 East, Sections 16 and 20, all Tallahassee Meridian, are prohibited within the marine portions of the Great White Heron and Key West National Wildlife Refuge Management Areas described in appendix II to this subpart.

(c) *Wildlife management areas.* (1) Marine portions of the Wildlife Management Areas listed in appendix III to this subpart or portions thereof may be designated ''idle speed only/no-wake,'' ''no-motor'' or ''no-access buffer'' zones or ''closed''. The Director, in cooperation with other Federal, State, or local resource management authorities, as appropriate, shall post signs conspicuously, using mounting posts, buoys, or other means according to location and purpose, at appropriate intervals and locations, clearly delineating an area as an ''idle speed only/no wake'', a ''no-motor'', or a ''no-access buffer'' zone or as ''closed'', and allowing instant, long-range recognition by boaters. Such signs shall display the official logo of the Sanctuary.

(2) The following activities are prohibited within the marine portions of the Wildlife Management Areas listed in appendix III to this subpart:

(i) In those marine portions of any Wildlife Management Area designated an ''idle speed only/no wake'' zone in appendix III to this subpart, operating a vessel at a speed greater that idle speed only/no wake.

(ii) In those marine portions of any Wildlife Management Area designated a ''no-motor'' zone in appendix III to this subpart, using internal combustion motors or engines for any purposes. A vessel with an internal combustion motor or engine may access a ''no-motor'' zone only through the use of a push pole, paddle, sail, electric motor or similar means of propulsion.

(iii) In those marine portions of any Wildlife Management Area designated a ''no-access buffer'' zone in appendix III of this subpart, entering the area by vessel.

(iv) In those marine portions of any Wildlife Management Area designated as closed in appendix III of this subpart, entering or using the area.

(3) The Director shall coordinate with other Federal, State, or local resource management authorities, as appropriate, in the establishment and enforcement of access restrictions described in paragraph (c)(2) (i)–(iv) of this section in the marine portions of Wildlife Management Areas.

(4) The Director may modify the number and location of access restrictions described in paragraph (c)(2) (i)–(iv) of this section within the marine portions of a Wildlife Management Area if the Director finds that such action is reasonably necessary to minimize disturbances to Sanctuary wildlife, or to ensure protection and preservation of Sanctuary wildlife consistent with the purposes of the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. The Director will effect such modification by:

(i) Publishing in the FEDERAL REGISTER, after notice and an opportunity for public comments in accordance, an amendment to the list of such areas set forth in appendix III to this subpart, and a notice regarding the time and place where maps depicting the precise locations of such restrictions will be made available for public inspection, and

(ii) Posting official signs delineating such restrictions in accordance with paragraph (c)(1) of this section.

(d) *Ecological Reserves, Sanctuary Preservation Areas, and Special Use (Research only) Areas.* (1) The following activities are prohibited within the Ecological Reserves described in appendix IV to this subpart, within the Sanctuary Preservation Areas described in appendix V to this subpart, and within the Special Use (Research only Areas) described in appendix VI to this subpart:

(i) Discharging or depositing any material or other matter except cooling water or engine exhaust.

(ii) Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities. However, fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the Ecological Reserve or Sanctuary Preservation Area, as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through such reserves or areas, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

(iii) Except for catch and release fishing by trolling in the Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key SPAs, fishing by any means. However, gear capable of harvesting fish may be aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such gear is not available for immediate use when entering and during transit through such Ecological Reserve or Sanctuary Preservation Area, and no presumption of fishing activity shall be drawn therefrom.

(iv) Touching living or dead coral, including but not limited to, standing on a living or dead coral formation.

(v) *Anchoring in the Tortugas Ecological Reserve.* In all other Ecological Reserves and Sanctuary Preservation Areas, placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any attached living organism. When anchoring dive boats, the first diver down must inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other attached organism. No further diving shall take place until the anchor is placed in accordance with these requirements.

(vi) Except in the Tortugas Ecological Reserve where mooring buoys must be used, anchoring instead of mooring when a mooring buoy is available or anchoring in other than a designated anchoring area when such areas have been designated and are available.

(vii) Except for passage without interruption through the area, for law

enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section, violating a temporary access restriction imposed by the Director pursuant to paragraph (d)(2) of this section.

(viii) Except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section: entering the Tortugas South area of the Tortugas Ecological Reserve; or entering the Tortugas North area of the Tortugas Ecological Reserve without a valid access permit issued pursuant to §922.167 or entering or leaving the Tortugas North area with a valid access permit issued pursuant to §922.167 without notifying FKNMS staff at the Dry Tortugas National Park office by telephone or radio no less than 30 minutes and no more than 6 hours, before entering and upon leaving the Tortugas Ecological Reserve.

(ix) Tying a vessel greater than 100 feet (30.48 meters) LOA, or tying more than one vessel (other than vessels carried on board a vessel) if the combined lengths would exceed 100 feet (30.48 meters) LOA, to a mooring buoy or to a vessel tied to a mooring buoy in the Tortugas Ecological Reserve.

(2) The Director may temporarily restrict access to any portion of any Sanctuary Preservation Area or Ecological Reserve if the Director, on the basis of the best available data, information and studies, determines that a concentration of use appears to be causing or contributing to significant degradation of the living resources of the area and that such action is reasonably necessary to allow for recovery of the living resources of such area. The Director will provide for continuous monitoring of the area during the pendency of the restriction. The Director will provide public notice of the restriction by publishing a notice in the FEDERAL REGISTER, and by such other means as the Director may deem appropriate. The Director may only restrict access to an area for a period of 60 days, with one additional 60 day renewal. The Director may restrict access to an area for a longer period pursuant to a notice and opportunity for public comment rulemaking under the Administrative Procedure Act. Such restriction will be kept to the minimum amount of area necessary to achieve the purposes thereof.

(e) *Special-use Areas.* (1) The Director may set aside discrete areas of the Sanctuary as Special-use Areas, and, by designation pursuant to this paragraph, impose the access and use restrictions specified in paragraph (e)(3) of this section. Special-use Areas are described in appendix VI to this subpart, in accordance with the following designations and corresponding objectives:

(i) ''Recovery area'' to provide for the recovery of Sanctuary resources from degradation or other injury attributable to human uses;

(ii) ''Restoration area'' to provide for restoration of degraded or otherwise injured Sanctuary resources;

(iii) ''Research-only area'' to provide for scientific research or education relating to protection and management, through the issuance of a Sanctuary General permit for research pursuant to §922.166 of these regulations; and

(iv) ''Facilitated-use area'' to provide for the prevention of use or user conflicts or the facilitation of access and use, or to promote public use and understanding, of Sanctuary resources through the issuance of special-use permits.

(2) A Special-use Area shall be no larger than the size the Director deems reasonably necessary to accomplish the applicable objective.

(3) Persons conducting activities within any Special-use Area shall comply with the access and use restrictions specified in this paragraph and made applicable to such area by means of its designation as a ''recovery area,'' ''restoration area,'' ''research-only area,'' or ''facilitated-use area.'' Except for passage without interruption through the area or for law enforcement purposes, no person may enter a Special-use Area except to conduct or cause to be conducted the following activities:

(i) In such area designated as a ''recovery area'' or a ''restoration area'', habitat manipulation related to restoration of degraded or otherwise injured Sanctuary resources, or activities reasonably necessary to monitor

recovery of degraded or otherwise injured Sanctuary resources;

(ii) In such area designated as a ''research only area'', scientific research or educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a valid National Marine Sanctuary General or Historical Resources permit, or

(iii) In such area designated as a ''facilitated-use area'', activities specified by the Director or specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a valid Special-use permit.

(4)(i) The Director may modify the number of, location of, or designations applicable to, Special-use Areas by publishing in the FEDERAL REGISTER, after notice and an opportunity for public comment in accordance with the Administrative Procedure Act, an amendment to appendix VI to this subpart, except that, with respect to such areas designated as a ''recovery area,'' ''restoration area,'' or ''research only area,'' the Director may modify the number of, location of, or designation applicable to, such areas by publishing a notice of such action in the FEDERAL REGISTER if the Director determines that immediate action is reasonably necessary to:

(A) Prevent significant injury to Sanctuary resources where circumstances create an imminent risk to such resources;

(B) Initiate restoration activity where a delay in time would significantly impair the ability of such restoration activity to succeed;

(C) Initiate research activity where an unforeseen natural event produces an opportunity for scientific research that may be lost if research is not initiated immediately.

(ii) If the Director determines that a notice of modification must be promulgated immediately in accordance with paragraph (e)(4)(i) of this section, the Director will, as part of the same notice, invite public comment and specify that comments will be received for 15 days after the effective date of the notice. As soon as practicable after the end of the comment period, the Director will either rescind, modify or allow the modification to remain unchanged through notice in the FEDERAL REGISTER.

(5) In addition to paragraph (e)(3) of this section no person shall conduct activities listed in paragraph (d) of this section in ''Research-only Areas.''

(f) Additional Wildlife Management Areas, Ecological Reserves, Sanctuary Preservation Areas, or Special-use Areas, and additional restrictions in such areas, shall not take effect in Florida State waters unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

(g) *Anchoring on Tortugas Bank.* Vessels 50 meters or greater in registered length, are prohibited from anchoring on the portion of Tortugas Bank within the Florida Keys National Marine Sanctuary west of the Dry Tortugas National Park that is outside of the Tortugas Ecological Reserve. The boundary of the area closed to anchoring by vessels 50 meters or greater in registered length is formed by connecting in succession the points at the following coordinates (based on the North American Datum of 1983):

(1) 24 deg. 32.00′ N 83 deg. 00.05′ W
(2) 24 deg. 37.00′ N 83 deg. 06.00′ W
(3) 24 deg. 39.00′ N 83 deg. 06.00′ W
(4) 24 deg. 39.00′ N 83 deg. 00.05′ W
(5) 24 deg. 32.00′ N 83 deg. 00.05′ W

[62 FR 32161, June 12, 1997, as amended at 63 FR 43873, Aug. 17, 1998; 66 FR 4369, Jan. 17, 2001; 74 FR 38095, July 31, 2009]

§ 922.165 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. Emergency regulations shall not take effect in Florida territorial waters until approved by the Governor of the State of Florida. Any temporary regulation may be in effect for up to 60 days, with one 60-day extension. Additional or extended action will require notice and comment rulemaking under the Administrative Procedure Act, notice in local newspapers, notice to Mariners, and press releases.

§ 922.166 Permits other than for access to the Tortugas Ecological Reserve—application procedures and issuance criteria.

(a) *National Marine Sanctuary General Permit*. (1) A person may conduct an activity prohibited by §§ 922.163 or 922.164, other than an activity involving the survey/inventory, research/recovery, or deaccession/transfer of Sanctuary historical resources, if such activity is specifically authorized by, and provided such activity is conducted in accordance with the scope, purpose, terms and conditions of, a National Marine Sanctuary General permit issued under this paragraph (a).

(2) The Director, at his or her discretion, may issue a General permit under this paragraph (a), subject to such terms and conditions as he or she deems appropriate, if the Director finds that the activity will:

(i) Further research or monitoring related to Sanctuary resources and qualities;

(ii) Further the educational value of the Sanctuary;

(iii) Further the natural or historical resource value of the Sanctuary;

(iv) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty;

(v) Assist in managing the Sanctuary; or

(vi) Otherwise further Sanctuary purposes, including facilitating multiple use of the Sanctuary, to the extent compatible with the primary objective of resource protection.

(3) The Director shall not issue a General permit under this paragraph (a), unless the Director also finds that:

(i) The applicant is professionally qualified to conduct and complete the proposed activity;

(ii) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(iii) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;

(iv) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to the activity's impacts on Sanctuary resources and qualities;

(v) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(vi) It is necessary to conduct the proposed activity within the Sanctuary to achieve its purposes; and

(vii) The reasonably expected end value of the activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse impacts on Sanctuary resources and qualities from the conduct of the activity.

(4) For activities proposed to be conducted within any of the areas described in § 922.164 (b)–(e), the Director shall not issue a permit unless he or she further finds that such activities will further and are consistent with the purposes for which such area was established, as described in §§ 922.162 and 922.164 and in the management plan for the Sanctuary.

(b) *National Marine Sanctuary Survey/Inventory of Historical Resources Permit*. (1) A person may conduct an activity prohibited by §§ 922.163 or 922.164 involving the survey/inventory of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Survey/Inventory of Historical Resources permit issued under this paragraph (b). Such permit is not required if such survey/inventory activity does not involve any activity prohibited by §§ 922.163 or 922.164. Thus, survey/inventory activities that are non-intrusive, do not include any excavation, removal, or recovery of historical resources, and do not result in destruction of, loss of, or injury to Sanctuary resources or qualities do not require a permit. However, if a survey/inventory activity will involve test excavations or removal of artifacts or materials for evaluative purposes, a Survey/Inventory of Historical Resources permit is required. Regardless of whether a Survey/Inventory permit is required, a person may request such permit. Persons

who have demonstrated their professional abilities under a Survey/Inventory permit will be given preference over other persons in consideration of the issuance of a Research/Recovery permit. While a Survey/Inventory permit does not grant any rights with regards to areas subject to pre-existing rights of access which are still valid, once a permit is issued for an area, other survey/inventory permits will not be issued for the same area during the period for which the permit is valid.

(2) The Director, at his or her discretion, may issue a Survey/Inventory permit under this paragraph (b), subject to such terms and conditions as he or she deems appropriate, if the Director finds that such activity:

(i) Satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) Either will be non-intrusive, not include any excavation, removal, or recovery of historical resources, and not result in destruction of, loss of, or injury to Sanctuary resources or qualities, or if intrusive, will involve no more than the minimum manual alteration of the seabed and/or the removal of artifacts or other material necessary for evaluative purposes and will cause no significant adverse impacts on Sanctuary resources or qualities; and

(iii) That such activity will be conducted in accordance with all requirements of the Programmatic Agreement for the Management of Submerged Cultural Resources in the Florida Keys National Marine Sanctuary among NOAA, the Advisory Council on Historic Preservation, and the State of Florida (hereinafter SCR Agreement), and that such permit issuance is in accordance with such SCR Agreement. Copies of the SCR Agreement may also be examined at, and obtained from, the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910; or from the Florida Keys National Marine Sanctuary Office, P.O. Box 500368, Marathon, FL 33050.

(c) *National Marine Sanctuary Research/Recovery of Sanctuary Historical Resources Permit.* (1) A person may conduct any activity prohibited by §§ 922.163 or 922.164 involving the research/recovery of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Research/Recovery of Historical Resources permit issued under this paragraph (c).

(2) The Director, at his or her discretion, may issue a Research/Recovery of Historical Resources permit, under this paragraph (c), and subject to such terms and conditions as he or she deems appropriate, if the Director finds that:

(i) Such activity satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) The recovery of the resource is in the public interest as described in the SCR Agreement;

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

(iv) Recovery of the resource is necessary or appropriate to protect the resource, preserve historical information, and/or further the policies and purposes of the NMSA and the FKNMSPA, and that such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(d) *National Marine Sanctuary Special-use Permit.* (1) A person may conduct any commercial or concession-type activity prohibited by §§ 922.163 or 922.164, if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Special-use permit issued under this paragraph (d). A Special-use permit is required for the deaccession/transfer of Sanctuary historical resources.

(2) The Director, at his or her discretion, may issue a Special-use permit in accordance with this paragraph (d), and subject to such terms and conditions as he or she deems appropriate and the mandatory terms and conditions of section 310 of the NMSA, if the Director finds that issuance of such permit is reasonably necessary to: establish conditions of access to and use of any Sanctuary resource; or promote public

use and understanding of any Sanctuary resources. No permit may be issued unless the activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure any Sanctuary resource, and if for the deaccession/transfer of Sanctuary Historical Resources, unless such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(3) The Director may assess and collect fees for the conduct of any activity authorized by a Special-use permit issued pursuant to this paragraph (d). No Special-use permit shall be effective until all assessed fees are paid, unless otherwise provided by the Director by a fee schedule set forth as a permit condition. In assessing a fee, the Director shall include:

(i) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:

(A) Number of personnel;

(B) Personnel hours;

(C) Equipment;

(D) Biological assessments;

(E) Copying; and

(F) Overhead directly related to reviewing and processing the permit application;

(ii) All costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the Special-use permit is being issued, including, but not limited to:

(A) The cost of monitoring the conduct both during the activity and after the activity is completed in order to assess the impacts to Sanctuary resources and qualities;

(B) The use of an official NOAA observer, including travel and expenses and personnel hours; and

(C) Overhead costs directly related to the permitted activity; and

(iii) An amount which represents the fair market value of the use of the Sanctuary resource and a reasonable return to the United States Government.

(4) Nothing in this paragraph (d) shall be considered to require a person to obtain a permit under this paragraph for the conduct of any fishing activities within the Sanctuary.

(e) *Applications.* (1) Applications for permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. All applications must include:

(i) A detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed;

(ii) The qualifications and experience of all personnel;

(iii) The financial resources available to the applicant to conduct and complete the proposed activity;

(iv) A statement as to why it is necessary to conduct the activity within the Sanctuary;

(v) The potential impacts of the activity, if any, on Sanctuary resources and qualities;

(vi) The benefit to be derived from the activity; and

(vii) Such other information as the Director may request depending on the type of activity. Copies of all other required licenses, permits, approvals, or other authorizations must be attached to the application.

(2) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems reasonably necessary to act on the application and may seek the views of any persons. The Director may require a site visit as part of the permit evaluation. Unless otherwise specified, the information requested must be received by the Director within 30 days of the postmark date of the request. Failure to provide such additional information on a timely basis may be deemed by the Director to constitute abandonment or withdrawal of the permit application.

(f) A permit may be issued for a period not exceeding five years. All permits will be reviewed annually to determine the permittee's compliance with permit scope, purpose, terms and conditions and progress toward reaching the stated goals and appropriate action taken under paragraph (g) of this section if warranted. A permittee

may request permit renewal pursuant to the same procedures for applying for a new permit. Upon the permittee's request for renewal, the Director shall review all reports submitted by the permittee as required by the permit conditions. In order to renew the permit, the Director must find that the:

(1) Activity will continue to further the purposes for which the Sanctuary was designated in accordance with the criteria applicable to the initial issuance of the permit;

(2) Permittee has at no time violated the permit, or these regulations; and

(3) The activity has not resulted in any unforeseen adverse impacts to Sanctuary resources or qualities.

(g) The Director may amend, suspend, or revoke a permit for good cause. The Director may deny a permit application, in whole or in part, if it is determined that the permittee or applicant has acted in violation of a previous permit, of these regulations, of the NMSA or FKNMSPA, 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.

(h) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 922.50.

(i) A permit issued pursuant to this section other than a Special-use permit is nontransferable. Special-use permits may be transferred, sold, or assigned with the written approval of the Director. The permittee shall provide the Director with written notice of any proposed transfer, sale, or assignment no less than 30 days prior to its proposed consummation. Transfers, sales, or assignments consummated in violation of this requirement shall be considered a material breach of the Special-use permit, and the permit shall be considered void as of the consummation of any such transfer, sale, or assignment.

(j) The permit or a copy thereof shall be maintained in legible condition on board all vessels or aircraft used in the conduct of the permitted activity and be displayed for inspection upon the request of any authorized officer.

(k) Any permit issued pursuant to this section shall be subject to the following terms and conditions:

(1) All permitted activities shall be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources or qualities, except to the extent that such may be specifically authorized.

(2) The permittee agrees to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

(3) All necessary Federal, State, and local permits from all agencies with jurisdiction over the proposed activities shall be secured before commencing field operations.

(l) In addition to the terms and conditions listed in paragraph (k) of this section, any permit authorizing the research/recovery of historical resources shall be subject to the following terms and conditions:

(1) A professional archaeologist shall be in charge of planning, field recovery operations, and research analysis.

(2) An agreement with a conservation laboratory shall be in place before field recovery operations are begun, and an approved nautical conservator shall be in charge of planning, conducting, and supervising the conservation of any artifacts and other materials recovered.

(3) A curation agreement with a museum or facility for curation, public access and periodic public display, and maintenance of the recovered historical resources shall be in place before commencing field operations (such agreement for the curation and display of recovered historical resources may provide for the release of public artifacts for deaccession/transfer if such deaccession/transfer is consistent with preservation, research, education, or other purposes of the designation and management of the Sanctuary. Deaccession/transfer of historical resources requires a Special-use permit issued pursuant to paragraph (d) and such deaccession/transfer shall be executed in accordance with the requirements of the SCR Agreement).

(4) The site's archaeological information is fully documented, including

measured drawings, site maps drawn to professional standards, and photographic records.

(m) In addition to the terms and conditions listed in paragraph (k) and (l) of this section, any permit issued pursuant to this section is subject to such other terms and conditions, including conditions governing access to, or use of, Sanctuary resources, as the Director deems reasonably necessary or appropriate and in furtherance of the purposes for which the Sanctuary is designated. Such terms and conditions may include, but are not limited to:

(1) Any data or information obtained under the permit shall be made available to the public.

(2) A NOAA official shall be allowed to observe any activity conducted under the permit.

(3) The permittee shall submit one or more reports on the status, progress, or results of any activity authorized by the permit.

(4) The permittee shall submit an annual report to the Director not later than December 31 of each year on activities conducted pursuant to the permit. The report shall describe all activities conducted under the permit and all revenues derived from such activities during the year and/or term of the permit.

(5) The permittee shall purchase and maintain general liability insurance or other acceptable security against potential claims for destruction, loss of, or injury to Sanctuary resources arising out of the permitted activities. The amount of insurance or security should be commensurate with an estimated value of the Sanctuary resources in the permitted area. A copy of the insurance policy or security instrument shall be submitted to the Director.

§ 922.167 Permits for access to the Tortugas Ecological Reserve.

(a) A person may enter the Tortugas North area of the Tortugas Ecological Reserve other than for passage without interruption through the reserve, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of § 922.164 , if authorized by a valid access permit issued pursuant to § 922.167.

(b)(1) Access permits must be requested at least 72 hours but no longer than one month before the date the permit is desired to be effective. Access permits do not require written applications or the payment of any fee. Permits may be requested via telephone or radio by contacting FKNMS at any of the following numbers:

Key West office: telephone: (305) 292–0311
Marathon office: telephone: (305) 743–2437

(2) The following information must be provided, as applicable:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) Name, address, and telephone number of applicant.

(iv) USCG documentation, state license, or registration number.

(v) Home port.

(vi) Length of vessel and propulsion type (*i.e.*, motor or sail).

(vii) Number of divers.

(viii) Requested effective date and duration of permit (2 weeks, maximum).

(c) The Sanctuary Superintendent will issue a permit to the owner or to the owner's representative for the vessel when all applicable information has been provided. The Sanctuary Superintendent will provide a permit number to the applicant and confirm the effective date and duration period of the permit. Written confirmation of permit issuance will be provided upon request.

[66 FR 4370, Jan. 17, 2001]

§ 922.168 [Reserved]

APPENDIX I TO SUBPART P OF PART 922—FLORIDA KEYS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

(APPENDIX BASED ON NORTH AMERICAN DATUM OF 1983)

(1) The boundary of the Florida Keys National Marine Sanctuary—

(a) Begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 05 minutes west longitude, then runs eastward to the point at 25 degrees 39 minutes north latitude, 80 degrees 04 minutes west longitude; and

(b) Then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 04 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 05 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 07 minutes west longitude;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 08 minutes west longitude;

(c) Then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 07 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 06 minutes west longitude,

(viii) 24 degrees 46 minutes north latitude, 83 degrees 06 minutes west longitude,

(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,

(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) Then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) After Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

(2) The shoreward boundary of the Florida Keys National Marine Sanctuary is the mean high-water mark except around the Dry Tortugas where the boundary is coterminous with that of the Dry Tortugas National Park, formed by connecting in succession the points at the following coordinates:

(a) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(b) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 second west longitude;

(c) 24 degrees 39 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 seconds west longitude;

(d) 24 degrees 43 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(e) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 52 minutes 0 seconds west longitude;

(f) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude;

(g) 24 degrees 42 minutes 0 seconds north latitude, 82 degrees 46 minutes, 0 seconds west longitude;

(h) 24 degrees 40 minutes 0 seconds north latitude, 82 degrees 46 minutes 0 seconds west longitude;

(i) 24 degrees 37 minutes 0 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude; and

(j) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude.

(3) The Florida Keys National Marine Sanctuary also includes the area located within the boundary formed by connecting in succession the points at the following coordinates:

(a) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude,

(b) 24 degrees 33 minutes north latitude, 83 degrees 05 minutes west longitude, and

(c) 24 degrees 18 minutes north latitude, 83 degrees 05 minutes west longitude;

(d) 24 degrees 18 minutes north latitude, 83 degrees 09 minutes west longitude; and

(e) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude.

[66 FR 4370, Jan. 17, 2001]

APPENDIX II TO SUBPART P OF PART 922—EXISTING MANAGEMENT AREAS BOUNDARY COORDINATES

(1) The boundary of each of the Existing Management Areas is formed by connecting in succession the points at the following coordinates:

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

KEY LARGO-MANAGEMENT AREA

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.19′45″ N	80 deg.12′00″ W.
2	25 deg.16′02″ N	80 deg.08′07″ W.
3	25 deg.07′05″ N	80 deg.12′05″ W.
4	24 deg.58′03″ N	80 deg.19′08″ W.
5	25 deg.02′02″ N	80 deg.25′25″ W.
6	25 deg.19′45″ N	80 deg.12′00″ W.

LOOE KEY MANAGEMENT AREA

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.31′62″ N	81 deg.26′00″ W.

LOOE KEY MANAGEMENT AREA—Continued

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
2	24 deg.33′57″ N	81 deg.26′00″ W.
3	24 deg.34′15″ N	81 deg.23′00″ W.
4	24 deg.32′20″ N	81 deg.23′00″ W.
5	24 deg.31′62″ N	81 deg.26′00″ W.

UNITED STATES FISH AND WILDLIFE SERVICE

GREAT WHITE HERON NATIONAL WILDLIFE REFUGE

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
1	24 deg.43.8′ N	81 deg.48.6′ W.
2	24 deg.43.8′ N	81 deg.37.2′ W.
3	24 deg.49.2′ N	81 deg.37.2′ W.
4	24 deg.49.2′ N	81 deg.19.8′ W.
5	24 deg.48.0′ N	81 deg.19.8′ W.
6	24 deg.48.0′ N	81 deg.14.4′ W.
7	24 deg.49.2′ N	81 deg.14.4′ W.
8	24 deg.49.2′ N	81 deg.08.4′ W.
9	24 deg.43.8′ N	81 deg.08.4′ W.
10	24 deg.43.8′ N	81 deg.14.4′ W.
11	24 deg.43.2′ N	81 deg.14.4′ W.
12	24 deg.43.2′ N	81 deg.16.2′ W.
13	24 deg.42.6′ N	81 deg.16.2′ W.
14	24 deg.42.6′ N	81 deg.21.0′ W.
15	24 deg.41.4′ N	81 deg.21.0′ W.
16	24 deg.41.4′ N	81 deg.22.2′ W.
17	24 deg.43.2′ N	81 deg.22.2′ W.
18	24 deg.43.2′ N	81 deg.22.8′ W.
19	24 deg.43.8′ N	81 deg.22.8′ W.
20	24 deg.43.8′ N	81 deg.24.0′ W.
21	24 deg.43.2′ N	81 deg.24.0′ W.
22	24 deg.43.2′ N	81 deg.26.4′ W.
23	24 deg.43.8′ N	81 deg.26.4′ W.
24	24 deg.43.8′ N	81 deg.27.0′ W.
25	24 deg.43.2′ N	81 deg.27.0′ W.
26	24 deg.43.2′ N	81 deg.29.4′ W.
27	24 deg.42.6′ N	81 deg.29.4′ W.
28	24 deg.42.6′ N	81 deg.30.6′ W.
29	24 deg.41.4′ N	81 deg.30.6′ W.
30	24 deg.41.4′ N	81 deg.31.2′ W.

GREAT WHITE HERON NATIONAL WILDLIFE REFUGE—Continued

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
31	24 deg.40.8′ N	81 deg.31.2′ W.
32	24 deg.40.8′ N	81 deg.32.4′ W.
33	24 deg.41.4′ N	81 deg.32.4′ W.
34	24 deg.41.4′ N	81 deg.34.2′ W.
35	24 deg.40.8′ N	81 deg.34.2′ W.
36	24 deg.48.0′ N	81 deg.35.4′ W.
37	24 deg.39.6′ N	81 deg.35.4′ W.
38	24 deg.39.6′ N	81 deg.36.0′ W.
39	24 deg.39.0′ N	81 deg.36.0′ W.
40	24 deg.39.0′ N	81 deg.37.2′ W.
41	24 deg.37.8′ N	81 deg.37.2′ W.
42	24 deg.37.8′ N	81 deg.37.8′ W.
43	24 deg.37.2′ N	81 deg.37.8′ W.
44	24 deg.37.2′ N	81 deg.40.2′ W.
45	24 deg.36.0′ N	81 deg.40.2′ W.
46	24 deg.36.0′ N	81 deg.40.8′ W.
47	24 deg.35.4′ N	81 deg.40.8′ W.
48	24 deg.35.4′ N	81 deg.42.0′ W.
49	24 deg.36.0′ N	81 deg.42.0′ W.
50	24 deg.36.0′ N	81 deg.48.6′ W.
51	24 deg.43.8′ N	81 deg.48.6′ W.

KEY WEST NATIONAL WILDLIFE REFUGE

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
1	24 deg.40.0′ N	81 deg.49.0′ W.
2	24 deg.40.0′ N	82 deg.10.0′ W.
3	24 deg.27.0′ N	82 deg.10.0′ W.
4	24 deg.27.0′ N	81 deg.49.0′ W.
5	24 deg.40.0′ N	81 deg.49.0′ W.

(2) When differential Global Positioning Systems data becomes available, these coordinates may be publication in the FEDERAL REGISTER to reflect the increased accuracy of such data.

[66 FR 4371, Jan. 17, 2001]

APPENDIX III TO SUBPART P OF PART 922—WILDLIFE MANAGEMENT AREAS ACCESS RESTRICTIONS

Area	Access restrictions
Bay Keys	No-motor zone (300 feet) around one key; idle speed only/no-wake zones in tidal creeks.
Boca Grande Key	South one-half of beach closed (beach above mean high water closed by Department of the Interior).
Woman Key	One-half of beach and sand spit on southeast side closed (beach and sand spit above mean high water closed by Department of the Interior).
Cayo Agua Keys	Idle speed only/no-wake zones in all navigable tidal creeks.
Cotton Key	No-motor zone on tidal flat.
Snake Creek	No-motor zone on tidal flat.
Cottrell Key	No-motor zone (300 feet) around entire key.
Little Mullet Key	No-access buffer zone (300 feet) around entire key.
Big Mullet Key	No-motor zone (300 feet) around entire key.
Crocodile Lake	No-access buffer zone (100 feet) along shoreline between March 1 and October 1.
East Harbor Key	No-access buffer zone (300 feet) around northernmost island.
Lower Harbor Keys	Idle speed only/no-wake zones in selected tidal creeks.
Eastern Lake Surprise	Idle speed only/no-wake zone east of highway U.S. 1.
Horseshoe Key	No-access buffer zone (300 feet) around main island (main island closed by Department of the Interior).

Area	Access restrictions
Marquesas Keys	(i) No-motor zones (300 feet) around three smallest keys on western side of chain; (ii) no-access buffer zone (300 feet) around one island at western side of chain; (iii) idle speed only/no-wake zone in southwest tidal creek.
Tidal flat south of Marvin Key	No-access buffer zone on tidal flat.
Mud Keys	(i) Idle speed only/no-wake zones in the two main tidal creeks; (ii) two smaller creeks on west side closed.
Pelican Shoal	No-access buffer zone out to 50 meters from shore between April 1 and August 31 (shoal closed by the Florida Game and Freshwater Fish Commission).
Rodriguez Key	No-motor zone on tidal flats.
Dove Key	No-motor zone on tidal flats; area around the two small islands closed.
Tavernier Key	No-motor zone on tidal flats.
Sawyer Keys	Tidal creeks on south side closed.
Snipe Keys	(i) Idle speed only/no-wake zone in main tidal creek; (ii) no-motor zone in all other tidal creeks.
Upper Harbor Key	No-access buffer zone (300 feet) around entire key.
East Content Keys	Idle speed only/no-wake zones in tidal creeks between southwesternmost keys.
West Content Keys	Idle speed only/no-wake zones in selected tidal creeks; no-access buffer zone in one cove.
Little Crane Key	No-access buffer zone (300 feet) around entire key.

Appendix IV to Subpart P of Part 922—Ecological Reserves Boundary

Coordinates

(1) The boundary of the Western Sambo Ecological Reserve is formed by connecting in succession the points at the following coordinates:

Western Sambo

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.33.70′ N	81 deg.40.80′ W.
2	24 deg.28.85′ N	81 deg.41.90′ W.
3	24 deg.28.50′ N	81 deg.43.70′ W.
4	24 deg.33.50′ N	81 deg.43.10′ W.
5	24 deg.33.70′ N	81 deg.40.80′ W.

(2) The Tortugas Ecological Reserve consists of two discrete areas, Tortugas North and Tortugas South.

(3) The boundary of Tortugas North is formed by connecting in succession the points at the following coordinates:

Tortugas North

Point	Latitude	Longitude
1	24 deg.46.00′ N	83 deg.06.00′ W.
2	24 deg.46.00′ N	82 deg.54.00′ W.
3	24 deg.45.80′ N	82 deg.48.00′ W.
4	24 deg.43.53′ N	82 deg.48.00′ W.
5	24 deg.43.53′ N	82 deg.52.00′ W.
6	24 deg.43.00′ N	82 deg.54.00′ W.
7	24 deg.39.00′ N	82 deg.58.00′ W.
8	24 deg.39.00′ N	83 deg.06.00′ W.
9	24 deg.46.00′ N	83 deg.06.00′ W.

(4) The boundary of Tortugas South is formed by connecting in succession the points at the following coordinates:

Tortugas South

Point	Latitude	Longitude
1	24 deg.33.00′ N	83 deg.09.00′ W.
2	24 deg.33.00′ N	83 deg.05.00′ W.
3	24 deg.18.00′ N	83 deg.05.00′ W.
4	24 deg.18.00′ N	83 deg.09.00′ W.
5	24 deg.33.00′ N	83 deg.09.00′ W.

[66 FR 4372, Jan. 17, 2001]

Appendix V to Subpart P of Part 922—Sanctuary Preservation Areas Boundary Coordinates

The boundary of each of the Sanctuary Preservation Areas (SPAs) is formed by connecting in succession the points at the following coordinates:

Alligator Reef

[Based on differential Global Positioning Systems data]

Point	Latitute	Longitude
1	24 deg.50.98′ N	80 deg.36.84′ W.
2	24 deg.50.51′ N	80 deg.37.35′ W.
3	24 deg.50.81′ N	80 deg.37.63′ W.
4	24 deg.51.23′ N	80 deg.37.17′ W.
5	24 deg.50.98′ N	80 deg.36.84′ W.

Catch and release fishing by trolling only is allowed in this SPA.

Carysfort/South Carysfort Reef

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.13.78′ N	80 deg.12.00′ W.
2	25 deg.12.03′ N	80 deg.12.98′ W.
3	25 deg.12.24′ N	80 deg.13.77′ W.
4	25 deg.14.13′ N	80 deg.12.78′ W.
5	25 deg.13.78′ N	80 deg.12.00′ W.

CHEECA ROCKS

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.54.42′ N	80 deg.36.91′ W.
2	24 deg.54.25′ N	80 deg.36.77′ W.
3	24 deg.54.10′ N	80 deg.37.00′ W.
4	24 deg.54.22′ N	80 deg.37.15′ W.
5	24 deg.54.42′ N	80 deg.36.91′ W.

COFFINS PATCH

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.41.47′ N	80 deg.57.68′ W.
2	24 deg.41.12′ N	80 deg.57.53′ W.
3	24 deg.40.75′ N	80 deg.58.33′ W.
4	24 deg.41.06′ N	80 deg.58.48′ W.
5	24 deg.41.47′ N	80 deg.57.68′ W.

CONCH REEF

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.57.48′ N	80 deg.27.47′ W.
2	24 deg.57.34′ N	80 deg.27.26′ W.
3	24 deg.56.78′ N	80 deg.27.52′ W.
4	24 deg.56.96′ N	80 deg.27.73′ W.
5	24 deg.57.48′ N	80 deg.27.47′ W.

Catch and release fishing by trolling only is allowed in this SPA.

DAVIS REEF

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.55.61′ N	80 deg.30.27′ W.
2	24 deg.55.41′ N	80 deg.30.05′ W.
3	24 deg.55.11′ N	80 deg.30.35′ W.
4	24 deg.55.34′ N	80 deg.30.52′ W.
5	24 deg.55.61′ N	80 deg.30.27′ W.

DRY ROCKS

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.07.59′ N	80 deg.17.91′ W.
2	25 deg.07.41′ N	80 deg.17.70′ W.
3	25 deg.07.25′ N	80 deg.17.82′ W.
4	25 deg.07.41′ N	80 deg.18.09′ W.
5	25 deg.07.59′ N	80 deg.17.91′ W.

GRECIAN ROCKS

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.06.91′ N	80 deg.18.20′ W.
2	25 deg.06.67′ N	80 deg.18.06′ W.
3	25 deg.06.39′ N	80 deg.18.32′ W.
4	25 deg.06.42′ N	80 deg.18.48′ W.
5	25 deg.06.81′ N	80 deg.18.44′ W.
6	25 deg.06.91′ N	80 deg.18.20′ W.

EASTERN DRY ROCKS

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.27.92′ N	81 deg.50.55′ W.
2	24 deg.27.73′ N	81 deg.50.33′ W.
3	24 deg.27.47′ N	81 deg.50.80′ W.
4	24 deg.27.72′ N	81 deg.50.86′ W.
5	24 deg.27.92′ N	81 deg.50.55′ W.

THE ELBOW

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.08.97′ N	80 deg.15.63′ W.
2	25 deg.08.95′ N	80 deg.15.22′ W.
3	25 deg.08.18′ N	80 deg.15.64′ W.
4	25 deg.08.50′ N	80 deg.16.07′ W.
5	25 deg.08.97′ N	80 deg.15.63′ W.

FRENCH REEF

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.02.20′ N	80 deg.20.63′ W.
2	25 deg.01.81′ N	80 deg.21.02′ W.
3	25 deg.02.36′ N	80 deg.21.27′ W.
4	25 deg.02.20′ N	80 deg.20.63′ W.

HEN AND CHICKENS

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.56.38′ N	80 deg.32.86′ W.
2	24 deg.56.21′ N	80 deg.32.63′ W.
3	24 deg.55.86′ N	80 deg.32.95′ W.
4	24 deg.56.04′ N	80 deg.33.19′ W.
5	24 deg.56.38′ N	80 deg.32.86′ W.

LOOE KEY

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.33.24′ N	81 deg.24.03′ W.
2	24 deg.32.70′ N	81 deg.23.85′ W.
3	24 deg.32.52′ N	81 deg.24.70′ W.
4	24 deg.33.12′ N	81 deg.24.81′ W.
5	24 deg.33.24′ N	81 deg.24.03′ W.

MOLASSES REEF

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.01.00′ N	80 deg.22.53′ W.
2	25 deg.01.06′ N	80 deg.21.84′ W.
3	25 deg.00.29′ N	80 deg.22.70′ W.
4	25 deg.00.72′ N	80 deg.22.83′ W.
5	25 deg.01.00′ N	80 deg.22.53′ W.

NEWFOUND HARBOR KEY

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.37.10′ N	81 deg.23.34′ W.
2	24 deg.36.85′ N	81 deg.23.28′ W.
3	24 deg.36.74′ N	81 deg.23.80′ W.
4	24 deg.37.00′ N	81 deg.23.86′ W.
5	24 deg.37.10′ N	81 deg.23.34′ W.

ROCK KEY

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.27.48′ N	81 deg.51.35′ W.
2	24 deg.27.30′ N	81 deg.51.15′ W.
3	24 deg.27.21′ N	81 deg.51.60′ W.
4	24 deg.27.45′ N	81 deg.51.65′ W.
5	24 deg.27.48′ N	81 deg.51.35′ W.

SAND KEY

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.27.58′ N	81 deg.52.29′ W.
2	24 deg.27.01′ N	81 deg.52.32′ W.
3	24 deg.27.02′ N	81 deg.52.95′ W.
4	24 deg.27.61′ N	81 deg.52.94′ W.
5	24 deg.27.58′ N	81 deg.52.29′ W.

Catch and release fishing by trolling only is allowed in this SPA.

SOMBRERO KEY

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.37.91′ N	81 deg.06.78′ W.
2	24 deg.37.50′ N	81 deg.06.19′ W.
3	24 deg.37.25′ N	81 deg.06.89′ W.
4	24 deg.37.91′ N	81 deg.06.78′ W.

Catch and release fishing by trolling only is allowed in this SPA.

[66 FR 4373, Jan. 17, 2001]

APPENDIX VI TO SUBPART P OF PART 922—SPECIAL-USE AREAS BOUNDARY COORDINATES AND USE DESIGNATIONS

The boundary of each of the Special-Use is formed by connecting in succession the points at the following coordinates:

CONCH REEF

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.56.83′ N	80 deg.27.26′ W.
2	24 deg.57.10′ N	80 deg.26.93′ W.
3	24 deg.56.99′ N	80 deg.27.42′ W.
4	24 deg.57.34′ N	80 deg.27.26′ W.

CONCH REEF—Continued

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
5	24 deg.56.83′ N	80 deg.27.26′ W.

EASTERN SAMBO

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.29.84′ N	81 deg.39.59′ W.
2	24 deg.29.55′ N	81 deg.39.35′ W.
3	24 deg.29.37′ N	81 deg.39.96′ W.
4	24 deg.29.77′ N	81 deg.40.03′ W.
5	24 deg.29.84′ N	81 deg.39.59′ W.

LOOE KEY

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.34.17′ N	81 deg.23.01′ W.
2	24 deg.33.98′ N	81 deg.22.96′ W.
3	24 deg.33.84′ N	81 deg.23.60′ W.
4	24 deg.34.23′ N	81 deg.23.68′ W.
5	24 deg.34.17′ N	81 deg.23.01′ W.

TENNESSEE REEF

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.44.77′ N	80 deg.47.12′ W.
2	24 deg.44.57′ N	80 deg.46.98′ W.
3	24 deg.44.68′ N	80 deg.46.59′ W.
4	24 deg.44.95′ N	80 deg.46.74′ W.
5	24 deg.44.77′ N	80 deg.47.12′ W.

[66 FR 4376, Jan. 17, 2001]

APPENDIX VII TO SUBPART P OF PART 922—AREAS TO BE AVOIDED BOUNDARY COORDINATES

IN THE VICINITY OF THE FLORIDA KEYS

[Reference Charts: United States 11466, 27th Edition—September 1, 1990 and United States 11450, 4th Edition—August 11, 1990]

Point	Latitude	Longitude
1	25°45.00′ N	80°06.10′ W
2	25°38.70′ N	80°02.70′ W
3	25°22.00′ N	80°03.00′ W
4	25°06.38′ N	80°10.48′ W
5	24°56.37′ N	80°19.26′ W
6	24°37.90′ N	80°47.30′ W
7	24°29.20′ N	81°17.30′ W
8	24°22.30′ N	81°43.17′ W
9	24°28.00′ N	81°43.17′ W
10	24°28.70′ N	81°43.50′ W
11	24°29.80′ N	81°43.17′ W
12	24°33.10′ N	81°35.15′ W
13	24°33.60′ N	81°26.00′ W
14	24°38.20′ N	81°07.00′ W

IN THE VICINITY OF THE FLORIDA KEYS—Continued

[Reference Charts: United States 11466, 27th Edition—September 1, 1990 and United States 11450, 4th Edition—August 11, 1990]

Point	Latitude	Longitude
15	24°43.20′ N	80°53.20′ W
16	24°46.10′ N	80°46.15′ W
17	24°51.10′ N	80°37.10′ W
18	24°57.50′ N	80°27.50′ W
19	25°09.90′ N	80°16.20′ W
20	25°24.00′ N	80°09.10′ W
21	25°31.50′ N	80°07.00′ W
22	25°39.70′ N	80°06.85′ W
23	25°45.00′ N	80°06.10′ W

IN THE VICINITY OF KEY WEST HARBOR

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
24	24 deg.27.95' N	81 deg.48.65' W.
25	24 deg.23.00' N	81 deg.53.50' W.
26	24 deg.26.60' N	81 deg.58.50' W.
27	24 deg.27.75' N	81 deg.55.70' W.
28	24 deg.29.35' N	81 deg.53.40' W.
29	24 deg.29.35' N	81 deg.50.00' W.
30	24 deg.27.95' N	81 deg.48.65' W.

AREA SURROUNDING THE MARQUESAS KEYS

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
31	24 deg.26.60' N	81 deg.59.55' W.
32	24 deg.23.00' N	82 deg.03.50' W.
33	24 deg.23.60' N	82 deg.27.80' W.
34	24 deg.34.50' N	82 deg.37.50' W.
35	24 deg.43.00' N	82 deg.26.50' W.
36	24 deg.38.31' N	81 deg.54.06' W.
37	24 deg.37.91' N	81 deg.53.40' W.
38	24 deg.36.15' N	81 deg.51.78' W.
39	24 deg.34.40' N	81 deg.50.60' W.
40	24 deg.33.44' N	81 deg.49.73' W.
41	24 deg.31.20' N	81 deg.52.10' W.
42	24 deg.28.70' N	81 deg.56.80' W.
43	24 deg.26.60' N	81 deg.59.55' W.

AREA SURROUNDING THE DRY TORTUGAS ISLANDS

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
44	24 deg.32.00' N	82 deg.53.50' W.
45	24 deg.32.00' N	83 deg.00.05' W.
46	24 deg.39.70' N	83 deg.00.05' W.
47	24 deg.45.60' N	82 deg.54.40' W.
48	24 deg.45.60' N	82 deg.47.02' W.
49	24 deg.42.80' N	82 deg.43.90' W.
50	24 deg.39.50' N	82 deg.43.90' W.
51	24 deg.35.60' N	82 deg.46.40' W.
52	24 deg.32.00' N	82 deg.53.50' W.

[66 FR 4377, Jan. 17, 2001, as amended at 66 FR 34534, June 29, 2001]

Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary

AUTHORITY: 16 U.S.C. 1431 *et seq.* and subtitle C, title II, Pub. L. 102–587, 106 Stat. 5055.

SOURCE: 64 FR 66570, Nov. 29, 1999, unless otherwise noted.

§922.180 Purpose.

(a) The purpose of the regulations in this subpart is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. The regulations are intended to supplement and complement existing regulatory authorities; to facilitate to the extent compatible with the primary objective of protecting the humpback whale and its habitat, all public and private uses of the Sanctuary, including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes, as well as education, research, recreation, commercial and military activities; to reduce conflicts between compatible uses; to maintain, restore, and enhance the humpback whale and its habitat; to contribute to the maintenance of natural assemblages of humpback whales for future generations; to provide a place for humpback whales that are dependent on their Hawaiian Islands wintering habitat for reproductive activities, including breeding, calving, and nursing, and for the long-term survival of their species; and to achieve the other purposes and policies of the HINMSA and NMSA.

(b) These regulations may be modified to fulfill the Secretary's responsibilities for the Sanctuary, including the provision of additional protections for humpback whales and their habitat, if reasonably necessary, and the conservation and management of other

marine resources, qualities and ecosystems of the Sanctuary determined to be of national significance. The Secretary shall consult with the Governor of the State of Hawaii on any modification to the regulations contained in this part. For any modification of the regulations contained in this part that would constitute a change in a term of the designation, as contained in the Designation Document for the Sanctuary, the Secretary shall follow the applicable requirements of sections 303 and 304 of the NMSA, and sections 2305 and 2306 of the HINMSA.

(c) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the Sanctuary management plan and regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed management plan and regulations before they take effect and if the Governor certifies any term or terms of such management plan or regulations as unacceptable, the unacceptable term or terms will not take effect in State waters of the Sanctuary.

§ 922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams:

(1) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;

(2) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

(3) To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

(4) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

(5) To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

(b) Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

HAWAII (BIG ISLAND)

Kawaihae Boat Harbor & Small Boat Basin

LANAI

Kaumalapau Harbor, Manele Harbor

MAUI

Lahaina Boat Harbor
Maalaea Boat Harbor

MOLOKAI

Hale o Lono Harbor
Kaunakakai Harbor

OAHU

Kuapa Pond (Hawaii Kai)

(c) The coordinates of the lateral extents of each boundary area within the Sanctuary boundary appear in appendix A of this subpart Q.

§ 922.182 Definitions.

(a) *Acts* means the Hawaiian Islands National Marine Sanctuary Act (HINMSA; sections 2301–2307 of Pub. L. 102–587), and the National Marine Sanctuaries Act (NMSA; also known as Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 16 U.S.C. 1431 *et seq.*).

Adverse impact means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

Alteration of the seabed means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

Habitat means those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites

used for reproductive activities, including breeding, calving and nursing.

Military activities means those military activities conducted by or under the auspices of the Department of Defense and any combined military activities carried out by the Department of Defense and the military forces of a foreign nation.

Sanctuary means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

Sanctuary resource means any humpback whale, or the humpback whale's habitat within the Sanctuary.

Shoreline means the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

Take or taking a humpback whale means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure a humpback whale, or to attempt to engage in any such conduct. The term includes, but is not limited to, any of the following activities: collecting any dead or injured humpback whale, or any part thereof; restraining or detaining any humpback whale, or any part thereof, no matter how temporarily; tagging any humpback whale; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any humpback whale.

(b) Other terms appearing in the regulations in this subpart are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

§922.183 Allowed activities.

(a) All activities except those prohibited by §922.184 may be undertaken in the Sanctuary subject to any emergency regulations promulgated pursuant to §922.185, subject to the interagency cooperation provisions of section 304(d) of the NMSA [16 U.S.C. 1434(d)] and §922.187 of this subpart, and subject to the liability established by section 312 of the NMSA and §922.46 of this part. All activities are also subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State, or county authority of competent jurisdiction.

(b) Included as activities allowed under the first sentence of paragraph (a) of this §922.183 are all classes of military activities, internal or external to the Sanctuary, that are being or have been conducted before the effective date of these regulations, as identified in the Final Environmental Impact Statement/Management Plan. Paragraphs (a)(1) through (a)(5) of §922.184 do not apply to these classes of activities, nor are these activities subject to further consultation under section 304(d) of the NMSA.

(c) Military activities proposed after the effective date of these regulations are also included as allowed activities under the first sentence of paragraph (a) of this §922.183. Paragraphs (a)(1) through (a)(5) of §922.184 apply to these classes of activities unless—

(1) They are not subject to consultation under section 304(d) of the NMSA and §922.187 of this subpart, or

(2) Upon consultation under section 304(d) of the NMSA and §922.187 of this subpart, NOAA's findings and recommendations include a statement that paragraphs (a)(1) through (a)(5) of §922.184 do not apply to the military activity.

(d) If a military activity described in paragraphs (b) or (c)(2) of this §922.183 is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA and §922.187 of this subpart, or if the modified activity is likely to destroy, cause the loss of, or injure any Sanctuary resource not considered in a previous consultation under section 304(d) of the NMSA and §922.187 of this subpart, the modified activity will be treated as a new military activity under paragraph (c) of this section.

(e) If a proposed military activity subject to section 304(d) of the NMSA and §922.187 of this subpart is necessary to respond to an emergency situation and the Secretary of Defense determines in writing that failure to undertake the proposed activity during the period of consultation would impair

the national defense, the Secretary of the military department concerned may request the Director that the activity proceed during consultation. If the Director denies such a request, the Secretary of the military department concerned may decide to proceed with the activity. In such case, the Secretary of the military department concerned shall provide the Director with a written statement describing the effects of the activity on Sanctuary resources once the activity is completed.

§ 922.184 Prohibited activities.

(a) The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted.

(1) Approaching, or causing a vessel or other object to approach, within the Sanctuary, by any means, within 100 yards of any humpback whale except as authorized under the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.;*

(2) Operating any aircraft above the Sanctuary within 1,000 feet of any humpback whale except as necessary for takeoff or landing from an airport or runway, or as authorized under the MMPA and the ESA;

(3) Taking any humpback whale in the Sanctuary except as authorized under the MMPA and the ESA;

(4) Possessing within the Sanctuary (regardless of where taken) any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA;

(5) Discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing any material or other matter outside the Sanctuary if the discharge or deposit subsequently enters and injures a humpback whale or humpback whale habitat, provided that such activity:

(i) Requires a Federal or State permit, license, lease, or other authorization; and

(ii) Is conducted:

(A) Without such permit, license, lease, or other authorization, or

(B) not in compliance with the terms or conditions of such permit, license, lease, or other authorization.

(6) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either of the Acts or any regulations issued under either of the Acts.

(b) The prohibitions in paragraphs (a)(1) through (a)(5) of this § 922.184 do not apply to activities necessary to respond to emergencies threatening life, property or the environment; or to activities necessary for valid law enforcement purposes. However, while such activities are not subject to paragraphs (a)(1) through (a)(5) of this § 922.184, this paragraph (b) does not exempt the activity from the underlying prohibition or restriction under other applicable laws and regulations (e.g., MMPA, ESA, and CWA).

(c) Any Sanctuary fishery regulations shall not take effect in Hawaii State waters until established by the State Board of Land and Natural Resources.

§ 922.185 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Before issuance of such regulations the Director shall consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii. Emergency regulations shall not take effect in State waters of the Sanctuary until approved by the Governor of Hawaii.

§ 922.186 Penalties; appeals.

(a) Pursuant to section 307 of the NMSA, each violation of either of the Acts, or any regulation in this subpart is subject to a civil penalty of not more than $100,000. Each such violation is subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the administrative

proceedings for assessment of civil penalties for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR Part 904.

(c) A person subject to an action taken for enforcement reasons for violation of these regulations or either of the Acts may appeal pursuant to the applicable procedures in 15 CFR Part 904.

§ 922.187 Interagency Cooperation.

Under section 304(d) of the NMSA, Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Director. The Federal agency proposing an action shall determine whether the activity is likely to destroy, cause the loss of, or injure a Sanctuary resource. To the extent practicable, consultation procedures under section 304(d) of the NMSA may be consolidated with interagency cooperation procedures required by other statutes, such as the ESA. The Director will attempt to provide coordinated review and analysis of all environmental requirements.

APPENDIX A TO SUBPART Q OF PART 922—HAWAIIAN ISLANDS HUMPBACK WHALE, NATIONAL MARINE SANCTUARY BOUNDARY DESCRIPTION AND COORDINATES OF THE LATERAL BOUNDARY CLOSURES AND EXCLUDED AREAS.

Appendix A provides a text and pictoral (see Figures 1–3) description of the Sanctuary boundary with specific lateral closure points and exclusion areas. The lateral extents (bounds) of each boundary area are closed by straight lines defined by at least two points. It may be necessary to extend these lines beyond the defining points to intersect the actual 100 fathom contour or the shoreline. Each point corresponds to a bounds number indicated in Figure 2. Digital files of the Sanctuary boundary (available in three common formats, ESRI Shape File, MapInfo Table, and an ASCII Exchange Format) are available from the Sanctuary office in Kihei, Maui, at the address listed above or by calling (808) 879–2818. These digital geographies are the best available representation of the verbal legal delineation and were derived from: the Hawaiian shoreline as supplied by State of Hawaii through the Office of Planning GIS Office, the NOAA and State of Hawaii agreed upon lateral boundary and exclusion areas, and the 100 fathom isobath digitized from the following 1:80,000 scale NOAA nautical charts-19327—West Coast of Hawaii (9th ED, 4/29/89),

19347—Channels between Molokai, Maui, Lanai, and Kahoolawe (17th ED, 12/13/97),

19351—Channels between Oahu, Molokai, and Lanai (8th ED, 7/01/1989),

19357—Island of Oahu (20th ED, 9/21/1996), and

19381—Island of Kauai (8th ED, 7/17/1993)].

For the portion of the Lanai region of the HIHWNMS west of Chart 19351,[157°42.8′ west] the 100 fathom contour was derived from the 1:250,000 chart 19340—Hawaii to Oahu (24th ED, 1/09/1993).

All digital geography data have been referenced to WGS84 (NAD83) and have been converted to geographic (latitude and longitude) coordinates.

SANCTUARY BOUNDARY

A. As defined by the specific lateral boundaries in B, and except for excluded areas described in paragraph C of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams (see Figure 1):

1. To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;

2. To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

3. To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

4. To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

5. To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

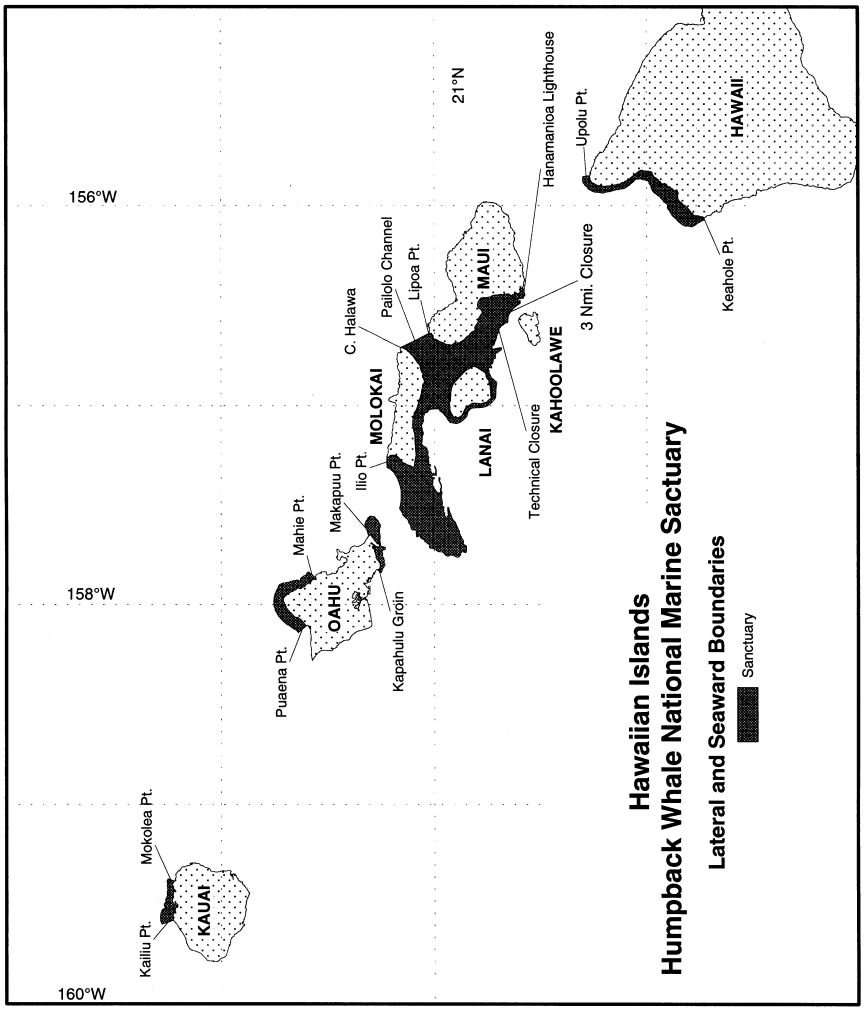

Figure 1

B. Lateral Closure Bounds for the Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary (see Figure 2).

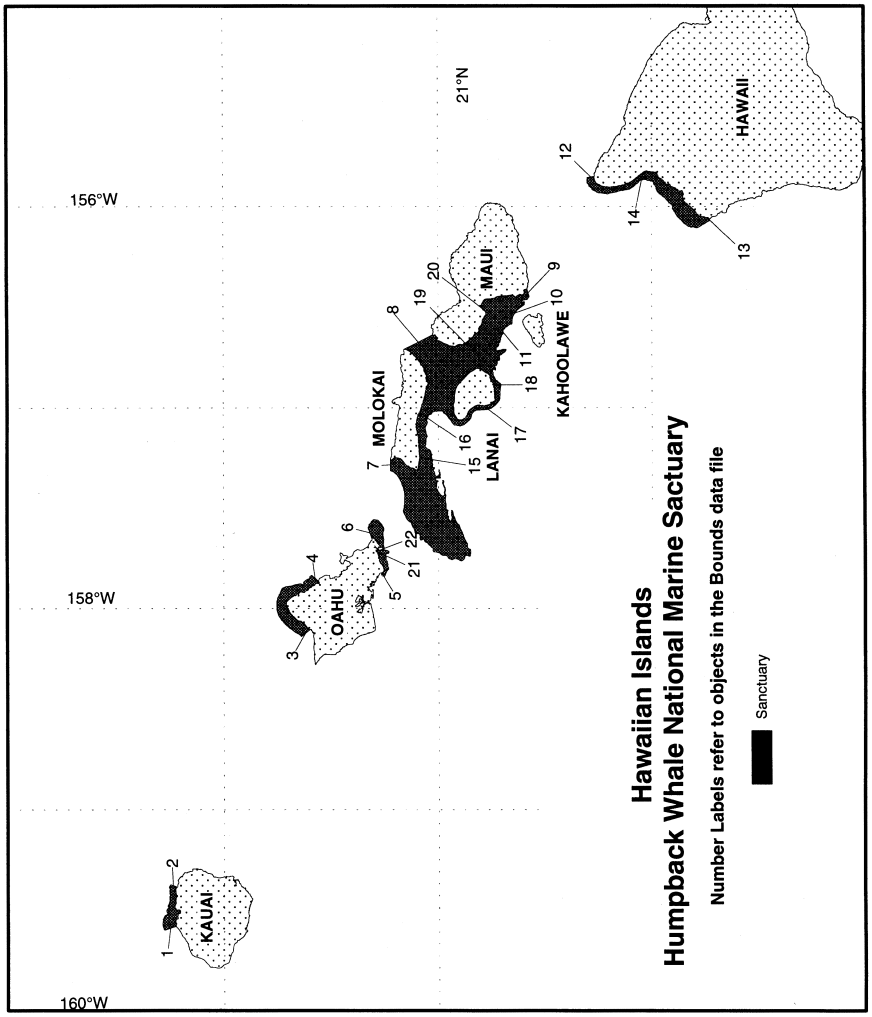

Figure 2

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
1	Kailiu Pt., Kauai	2	22°13′24.7″	−159°34′52.2″
			22°16′33.5″	−159°35′59.4″
2	Mokolea Pt., Kauai	2	22°13′29.9″	−159°22′55.8″
			22°14′55.4″	−159°22′19.3″
3	Puaena Pt., N. Oahu	2	21°38′24.6″	−158°8′26.0″
			21°36′8.4″	−158°6′24.5″
4	Mahie Pt., N. Oahu	2	21°33′37.3″	−157°51′51.9″
			21°35′32.2″	−157°50′5.5″
5	Kapahulu Groin, S. Oahu	3	21°15′5.7″	−157°50′27.5″
			21°16′6.1″	−157°49′25.7″
			21°16′6.2″	−157°49′23.8″
6	Makapuu Pt., S. Oahu	2	21°18′39.6″	−157°38′56.7″
			21°19′44.7″	−157°35′46.1″
7	Ilio Pt, Molokai	2	21°13′25.7″	−157°18′45.8″
			21°13′27.0″	−157°15′14.4″
8	Pailolo Channel, C. Halawa to Lipoa Pt.	2	21°1′29.8″	−156°38′22.0″
			21°9′29.5″	−156°42′37.2″

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
9	Hanamanoia Lighthouse, Maui	2	20°34′21.8″	−156°26′51.1″
			20°34′58.4″	−156°24′45.2″
10	3 Nmi. closure around Kahoolawe	51	20°35′58.1″	−156°29′32.0″
			20°35′59.9″	−156°29′33.0″
			20°36′3.9″	−156°29′35.5″
			20°36′6.6″	−156°29′36.9″
			20°36′16.3″	−156°29′43.1″
			20°36′25.7″	−156°29′49.9″
			20°36′34.6″	−156°29′57.3″
			20°36′39.9″	−156°30′2.2″
			20°36′43.8″	−156°30′5.5″
			20°36′50.8″	−156°30′12.1″
			20°36′59.0″	−156°30′16.5″
			20°37′58.7″	−156°30′22.7″
			20°37′18.1″	−156°30′29.5″
			20°37′27.0″	−156°30′36.8″
			20°37′35.5″	−156°30′44.8″
			20°37′43.4″	−156°30′53.4″
			20°37′50.9″	−156°31′2.4″
			20°37′56.4″	−156°31′10.0″
			20°37′59.0″	−156°31′13.2″
			20°38′6.0″	−156°31′22.7″
			20°38′8.6″	−156°31′26.8″
			20°38′10.8″	−156°31′29.9″
			20°38′17.2″	−156°31′39.9″
			20°38′18.9″	−156°31′43.0″
			20°38′23.4″	−156°31′48.4″
			20°38′30.3″	−156°31′58.0″
			20°38′36.6″	−156°32′7.9″
			20°38′42.4″	−156°32′18.3″
			20°38′43.4″	−156°32′20.5″
			20°38′46.4″	−156°32′25.9″
			20°38′51.5″	−156°32′36.7″
			20°38′56.0″	−156°32′47.7″
			20°38′59.8″	−156°32′59.1″
			20°39′3.0″	−156°33′10.7″
			20°39′4.0″	−156°33′15.7″
			20°39′4.4″	−156°33′17.0″
			20°39′5.3″	−156°33′21.1″
			20°39′6.8″	−156°33′28.7″
			20°39′8.6″	−156°33′40.7″
			20°39′8.9″	−156°33′44.4″
			20°39′9.7″	−156°33′49.6″
			20°39′10.1″	−156°33′53.8″
			20°39′11.0″	−156°34′0.3″
			20°39′12.1″	−156°34′12.4″
			20°39′12.5″	−156°34′24.4″
			20°39′12.4″	−156°34′25.4″
			20°39′12.6″	−156°34′30.5″
			20°39′12.2″	−156°34′42.6″
			20°39′11.8″	−156°34′47.7″
			20°39′11.7″	−156°34′48.9″
			20°39′11.3″	−156°34′55.8″
11	Technical Cosure	2	20°41′39.2″	−156°37′7.5″
			20°41′45.0″	−156°38′3.6″
	North of Kahoolawe.			
12	Upolu Pt., Hawaii (Big Island)	2	20°16′5.3″	−155°51′0.5″
			20°17′59.9″	−155°51′17.2″
13	Keahole Pt., Hawaii (Big Island)	2	19°43′39.6″	−156′3′42.7″
			19°43′41.5″	−156°4′14.5″

C. Excluded Ports and Harbors Bounds (see Figure 3).

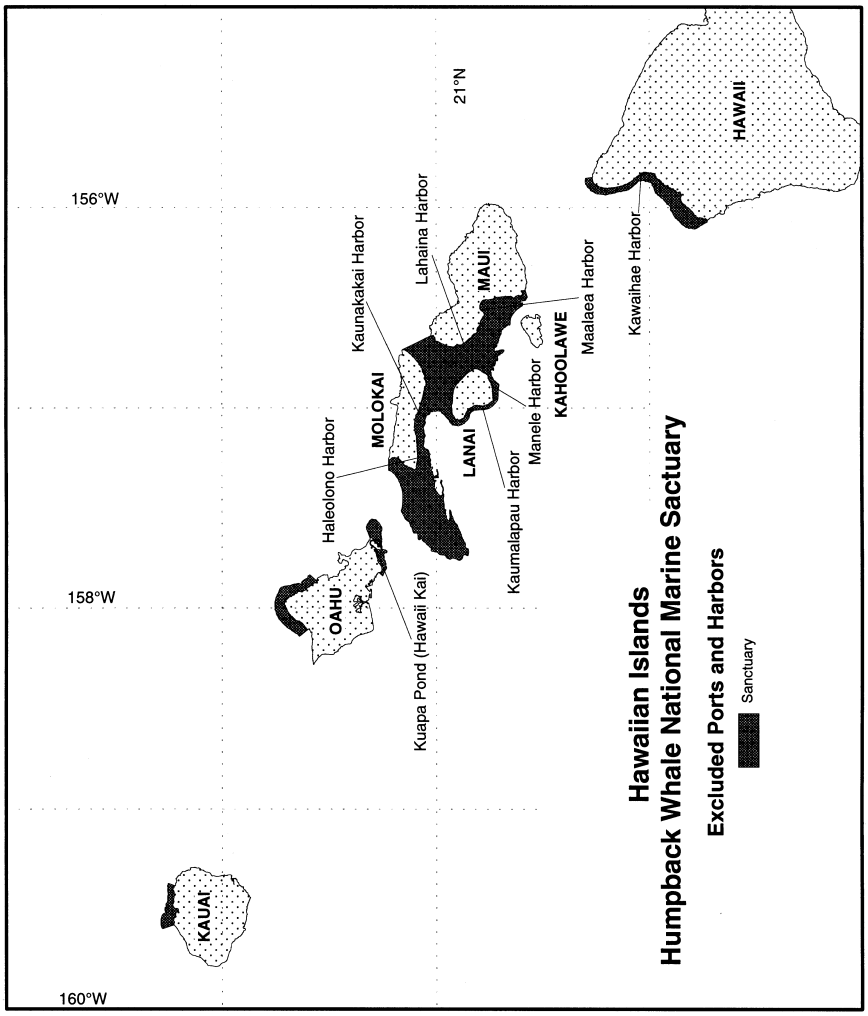

Figure 3

Bound No. (Fig.2)	Geographic Name	No. of Points	Latitude	Longitude
14	Kawaihae Harbor, Big Island exclusion	2	20°2′14.3″ 20°2′25.3″	−155°50′2.5″ −155°49′57.7″
15	Haleolono Harbor, Molokai exclusion	2	21°5′3.5″ 21°5′4.8″	−157°14′58.6″ −157°14′55.2″
16	Kaunakakai Harbor, Molokai exclusion	4	21°5′13.9″ 21°4′49.2″ 21°4′38.5″ 21°5′7.4″	−157°1′35.7″ −157°1′58.3″ −157°1′41.2″ −157°1′15.0″
17	Kaumalapau Harbor, Lanai exclusion	2	20°47′9.2″ 20°47′1.1″	−156°59′32.2″ −156°59′31.3″
18	Manele Harbor, Lanai exclusion	2	20°44′33.2″ 20°44′35.2″	−156°53′12.9″ −156°53′14.1″
19	Lahaina Harbor, Maui exclusion	2	20°52′18.3″ 20°52′18.8″	−156°40′45.0″ −156°40′44.0″
20	Maalaea Harbor, Maui exclusion	2	20°47′32.1″ 20°47′24.8″	−156°30′35.0″ −156°30′39.6″

Bound No. (Fig.2)	Geographic Name	No. of Points	Latitude	Longitude
21	Western closure Kuapa Pond (Hawaii Kai), Oahu	2	21°17′7.0″ 21°17′6.5″	– 157°43′7.7″ – 157°43′7.0″
22	Eastern closure Kuapa Pond (Hawaii Kai), Oahu	2	21°16′53.3″ 21°16′51.9″	– 157°42′42.7″ – 157°42′40.3″

Subpart R—Thunder Bay National Marine Sanctuary and Underwater Preserve

SOURCE: 65 FR 39056, June 22, 2000, unless otherwise noted.

§ 922.190 Boundary.

The Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 448 square miles (1169 square kilometers) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The boundary forms an approximately rectangular area by extending along the ordinary high water mark between the northern and southern boundaries of Alpena County, cutting across the mouths of rivers and streams, and lakeward from those points along latitude lines to longitude 83 degrees west. The coordinates of the boundary are set forth in appendix A to this Subpart.

§ 922.191 Definitions.

(a) The following terms are defined for purposes of Subpart R:

Minor project means any project listed in appendix B to this Subpart.

Programmatic Agreement means the agreement among NOAA, the Federal Advisory Council on Historic Preservation, and the State of Michigan, developed pursuant to the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.* and section 106 of the National Historic Preservation Act of 1966 as amended, 16 U.S.C. 470 *et seq.*, which, in part, sets forth the procedures for review and approval of State Permits that authorize activities prohibited by the Sanctuary regulations.

State Archaeologist means the State Archaeologist, Michigan Historical Center, Michigan Department of State.

State Permit means any lease, permit, license, approval, or other authorization issued by the State of Michigan for the conduct of activities or projects within the Thunder Bay National Marine Sanctuary and Underwater Preserve that are prohibited by the regulations at § 922.193.

Traditional fishing means those commercial, recreational, and subsistence fishing activities that were customarily conducted within the Sanctuary prior to its designation, as identified in the Final Environmental Impact Statement and Management Plan for this Sanctuary. Copies of the Final Environmental Impact Statement/Management Plan (FEIS/MP) are available upon request to the Marine Sanctuaries Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910, (301) 713–3125.

Traditional fishing includes tribal fishing rights as provided for in the 1836 Treaty of Washington and subsequent court decisions related to the Treaty.

Underwater cultural resource means:

(1) Any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sank prior to the effective date of Sanctuary designation; and

(2) Any of the above that sinks on or after the date of Sanctuary designation determined to be an underwater cultural resource by the Director pursuant to § 922.198. Underwater cultural resource also means any historical remnant of docks or piers or associated material, or materials resulting from activities of historic and prehistoric Native Americans.

(b) Other terms appearing in the regulations are defined at 15 CFR part 922 subpart A, and/or in the National Marine Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*

§922.192 Joint Management Committee.

(a) A state/federal Joint Management Committee shall be established to oversee and engage in decision-making authority for the Thunder Bay National Marine Sanctuary and Underwater Preserve.

(b) The Joint Management Committee shall be comprised of one Federal employee named by the NOAA Administrator and one state employee named by the Governor of Michigan. The Federal employee cannot be the sanctuary manager (the individual who exercises day-to-day management over the Sanctuary) and must have a civil service grade higher than that of the sanctuary manager.

(c) The Joint Management Committee shall:

(1) Develop a position description for, recruit prospective candidates for the position of, interview candidates for the position of, and take part in the annual performance evaluation of, the sanctuary manager;

(2) Approve revisions to the Management Plan;

(3) Approve annual work plans;

(4) Approve, on an annual basis, the expenditure of allocated state and federal funds and other sources of revenue for the Thunder Bay National Marine Sanctuary and Underwater Preserve, in accordance with the Management Plan and the annual work plans; and

(5) Make decisions on other key issues related to management of the Thunder Bay National Marine Sanctuary and Underwater Preserve.

(d) The Joint Management Committee shall meet as agreed to by the members but not less than once annually.

(e) If the Joint Management Committee is unable to reach agreement on an issue, the members shall follow the ''Consultation and Conflict Resolution'' procedures set forth in the Interlocal Agreement between NOAA and the State of Michigan.

(f) The Joint Management Committee may invite affected public parties to participate in selected aspects of Sanctuary management as:

(1) Parties to the Interlocal Agreement pursuant to the Michigan Urban Cooperation Act of 1967, MCL 124.501 *et seq.;* and/or

(2) Pursuant to the NMSA.

§922.193 Prohibited or otherwise regulated activities.

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

(1) Recovering, altering, destroying, possessing, or attempting to recover, alter, destroy, or possess an underwater cultural resource.

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

(i) Anchoring vessels;

(ii) Traditional fishing operations; or

(iii) Minor projects (as defined in appendix B of this subpart) that do not adversely affect underwater cultural resources.

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

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

(b) Members of a federally-recognized Indian tribe may exercise treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this subpart. 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, provided that the rights are authorized by the tribe by regulation, license, or permit.

(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

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

historical information, or further the policies of the Sanctuary.

(e) A person shall file an application for a permit with the Michigan Department of Environmental Quality, Land and Water Management Division, P.O. Box 30458, Lansing, MI, 48909-7958. The application shall contain all of the following information:

(1) The name and address of the applicant;

(2) Research plan that describes in detail the specific research objectives and previous work done at the site. An archaeological survey must be conducted on a site before an archaeological permit allowing excavation can be issued;

(3) Description of significant previous work in the area of interest, how the proposed effort would enhance or contribute to improving the state of knowledge, why the proposed effort should be performed in the Sanctuary, and its potential benefits to the Sanctuary;

(4) An operational plan that describes the tasks required to accomplish the project's objectives and the professional qualifications of those conducting and supervising those tasks (see § 922.195(e)(9) of this section). The plan must provide adequate description of methods to be used for excavation, recovery and the storage of artifacts and related materials on site, and describe the rationale for selecting the proposed methods over any alternative methods;

(5) Archaeological recording, including site maps, feature maps, scaled photographs, and field notes;

(6) An excavation plan describing the excavation, recovery and handling of artifacts;

(7)(i) A conservation plan documenting:

(A) The conservation facility's equipment;

(B) Ventilation temperature and humidity control; and

(C) storage space.

(ii) Documentation of intended conservation methods and processes must also be included;

(8) A curation and display plan for the curation of the conserved artifacts to ensure the maintenance and safety of the artifacts in keeping with the Sanctuary's federal stewardship responsibilities under the Federal Archaeology Program (36 CFR Part 79, Curation of Federally-Owned and Administered Archaeological Collections); and

(9) Documentation of the professional standards of an archaeologist supervising the archaeological recovery of historical artifacts. The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or closely related field plus:

(i) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(ii) At least four months of supervised field and analytic experience in general North American archaeology;

(iii) Demonstrated ability to carry research to completion; and

(iv) At least one year of full-time professional experience at a supervisory level in the study of archeological resources in the underwater environment.

§ 922.196 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to an underwater cultural resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of Michigan.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

§ 922.197 Consultation with affected federally-recognized Indian tribes.

The Director shall regularly consult with the governing bodies of affected federally-recognized Indian tribes regarding areas of mutual concern.

§ 922.198 Procedures for determining watercraft and related items which sink on or after the date of Sanctuary designation to be an underwater cultural resource.

The Director, in consultation with the State of Michigan, appropriate federal agencies, and the governing body of any affected federally-recognized tribe, may determine, after providing 45 days for public comment, that any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sinks on or after the date of Sanctuary designation, to be an underwater cultural resource if such is determined by the Director to be 50 years or older and of special national significance due to architectural significance or association with individuals or events that are significant to local or national history.

APPENDIX A TO SUBPART R OF PART 922—THUNDER BAY NATIONAL MARINE SANCTUARY AND UNDERWATER PRESERVE BOUNDARY COORDINATES

[Based on North American Datum of 1983]

Point	Latitude	Longitude
1	45°12′25.5″	83°23′18.6″
2	45°12′25.5″	83°00′00″
3	44°51′30.5″	83°00′00″
4	44°51′30.5″	83°19′17.3″

APPENDIX B TO SUBPART R OF PART 922—MINOR PROJECTS FOR PURPOSES OF § 922.193(a)(2)(iii)

Pursuant to Michigan State Administrative Rule R 322.1013 of Part 325, Great Lakes Submerged Lands of Public Act 451 (Michigan State Statute), the Michigan Department of Environmental Quality (Department) issues permits for projects that are of a minor nature which are not controversial, which have minimal adverse environmental impact, which will be constructed of clean, non-polluting materials, which do not impair the use of the adjacent bottomlands by the public, and which do not adversely affect riparian interests of adjacent owners. The following projects are minor projects:

(a) Noncommercial single piers, docks, and boat hoists which meet the following design criteria:

(i) are of a length or size not greater than the length or size of similar structures in the vicinity and on the watercourse involved; and

(ii) provide for the free littoral flow of water and drift material.

(b) Spring piles and pile clusters when their design and purpose is usual for such projects in the vicinity and on the watercourse involved.

(c) Seawalls, bulkheads, and other permanent revetment structures which meet all of the following purpose and design criteria:

(i) the proposed structure fulfills an identifiable need for erosion protection, bank stabilization, protection of uplands, or improvements on uplands;

(ii) the structure will be constructed of suitable materials free from pollutants, waste metal products, debris, or organic materials;

(iii) the structure is not more than 300 feet in length and is located in an area on the body of water where other similar structures already exist;

(iv) the placement of backfill or other fill associated with the construction does not exceed an average of 3 cubic yards per running foot along the shoreline and a maximum of 300 cubic yards; and

(v) the structure or any associated fill will not be placed in a wetland area or placed in any manner that impairs surface water flow into or out of any wetland area.

(d) Groins 50 feet or less in length, as measures from the toe to bluff, which meet all of the following criteria:

(i) the groin is low profile, with the lakeward end not more than 1 foot above the existing water level; and

(ii) the groin is placed at least ½ of the groin length from the adjacent property line or closer with written approval of the adjacent riparian.

(e) Filling for restoration of existing permitted fill, fills placed incidental to construction of other structures, and fills that do not exceed 300 cubic yards as a single and complete project, where the fill is of suitable material free from pollutants, waste metal products, debris, or organic materials.

(f) Dredging for the maintenance of previously dredged areas or dredging of not more than 300 cubic yards as a single and complete project when both of the following criteria are met:

(i) No reasonable expectation exists that the materials to be dredged are polluted; and

(ii) All dredging materials will be removed to an upland site exclusive of wetland areas.

(g) Structural repair of man-made structures, except as exempted by Michigan State Administrative Rule R 322.1008(3), when their design and purpose meet both of the following criteria:

(i) The repair does not alter the original use of a recently serviceable structure; and

(ii) The repair will not adversely affect public trust values or interests, including navigation and water quality.

(h) Fish or wildlife habitat structures which meet both of the following criteria:

(i) Are placed so the structures do not impede or create a navigational hazard; and

(ii) Are anchored to the bottomlands.

(i) Scientific structures such as staff gauges, water monitoring devices, water quality testing devices, survey devices, and core sampling devices, if the structures do not impede or create a navigational hazard.

(j) Navigational aids which meet both of the following criteria:

(i) Are approved by the United States Coast Guard; and

(ii) Are approved under Michigan State Act No. 303 of the Public Acts of 1967, as amended, being Section 281.1001 *et seq*. of the Michigan Compiled Laws, and known as the Marine Safety Act.

(k) Extension of a project where work is being performed under a current permit and which will result in no damage to natural resources.

(l) A sand trap wall which meets all of the following criteria:

(i) The wall is 300 feet or less in length along the shoreline;

(ii) The wall does not extend more than 30 feet lakeward of the toe of bluff;

(iii) The wall is low profile, that is, it is not more than 1 foot above the existing water level; and

(iv) The wall is constructed of wood or steel or other non-polluting material.

(m) Physical removal of man-made structures or natural obstructions which meet all of the following criteria:

(i) The debris and spoils shall be removed to an upland site, not in a wetland, in a manner which will not allow erosion into public waters;

(ii) The shoreline and bottom contours shall be restored to an acceptable condition; and

(iii) Upon completion of structure removal, the site does not constitute a safety or navigational hazard. Department staff shall consider fisheries and wildlife resource values when evaluating applications for natural obstruction removal.

PART 923—COASTAL ZONE MANAGEMENT PROGRAM REGULATIONS

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AUTHORITY: 16 U.S.C. 1451 *et seq.;* 31 U.S.C. 6506; 42 U.S.C. 3334; 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.

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, unless otherwise noted. 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. This subpart also allows use of section 309 funds for implementation of program changes for up to 2 fiscal years following the fiscal year in which a program change was approved.

(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:

(1) To support up to 100 percent of the allowable costs of approved projects under section 309 of the CZMA, as amended; or

(2) To implement program changes approved by the Secretary for up to two fiscal years following the fiscal year in which a program change was approved.

(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; 62 FR 12541, Mar. 17, 1997]

§ 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.

(9) Adoption of procedures and policies to evaluate and facilitate the siting of public and private aquaculture facilities in the coastal zone, which will enable States to formulate, administer, and implement strategic plans for marine aquaculture.

[57 FR 31116, July 14, 1992. Redesignated at 61 FR 33818, June 28, 1996, as amended at 62 FR 12541, Mar. 17, 1997]

§ 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

[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.

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.

(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 non-adherence 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 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

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AUTHORITY: 16 U.S.C. 1451 *et seq.*

SOURCE: 65 FR 77154, Dec. 8, 2000, unless otherwise noted.

Subpart A—General Information

§930.1 Overall objectives.

The objectives of this part are:

(a) To describe the obligations of all parties who are required to comply with the federal consistency requirement of the Coastal Zone Management Act;

(b) To implement the federal consistency requirement in a manner which strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs and the importance of federal activities (the term ''federal action'' includes all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.);

(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 requirement of the Act are satisfied. Federal agencies, State agencies, and applicants should coordinate as early as possible in developing a proposed federal action, and may mutually agree to intergovernmental coordination efforts to meet the requirements of these regulations, provided that public participation requirements are met and applicable

State management program enforceable policies are considered. State agencies should participate in the administrative processes of federal agencies concerning federal actions that may be subject to state review under subparts C, D, E, F and I of this part.

(d) To interpret significant terms in the Act and this part;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the enforceable policies of approved 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 management programs; and

(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.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

§ 930.2 Public participation.

State management programs shall provide an opportunity for public participation in the State agency's review of a Federal agency's consistency determination or an applicant's or person's consistency certification.

§ 930.3 Review of the implementation of the federal consistency requirement.

As part of the responsibility to conduct a continuing review of approved management programs, the Director of the Office of Ocean and Coastal Resource Management (Director) shall review the performance of each State's implementation of the federal consistency requirement. The Director shall 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 Director'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.

§ 930.4 Conditional concurrences

(a) Federal agencies, applicants, persons and applicant agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under subpart C or in a Federal agency's approval under subparts D, E, F or I of this part, would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable subpart and notify, pursuant to § 930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from the Federal agency that the application will not be approved as amended by the State agency's conditions; and

(2) The Federal agency (for subpart C), applicant (for subparts D and I), person (for subpart E) or applicant agency (for subpart F) shall modify the applicable plan, project proposal, or application to the Federal agency pursuant to the State agency's conditions. The Federal agency, applicant, person or applicant agency shall immediately notify the State agency if the State agency's conditions are not acceptable; and

(3) The Federal agency (for subparts D, E, F and I) shall approve the amended application (with the State agency's

conditions). The Federal agency shall immediately notify the State agency and applicant or applicant agency if the Federal agency will not approve the application as amended by the State agency's conditions.

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable subpart.

§ 930.5 State enforcement action.

The regulations in this part are not intended in any way to alter or limit other legal remedies, including judicial review or State enforcement, otherwise available. State agencies and Federal agencies should first use the various remedial action and mediation sections of this part to resolve their differences or to enforce State agency concurrences or objections.

§ 930.6 State agency responsibility.

(a) This section describes the responsibilities of the ''State agency'' described in § 930.11(o). A designated State agency is required to uniformly and comprehensively apply the enforceable policies of the State's management program, efficiently coordinate all State coastal management requirements, and to provide a single point of contact for Federal agencies and the public to discuss consistency issues. Any appointment by the State agency of the State's consistency responsibilities to 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 State agency. A State may have two State agencies designated pursuant to § 306(d)(6) of the Act where the State has two geographically separate federally-approved management programs.

(b) The State agency is responsible for commenting on and concurring with or objecting to Federal agency consistency determinations and negative determinations (*see* subpart C of this part), consistency certifications for federal licenses, permits, and Outer Continental Shelf plans (*see* subparts D, E and I of this part), and reviewing the consistency of federal assistance activities proposed by applicant 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, and, where applicable, the public. Thereafter, only the State agency is authorized to comment officially on or concur with or object to a federal consistency determination or negative determination, a consistency certification, or determine the consistency of a proposed federal assistance activity.

(c) If described in a State's management program, the issuance or denial of relevant State permits can constitute the State agency's consistency concurrence or objection if the State agency ensures that the State permitting agencies or the State agency review individual projects to ensure consistency with all applicable State management program policies and that applicable public participation requirements are met. The State agency shall monitor such permits issued by another State agency.

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[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

§ 930.11 Definitions.

(a) *Act*. The term ''Act'' means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1464).

(b) *Any coastal use or resource*. The phrase ''any coastal use or resource'' means any land or water use or natural resource of the coastal zone. Land and water uses, or coastal uses, are defined in sections 304(10) and (18) of the act, respectively, and include, but are not limited to, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects. Natural resources include biological or physical resources that are found within a State's coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. Coastal uses and resources also includes uses and resources appropriately described in a management program.

(c) *Assistant Administrator*. The term ''Assistant Administrator'' means the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.

(d) *Associated facilities*. The term ''associated facilities'' means all proposed facilities 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 without which the federal action, as proposed, could not be conducted. The proponent of a federal action shall consider whether the federal action and its associated facilities affect any coastal use or resource and, if so, whether these interrelated activities satisfy the requirements of the applicable subpart (subparts C, D, E, F or I).

(e) *Coastal Zone*. The term ''coastal zone'' has the same definition as provided in § 304(1) of the Act.

(f) *Director*. The term ''Director'' means the Director of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, NOAA.

(g) *Effect on any coastal use or resource (coastal effect)*. The term ''effect on any coastal use or resource'' means any reasonably foreseeable effect on any coastal use or resource resulting from a Federal agency activity or federal license or permit activity (including all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.) Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.

(h) *Enforceable policy*. ''The term ''enforceable policy'' means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone,'' 16 U.S.C. 1453(6a), and which are incorporated in a management program as approved by OCRM either as part of program approval or as a program change under 15 CFR part 923, subpart H. An enforceable policy shall contain standards of sufficient specificity to guide public and private uses. Enforceable policies need not establish detailed criteria such that a proponent

of an activity could determine the consistency of an activity without interaction with the State agency. State agencies may identify management measures which are based on enforceable policies, and, if implemented, would allow the activity to be conducted consistent with the enforceable policies of the program. A State agency, however, must base its objection on enforceable policies.

(i) *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.

(j) *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.

(k) *Management program.* The term ''management program'' has the same definition as provided in section 304(12) 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.

(l) *OCRM.* The term ''OCRM'' means the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (''NOAA''), U.S. Department of Commerce.

(m) *Secretary.* The term ''Secretary'' means the Secretary of Commerce and/or designee.

(n) *Section.* The term ''Section'' means a section of the Coastal Zone Management Act of 1972, as amended.

(o) *State agency.* The term ''State agency'' means the agency of the State government designated pursuant to section 306(d)(6) of the Act to receive and administer grants for an approved management program, or a single designee State agency appointed by the 306(d)(6) State agency.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

Subpart C—Consistency for Federal Agency Activities

§ 930.30 Objectives.

The provisions of this subpart are intended to assure that all Federal agency activities including development projects affecting any coastal use or resource will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for Federal agency activities having interstate coastal effects.

§ 930.31 Federal agency activity.

(a) The term ''Federal agency activity'' means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. The term ''Federal agency activity'' includes a range of activities where a Federal agency makes a proposal for action initiating an activity or series of activities when coastal effects are reasonably foreseeable, e.g., a Federal agency's proposal to physically alter coastal resources, a plan that is used to direct future agency actions, a proposed rulemaking that alters uses of the coastal zone. ''Federal agency 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).

(b) The term federal ''development project'' means a Federal agency activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and includes the acquisition, use, or disposal of any coastal use or resource.

(c) The Federal agency activity category is a residual category for federal actions that are not covered under subparts D, E, or F of this part.

(d) A general permit proposed by a Federal agency is subject to this subpart if the general permit does not involve case-by-case or individual issuance of a license or permit by a Federal agency. When proposing a general permit, a Federal agency shall provide a consistency determination to

the relevant management programs and request that the State agency(ies) provide the Federal agency with review, and if necessary, conditions, based on specific enforceable policies, that would permit the State agency to concur with the Federal agency's consistency determination. State agency concurrence shall remove the need for the State agency to review individual uses of the general permit for consistency with the enforceable policies of management programs. Federal agencies shall, pursuant to the consistent to the maximum extent practicable standard in § 930.32, incorporate State conditions into the general permit. If the State agency's conditions are not incorporated into the general permit or a State agency objects to the general permit, then the Federal agency shall notify potential users of the general permit that the general permit is not available for use in that State unless an applicant under subpart D of this part or a person under subpart E of this part, who wants to use the general permit in that State provides the State agency with a consistency certification under subpart D of this part and the State agency concurs. When subpart D or E of this part applies, all provisions of the relevant subpart apply.

(e) The terms ''Federal agency activity'' and ''Federal development project'' also include modifications of any such activity or development project which affect any coastal use or resource, provided that, in the case of modifications of an activity or development project which the State agency has previously reviewed, the effect on any coastal use or resource is substantially different than those previously reviewed by the State agency.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

§ 930.32 Consistent to the maximum extent practicable.

(a)(1) The term ''consistent to the maximum extent practicable'' means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

(2) Section 307(e) of the Act does not relieve Federal agencies of the consistency requirements under the Act. The Act was intended to cause substantive changes in Federal agency decision-making within the context of the discretionary powers residing in such agencies. Accordingly, whenever legally permissible, Federal agencies shall consider the enforceable policies of management programs as requirements to be adhered to in addition to existing Federal agency statutory mandates. If a Federal agency asserts that full consistency with the management program is prohibited, it shall clearly describe, in writing, to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to be fully consistent with the enforceable policies of the management program.

(3) For the purpose of determining consistent to the maximum extent practicable under paragraphs (a)(1) and (2) of this section, federal legal authority includes Federal appropriation Acts if the appropriation Act includes language that specifically prohibits full consistency with specific enforceable policies of management programs. Federal agencies shall not use a general claim of a lack of funding or insufficient appropriated funds or failure to include the cost of being fully consistent in Federal budget and planning processes as a basis for being consistent to the maximum extent practicable with an enforceable policy of a management program. The only circumstance where a Federal agency may rely on a lack of funding as a limitation on being fully consistent with an enforceable policy is the Presidential exemption described in section 307(c)(1)(B) of the Act (16 U.S.C. 1456(c)(1)(B)). In cases where the cost of being consistent with the enforceable policies of a management program was not included in the Federal agency's budget and planning processes, the Federal agency should determine the amount of funds needed and seek additional federal funds. Federal agencies should include the cost of being fully consistent with the enforceable policies of management programs in their budget and planning processes, to the same extent that a Federal agency

would plan for the cost of complying with other federal requirements.

(b) A Federal agency may deviate from full consistency with an approved management program when such deviation is justified because of an emergency or other similar unforeseen circumstance (''exigent circumstance''), which presents the Federal agency with a substantial obstacle that prevents complete adherence to the approved program. Any deviation shall be the minimum necessary to address the exigent circumstance. Federal agencies shall carry out their activities consistent to the maximum extent practicable with the enforceable policies of a management program, to the extent that the exigent circumstance allows. Federal agencies shall consult with State agencies to the extent that an exigent circumstance allows and shall attempt to seek State agency concurrence prior to addressing the exigent circumstance. Once the exigent circumstances have passed, and if the Federal agency is still carrying out an activity with coastal effects, Federal agencies shall comply with all applicable provisions of this subpart to ensure that the activity is consistent to the maximum extent practicable with the enforceable policies of management programs. Once the Federal agency has addressed the exigent circumstance or completed its emergency response activities, it shall provide the State agency with a description of its actions and their coastal effects.

(c) A classified activity that affects any coastal use or resource is not exempt from the requirements of this subpart, unless the activity is exempted by the President under section 307(c)(1)(B) of the Act. Under the consistent to the maximum extent practicable standard, the Federal agency shall provide to the State agency a description of the project and coastal effects that it is legally permitted to release or does not otherwise breach the classified nature of the activity. Even when a Federal agency may not be able to disclose project information, the Federal agency shall conduct the classified activity consistent to the maximum extent practicable with the enforceable policies of management programs. The term classified means to protect from disclosure national security information concerning the national defense or foreign policy, provided that the information has been properly classified in accordance with the substantive and procedural requirements of an executive order. Federal and State agencies are encouraged to agree on a qualified third party(ies) with appropriate security clearance(s) to review classified information and to provide non-classified comments regarding the activity's reasonably foreseeable coastal effects.

§ 930.33 Identifying Federal agency activities affecting any coastal use or resource.

(a) Federal agencies shall determine which of their activities affect any coastal use or resource of States with approved management programs.

(1) Effects are determined by looking at reasonably foreseeable direct and indirect effects on any coastal use or resource. An action which has minimal or no environmental effects may still have effects on a coastal use (e.g., effects on public access and recreational opportunities, protection of historic property) or a coastal resource, if the activity initiates an event or series of events where coastal effects are reasonably foreseeable. Therefore, Federal agencies shall, in making a determination of effects, review relevant management program enforceable policies as part of determining effects on any coastal use or resource.

(2) If the Federal agency determines that a Federal agency activity has no effects on any coastal use or resource, and a negative determination under § 930.35 is not required, then the Federal agency is not required to coordinate with State agencies under section 307 of the Act.

(3)(i) *De minimis* Federal agency activities. Federal agencies are encouraged to review their activities, other than development projects within the coastal zone, to identify *de minimis* activities, and request State agency concurrence that these de minimis activities should not be subject to further State agency review. *De minimis* activities shall only be excluded from State agency review if a Federal agency and State agency have agreed. The State

agency shall provide for public participation under section 306(d)(14) of the Act when reviewing the Federal agency's *de minimis* activity request. If the State agency objects to the Federal agency's *de minimis* finding then the Federal agency must provide the State agency with either a negative determination or a consistency determination pursuant to this subpart. OCRM is available to facilitate a Federal agency's request.

(ii) *De minimis* activities are activities that are expected to have insignificant direct or indirect (cumulative and secondary) coastal effects and which the State agency concurs are *de minimis*.

(4) *Environmentally beneficial activities*. The State agency and Federal agencies may agree to exclude environmentally beneficial Federal agency activities (either on a case-by-case basis or for a category of activities) from further State agency consistency review. Environmentally beneficial activity means an activity that protects, preserves, or restores the natural resources of the coastal zone. The State agency shall provide for public participation under section 306(d)(14) of the Act for the State agency's consideration of whether to exclude environmentally beneficial activities.

(5) General consistency determinations, phased consistency determinations, and national or regional consistency determinations under § 930.36 are also available to facilitate federal-State coordination.

(b) Federal agencies shall consider all development projects within the coastal zone to be activities affecting any coastal use or resource. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they affect any coastal use or resource.

(c) Federal agency activities and development projects outside of the coastal zone, are subject to Federal agency review to determine whether they affect any coastal use or resource.

(d) Federal agencies shall broadly construe the effects test to provide State agencies with a consistency determination under § 930.34 and not a negative determination under § 930.35 or other determinations of no effects. Early coordination and cooperation between a Federal agency and the State agency can enable the parties to focus their efforts on particular Federal agency activities of concern to the State agency.

§ 930.34 Federal and State agency coordination.

(a)(1) Federal agencies shall provide State agencies with consistency determinations for all Federal agency activities affecting any coastal use or resource. To facilitate State agency review, Federal agencies should coordinate with the State agency prior to providing the determination.

(2) *Use of existing procedures*. Federal agencies are encouraged to coordinate and consult with State agencies through use of existing procedures in order to avoid waste, duplication of effort, and to reduce Federal and State agency administrative burdens. Where necessary, these existing procedures should be modified to facilitate coordination and consultation under the Act.

(b) *Listed activities*. State agencies are strongly encouraged to list in their management programs Federal agency activities which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. Listed Federal agency activities shall 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 agency activities that occur outside of the coastal zone, which the State agency believes will have reasonably foreseeable coastal effects, it shall also describe the geographic location of such activities (e.g., reclamation projects in coastal floodplains).

(c) *Unlisted activities*. State agencies should monitor unlisted Federal agency activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, and the FEDERAL REGISTER) and should notify Federal agencies of unlisted Federal agency activities which Federal agencies have not subjected to a consistency review but which, in the opinion of the State

agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. The provisions in paragraphs (b) and (c) of this section are recommended rather than mandatory procedures for facilitating federal-State coordination of Federal agency activities which affect any coastal use or resource. State agency notification to the Federal agency (by listed or unlisted notification) is neither a substitute for nor does it eliminate Federal agency responsibility to comply with the consistency requirement, and to provide State agencies with consistency determinations for all development projects in the coastal zone and for all other Federal agency activities which the Federal agency finds affect any coastal use or resource, regardless of whether the State agency has listed the activity or notified the Federal agency through case-by-case monitoring.

(d) *State guidance and assistance to Federal agencies.* As a preliminary matter, a decision that a Federal agency activity affects any coastal use or resource should lead to early consultation with the State agency (*i.e.*, before the required 90-day period). Federal agencies should obtain the views and assistance of the State agency regarding the means for determining that the proposed activity will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of a management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the Federal agency, the State agency shall identify any enforceable policies applicable to the proposed activity based upon the information provided to the State agency at the time of the request.

§ 930.35 Negative determinations for proposed activities.

(a) If a Federal agency determines that there will not be coastal effects, then the Federal agency shall provide the State agencies with a negative determination for a Federal agency activity:

(1) Identified by a State agency on its list, as described in § 930.34(b), or through case-by-case monitoring of unlisted activities; or

(2) Which is the same as or is 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 coastal effects of the activity.

(b) *Content of a negative determination.* A negative determination may be submitted to State agencies in any written form so long as it contains a brief description of the activity, the activity's location and the basis for the Federal agency's determination that the activity will not affect any coastal use or resource. In determining effects, Federal agencies shall follow § 930.33(a)(1), including an evaluation of the relevant enforceable policies of a management program and include the evaluation in the negative determination. The level of detail in the Federal agency's analysis may vary depending on the scope and complexity of the activity and issues raised by the State agency, but shall be sufficient for the State agency to evaluate whether coastal effects are reasonably foreseeable.

(c) A negative determination under paragraph (a) of this section 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. A State agency is not obligated to respond to a negative determination. If a State agency does not respond to a Federal agency's negative determination within 60 days, State agency concurrence with the negative determination shall be presumed. State agency concurrence shall not be presumed in cases where the State agency, within the 60-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. If a State agency objects to a negative determination, asserting that coastal effects are reasonably foreseeable, the Federal agency shall consider submitting a consistency determination to the State

agency or otherwise attempt to resolve any disagreement within the remainder of the 90-day period. If a Federal agency, in response to a State agency's objection to a negative determination, agrees that coastal effects are reasonably foreseeable, the State agency and Federal agency should attempt to agree to complete the consistency review within the 90-day period for the negative determination or consider an alternative schedule pursuant to § 930.36(b)(1). Federal agencies should consider postponing final Federal agency action, beyond the 90-day period, until a disagreement has been resolved. State agencies are not required to provide public notice of the receipt of a negative determination or the resolution of an objection to a negative determination, unless a Federal agency submits a consistency determination pursuant to § 930.34.

(d) *General negative determinations.* In cases where Federal agencies will be performing a repetitive activity that a Federal agency determines will not have reasonably foreseeable coastal effects, whether performed separately or cumulatively, a Federal agency may provide a State agency(ies) with a general negative determination, thereby avoiding the necessity of issuing separate negative determinations for each occurrence of the activity. A general negative determination must adhere to all requirements for negative determinations under § 930.35. In addition, a general negative determination must describe in detail the activity covered by the general negative determination and the expected number of occurrences of the activity over a specific time period. If a Federal agency issues a general negative determination, it may periodically assess whether the general negative determination is still applicable.

(e) In the event of a serious disagreement between a Federal agency and a State agency regarding a determination related to whether a proposed activity affects any coastal use or resource, either party may seek the Secretarial mediation or OCRM mediation services provided for in subpart G.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.36 Consistency determinations for proposed activities.

(a) Federal agencies shall review their proposed Federal agency activities which affect any coastal use or resource in order to develop consistency determinations which indicate whether such activities will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved management programs. Federal agencies should consult with State agencies at an early stage in the development of the proposed activity in order to assess whether such activities will be consistent to the maximum extent practicable with the enforceable policies of such programs.

(b) *Timing of consistency determinations.* (1) 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 reasonably determine the consistency of the activity with the management program, but before the Federal agency reaches a significant point of decision-making in its review process, *i.e.*, while the Federal agency has the ability to modify the activity. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal agency activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

(2) Federal and State agencies may mutually agree upon procedures for extending the notification requirement beyond 90 days for activities requiring a substantial review period, and for shortening the notification period for activities requiring a less extensive review period, provided that public participation requirements are met.

(c) *General consistency determinations.* In cases where Federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Federal 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 Federal agency may provide a State agency with a general consistency determination only in situations where the incremental actions are repetitive and do not affect any coastal use or resource when performed separately. A Federal agency and State agency may mutually agree on a general consistency determination for de minimis activities (*see* § 930.33(a)(3)) or any other repetitive activity or category of activity(ies). If a Federal agency issues a general consistency determination, it shall thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

(d) *Phased consistency determinations.* In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project or other activity from planning to completion, the Federal agency shall provide the State agency with one consistency determination for the entire activity or development project. In cases where federal decisions related to a proposed development project or other activity will be made in phases based upon developing information that was not available at the time of the original consistency determination, 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 or other activity continues to be consistent to the maximum extent practicable with the management program.

(e) *National or regional consistency determinations.* (1) A Federal agency may provide States with consistency determinations for Federal agency activities that are national or regional in scope (e.g., rulemaking, national plans), and that affect any coastal use or resource of more than one State. Many States share common coastal management issues and have similar enforceable policies, e.g., protection of a particular coastal resource. The Federal agency's national or regional consistency determination should, at a minimum, address the common denominator of these policies, *i.e.*, the common coastal effects and management issues, and thereby address different States' policies with one discussion and determination. If a Federal agency decides not to use this section, it must issue consistency determinations to each State agency pursuant to § 930.39.

(2) Federal agency activities with coastal effects shall be consistent to the maximum extent practicable with the enforceable policies of each State's management program. Thus, the Federal agency's national or regional consistency determination shall contain sections that would apply to individual States to address coastal effects and enforceable policies unique to particular States, if common coastal effects and enforceable policies cannot be addressed under paragraph (e)(1). Early coordination with coastal States will enable the Federal agency to identify particular coastal management concerns and policies. In addition, the Federal agency could address the concerns of each affected State by providing for State conditions for the proposed activity. Further, the consistency determination could identify the coordination efforts and describe how the Federal agency responded to State agency concerns.

§ 930.37 Consistency determinations and National Environmental Policy Act (NEPA) requirements.

A Federal agency may use its NEPA documents as a vehicle for its consistency determination or negative determination under this subpart. However, a Federal agency's federal consistency obligations under the Act are independent of those required under NEPA and are not necessarily fulfilled by the submission of a NEPA document. State agencies shall not require Federal agencies to submit NEPA documents as information required pursuant to § 930.39. If a Federal agency includes its consistency determination or negative determination in a NEPA document, the Federal agency shall ensure that the NEPA document includes the information and adheres to the timeframes

required by this subpart. Federal agencies and State agencies should mutually agree on how to best coordinate the requirements of NEPA and the Act.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.38 Consistency determinations for activities initiated prior to management program approval.

(a) A consistency determination is required for ongoing Federal agency activities other than development projects 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 is required for major, phased federal development project decisions described in § 930.36(d) 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 effects on any coastal use or resource 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 NEPA).

§ 930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. The statement must be based upon an evaluation of the relevant enforceable policies of the management program. A description of this evaluation shall be included in the consistency determination, or provided to the State agency simultaneously with the consistency determination if the evaluation is contained in another document. Where a Federal agency is aware, prior to its submission of its consistency determination, that its activity is not fully consistent with a management program's enforceable policies, the Federal agency shall describe in its consistency determination the legal authority that prohibits full consistency as required by § 930.32(a)(2). Where the Federal agency is not aware of any inconsistency until after submission of its consistency determination, the Federal agency shall submit its description of the legal authority that prohibits full consistency to the State agency as soon as possible, or before the end of the 90-day period described in § 930.36(b)(1). The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied.

(b) Federal agencies shall be guided by the following in making their consistency determinations. The activity its effects on any coastal use or resource, associated facilities (e.g., proposed siting and construction of access road, connecting pipeline, support buildings, and the effects of the associated facilities (e.g., erosion, wetlands, beach access impacts), must all be consistent to the maximum extent practicable with the enforceable policies of the management program.

(c) In making their consistency determinations, Federal agencies shall ensure that their activities are consistent to the maximum extent practicable with the enforceable, policies of the management program. However,

Federal agencies should give consideration to management program provisions which are in the nature of recommendations.

(d) When Federal agency standards are more restrictive than standards or requirements contained in the management program, the Federal agency may continue to apply its stricter standards. In such cases the Federal agency shall inform the State agency in the consistency determination of the statutory, regulatory or other basis for the application of the stricter standards.

(e) *State permit requirements.* Federal law, other than the CZMA, may require a Federal agency to obtain a State permit. Even when Federal agencies are not required to obtain State permits, Federal agencies shall still be consistent to the maximum extent practicable with the enforceable policies that are contained in such State permit programs that are part of a management program.

§930.40 Multiple Federal agency participation.

Whenever more than one Federal agency is involved in a Federal agency activity or its associated facilities affecting any coastal use or resource, or is involved in a group of Federal agency activities related to each other because of their geographic proximity, the Federal agencies may prepare 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 shall be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies and shall comply with the requirements of §930.39.

§930.41 State agency response.

(a) A State agency shall inform the Federal agency of its concurrence with or objection to the Federal agency's consistency determination at the earliest practicable time, after providing for public participation in the State agency's review of the consistency determination. The Federal agency may presume State agency concurrence if the State agency's response is not received within 60 days from receipt of the Federal agency's consistency determination and supporting information required by §930.39(a). The 60-day review period begins when the State agency receives the consistency determination and supporting information required by §930.39(a). If the information required by §930.39(a) is not included with the determination, the State agency shall notify the Federal agency in writing within 14 days of receiving the determination and supporting information that the 60-day review period has not begun, identify missing information required by §930.39(a), and that the 60-day review period will begin when the missing information is received by the State agency. If the State agency has not notified the Federal agency that information required by §930.39(a) is missing within the 14 day notification period, then the 60-day review period shall begin on the date the State agency received the consistency determination and accompanying information. The State agency's determination of whether the information required by §930.39(a) is complete is not a substantive review of the adequacy of the information provided. Thus, if a Federal agency has submitted a consistency determination and information required by §930.39(a), then the State agency shall not assert that the 60-day review period has not begun because the information contained in the items required by §930.39(a) is substantively deficient. The failure to submit information not required by 930.39(a) shall not be a basis for asserting that the 60-day review period has not begun.

(b) State agency concurrence shall not be presumed in cases where the State agency, within the 60-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 shall not be taken sooner than 90 days from the receipt by the State agency of the

consistency determination unless the State concurs or concurrence is presumed, pursuant to paragraphs (a) and (b), with the activity, or unless both the Federal agency and the State agency agree to an alternative period.

(d) *Time limits on concurrences.* A State agency cannot unilaterally place an expiration date on its concurrence. If a State agency believes that an expiration date is necessary, State and Federal agencies may agree to a time limit. If there is no agreement, later phases of, or modifications to, the activity that will have effects not evaluated at the time of the original consistency determination will require either a new consistency determination, a supplemental consistency determination under § 930.46, or a phased review under § 930.36(d) of this subpart.

(e) *State processing fees.* The Act does not require Federal agencies to pay State processing fees. State agencies shall not assess a Federal agency with a fee to process the Federal agency's consistency determination unless payment of such fees is required by other federal law or otherwise agreed to by the Federal agency and allowed by the Comptroller General of the United States. In no case may a State agency stay the consistency review period or base its objection on the failure of a Federal agency to pay a fee.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.42 Public participation.

(a) Management programs shall provide for public participation in the State agency's review of consistency determinations. Public participation, at a minimum, shall consist of public notice for the area(s) of the coastal zone likely to be affected by the activity, as determined by the State agency.

(b) *Timing of public notice.* States shall provide timely public notice after the consistency determination has been received by the State agency, except in cases where earlier public notice on the consistency determination by the Federal agency or the State agency meets the requirements of this section. A public comment period shall be provided by the State sufficient to give the public an opportunity to develop and provide comments on whether the project is consistent with management program enforceable policies and still allow the State agency to issue its concurrence or objection within the 60 day State response period.

(c) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency with the enforceable policies of the management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information, e.g., a State agency web site; and

(4) Specify a contact for submitting comments to the State agency.

(d) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official State gazette, a local newspaper serving areas of coastal zone likely to be affected by the activity, individual State mailings, public notice through a management program newsletter, and electronic notices, e.g., web sites. However, electronic notices, e.g., web sites, shall not be the sole source of a public notification, but may be used in conjunction with other means. Web sites may be used to provide a location for the public to obtain additional information. States shall not require that the Federal agency provide public notice. Federal and State agencies are encouraged to issue joint public notices, and hold joint public hearings, to minimize duplication of effort and to avoid unnecessary delays, so long as the joint notice meets the other requirements of this section.

§ 930.43 State agency objection.

(a) In the event the State agency objects to the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the objection and supporting information. The State agency response shall describe:

(1) How the proposed activity will be inconsistent with specific enforceable policies of the management program; and

(2) The specific enforceable policies (including citations).

(3) The State agency should also describe 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 enforceable policies of the management program. Failure to describe alternatives does not affect the validity of the State agency's objection.

(b) If the State agency's objection is based upon a finding that the Federal agency has failed to supply sufficient information, 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 agency activity with the enforceable policies of the management program.

(c) State agencies shall send to the Director a copy of objections to Federal agency consistency determinations.

(d) In the event of an objection, Federal and State agencies should use the remaining portion of the 90-day notice period (*see* § 930.36(b)) to attempt to resolve their differences. If resolution has not been reached at the end of the 90-day period, Federal agencies should consider using the dispute resolution mechanisms of this part and postponing final federal action until the problems have been resolved. At the end of the 90-day period the Federal agency shall not proceed with the activity over a State agency's objection unless:

(1) the Federal agency has concluded that under the ''consistent to the maximum extent practicable'' standard described in section 930.32 consistency with the enforceable policies of the management program is prohibited by existing law applicable to the Federal agency and the Federal agency has clearly described, in writing, to the State agency the legal impediments to full consistency (See §§ 930.32(a) and 930.39(a)), or

(2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects.

(e) If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency, or to follow an alternative suggested by the State agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

§ 930.44 Availability of mediation for disputes concerning proposed activities.

In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed federal activity affecting any coastal use or resource, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G.

§ 930.45 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 enforceable policies of the management program.

(b) The State agency may request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a Federal agency activity, including those activities where the State agency's concurrence was presumed, which was:

(1) Previously determined to be consistent to the maximum extent practicable with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent to the maximum extent practicable with the enforceable policies of the management program; or

(2) Previously determined not to be a Federal agency activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, the activity affects any coastal use or resource and is not consistent to the maximum extent practicable with the enforceable policies of the management program. The State

agency's request shall 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 or OCRM mediation services provided for in subpart G of this part.

§ 930.46 Supplemental coordination for proposed activities.

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The Federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

Subpart D—Consistency for Activities Requiring a Federal License or Permit

§ 930.50 Objectives.

The provisions of this subpart are intended to ensure that any required federal license or permit activity affecting any coastal use or resource is conducted in a manner consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal license or permit activities having interstate coastal effects.

§ 930.51 Federal license or permit.

(a) The term ''federal license or permit'' means any authorization that an applicant is required by law to obtain in order to conduct activities affecting any land or water use or natural resource of the coastal zone and that any Federal agency is empowered to issue to an applicant. The term ''federal license or permit'' does not include OCS plans, and federal license or permit activities described in detail in OCS plans, which are subject to subpart E of this part, or leases issued pursuant to lease sales conducted by a Federal agency (e.g., outer continental shelf (OCS) oil and gas lease sales conducted by the Minerals Management Service or oil and gas lease sales conducted by the Bureau of Land Management). Lease sales conducted by a Federal agency are Federal agency activities under subpart C of this part.

(b) The term also includes the following types of renewals and major amendments which affect any coastal use or resource:

(1) Renewals and major amendments of federal license or permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of federal license or permit activities

previously reviewed by the State agency which are filed after and are subject to management program changes not in existence at the time of original State agency review; and

(3) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which will cause an effect on any coastal use or resource substantially different than those originally reviewed by the State agency.

(c) The term ''major amendment'' of a federal license or permit activity means any subsequent federal approval that the applicant is required to obtain for modification to the previously reviewed and approved activity and where the activity permitted by issuance of the subsequent approval will affect any coastal use or resource, or, in the case of a major amendment subject to § 930.51(b)(3), affect any coastal use or resource in a way that is substantially different than the description or understanding of effects at the time of the original activity.

(d) The term ''renewals'' of a federal license or permit activity means any subsequent re-issuance, re-approval or extension of an existing license or permit that the applicant is required to obtain for an activity described under paragraph (b) of this section.

(e) The determination of substantially different coastal effects under paragraphs (b)(3), and (c) of this section is made on a case-by-case basis by the Federal agency after consulting with the State agency, and applicant. The Federal agency shall give considerable weight to the opinion of the State agency. The terms ''major amendment,'' ''renewals'' and ''substantially different'' shall be construed broadly to ensure that the State agency has the opportunity to review activities and coastal effects not previously reviewed.

(f) *This subpart applies to active applications.* If an applicant withdraws its application to the Federal agency, then the consistency process is terminated. If the applicant reapplies to the Federal agency, then a new consistency review process will start. If a Federal agency stops or stays the Federal license or permit application process, then the consistency review period will be stopped or stayed for the same amount of time as for the Federal application process.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 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 nation, State, or any State, regional, or local government, who, following management program approval, either files an application for a required individual federal license or permit, or who files a consistency certification for a required general federal license or permit under § 930.31(d) to conduct an activity affecting any coastal use or resource. 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 subpart C of this part.

§ 930.53 Listed federal license or permit activities.

(a) State agencies shall develop a list of federal license or permit activities which affect any coastal use or resource, including reasonably foreseeable effects, 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 or 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). In the event the State agency chooses to review federal license or permit activities, with reasonably foreseeable coastal effects, outside of the coastal zone, it must generally describe the geographic location of such activities.

(1) The geographic location description should encompass areas outside of the coastal zone where coastal effects from federal license or permit activities are reasonably foreseeable. The State agency should exclude geographic areas outside of the coastal zone where coastal effects are not reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature

of the activity and its coastal effects. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas. Federal lands located within the boundaries of a State's coastal zone are automatically included within the geographic location description; State agencies do not have to describe these areas. State agencies do have to describe the geographic location of listed activities occurring on federal lands located beyond the boundaries of a State's coastal zone.

(2) For listed activities occurring outside of the coastal zone for which a State has not generally described the geographic location of review, States must follow the conditions for review of unlisted activities under § 930.54 of this subpart.

(b) *General concurrences for minor activities*. To avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource, 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 or permit activities and the relevant 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.

(c) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval by the Director pursuant to the program change requirements found at 15 CFR part 923, subpart H.

(1) Consultation with the affected Federal agency means, at least 60 days prior to submitting a program change request to OCRM, a State agency shall notify in writing the relevant regional or field Federal agency staff and the head of the affected Federal agency, and request comments on the listing change. The notification shall describe the proposed change and identify the regional Federal agency staff the State has contacted for consultation.

(2) A State agency must include in its program change request to OCRM a description of any comments received from the affected Federal agency.

(d) 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 or permits of the requirements of this subpart.

§ 930.54 Unlisted federal license or permit activities.

(a)(1) With the assistance of Federal agencies, State agencies should monitor unlisted federal license or permit activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, FEDERAL REGISTER notices). State agencies shall notify Federal agencies, applicants, and the Director of unlisted activities affecting any coastal use or resource which require State agency review within 30 days from notice of the license or permit application, that has been submitted to the approving Federal agency, 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 application.

(2) Federal agencies or applicants should provide written notice of the submission of applications for federal licenses or permits for unlisted activities to the State agency. Notice to the

State agency may be constructive if notice is published in an official federal public notification document or through an official State clearinghouse (*i.e.*, the FEDERAL REGISTER, draft or final NEPA EISs that are submitted to the State agency, or a State's intergovernmental review process). The notice, whether actual or constructive, shall contain sufficient information for the State agency to learn of the activity, determine the activity's geographic location, and determine whether coastal effects are reasonably foreseeable.

(b) The State agency's notification shall also request the Director's approval to review the unlisted activity and shall contain an analysis that supports the State agency's assertion that coastal effects are reasonably foreseeable. Following State agency notification to the Federal agency, applicant and the Director, the Federal agency shall not issue the license or permit until the requirements of this subpart have been satisfied, unless the Director disapproves the State agency's request 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 Director regarding the State agency's request to review the activity. The sole basis for the Director's approval or disapproval of the State agency's request will relate to whether the proposed activity's coastal effects are reasonably foreseeable. The Director 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. The Director may extend the decision deadline beyond 30 days due to the complexity of the issues or to address the needs of the State agency, the Federal agency, or the applicant. The Director shall consult with the State agency, the Federal agency and the applicant prior to extending the decision deadline, and shall limit the extension to the minimum time necessary to make its decision. The Director shall notify the relevant parties of the expected length of an extension.

(d) If the Director disapproves the State agency's request, the Federal agency may approve the license or permit application and the applicant need not comply with the requirements of this subpart. If the Director approves the State agency's request, the Federal agency and applicant must comply with the consistency certification procedures of this subpart.

(e) Following an approval by the Director, 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 data and information (*see* §§ 930.58, 930.62 and 930.63). 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 necessary data and information, whichever period terminates last.

(f) The unlisted activity procedures in this section are provided to ensure that State agencies are afforded an opportunity to review federal license or permit activities with reasonably foreseeable coastal effects. Prior to bringing the issue before the Director, the concerned parties should discuss coastal effects and consistency. The applicant can avoid delay by simply seeking the State agency's expeditious concurrence rather than waiting for the Director's decision. If an applicant, of its own accord or after negotiations with the State agency, provides a consistency certification and necessary data and information to the State agency, the review shall be deemed to have received the Director's approval, and all of the provisions of this subpart shall apply and the State agency need not request the Director's approval. If an applicant for an unlisted activity has not subjected itself to the consistency process within the 30 day notification period contained in paragraph (a) of this section, the State agency must adhere to the unlisted activity review requirements of this section to preserve its right to review the activity.

§ 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 the federal consistency requirement, either party may request the OCRM mediation or Secretarial mediation services provided for in subpart G of this part; 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 Director (*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 Director approval.

§ 930.56 State agency guidance and assistance to applicants.

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 the State agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the applicant, the State agency shall identify any enforceable policies applicable to the proposed activity, based upon the information submitted to the State agency.

§ 930.57 Consistency certifications.

(a) Following appropriate coordination and cooperation with the State agency, all applicants for required 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 management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information.

(b) The applicant's consistency certification shall be in the following form: ''The proposed activity complies with the enforceable policies of (name of State) approved 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 copy of the application for the federal license or permit and

(i) All material relevant to a State's management program provided to the Federal agency in support of the application; and

(ii) To the extent not included in paragraphs (a)(1) or (a)(1)(i) of this section, a detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal;

(2) Information specifically identified in the management program as required necessary data and information for an applicant's consistency certification. The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities. Necessary data and information may include completed State or local government permit applications which are required for the proposed activity, but shall not include the issued State or local permits. NEPA documents shall not be considered necessary data and information when a Federal statute requires a Federal agency to initiate the CZMA federal consistency review prior to its completion of NEPA compliance. States shall not require that the consistency certification and/or the necessary data and information be included in NEPA documents. Required

data and information may not include confidential and proprietary material; and

(3) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the management program. Applicants shall demonstrate that the activity will be consistent with the enforceable policies of the management program. Applicants shall demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal effects for which the management program does not contain enforceable or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by 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 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 effects of the proposal.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.59 Multiple permit review.

(a) Applicants shall, to the extent practicable, consolidate related federal license or permit activities affecting any coastal use or resource 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 or permit activities found to be consistent with the management program.

§ 930.60 Commencement of State agency review.

(a) The State agency's six-month review period (*see* § 930.62(a)) of an applicant's consistency certification begins on the date the State agency receives the consistency certification required by § 930.57 and all the necessary data and information required by § 930.58(a).

(1) If an applicant fails to submit a consistency certification, the State agency shall notify the applicant and the Federal agency, within 30 days of receipt of the incomplete submission, that a consistency certification satisfying § 930.57 was not received and that the State agency's six-month review period will commence on the date of receipt of the missing certification, subject to paragraph (a)(2) of this section.

(2) If an applicant fails to submit all necessary data and information required by § 930.58(a), the State agency shall notify the applicant and the Federal agency, within 30 days of receipt of the incomplete submission, that necessary data and information described in § 930.58(a) was not received and that the State agency's six-month review period will commence on the date of receipt of the missing necessary data and information, subject to the requirement in paragraph (a) of this section that the applicant has also submitted a consistency certification. The State agency may waive the requirement in paragraph (a) of this section that all necessary data and information described in § 930.58(a) be submitted before commencement of the State agency's six-month consistency review. In the event of such a waiver, the requirements of § 930.58(a) must be satisfied prior to the end of the six-month consistency review period or the State agency may object to the consistency certification for insufficient information.

(3) Within 30 days of receipt of the consistency certification and/or necessary data and information that was deemed missing, pursuant to paragraphs (a)(1) or (2) of this section, the State agency shall notify the applicant

and Federal agency that the certification and necessary data and information required pursuant to § 930.58 is complete, the date the certification and/or necessary data and information deemed missing was received, and, that the State agency's consistency review commenced on the date of receipt. In the event of a State waiver under paragraph (a)(2) of this section, receipt of the necessary data and information deemed missing shall not alter the date the consistency review period commenced.

(b) State agencies and applicants (and persons under subpart E of this part) may mutually agree in writing to stay the six-month consistency review period. Such an agreement shall be in writing and state a specific date on when the stay will end. The State agency shall provide a copy of the written agreement to the Federal agency and the Federal agency shall not presume State agency concurrence with an applicant's consistency certification when such a written agreement to stay the six-month consistency review period is in effect. The State agency shall not stop, stay, or otherwise alter the consistency review period without such a written agreement with the applicant.

(c) The State agency's determination that a certification and necessary data and information under paragraph (a) of this section is complete is not a substantive review of the adequacy of the information received. If an applicant has submitted all necessary data and information required by § 930.58, then a State agency's or Federal agency's assertion that the submitted information is substantively deficient, or a State agency's or Federal agency's request for clarification of the information provided, or information or data requested that is in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

[71 FR 827, Jan. 5, 2006]

§ 930.61 Public participation.

(a) Following receipt of the material described in § 930.60 the State agency shall ensure timely public notice of the proposed activity. Public notice shall be provided for the area(s) of the coastal zone likely to be affected by the proposed activity, as determined by the State agency. At the discretion of the State agency, public participation may include one or more public hearings. The State agency shall not require an applicant or a Federal agency to hold a public hearing. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to reasonably inform the public, obtain sufficient comment, and develop a decision on the matter.

(b) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency under the policies of the management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information; and

(4) Specify a contact for submitting comments to the management program.

(c) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official State gazette, a local newspaper serving areas of the coastal zone likely to be affected by the activity, individual State mailings, public notice through a management program newsletter, and electronic notices, e.g., web sites. However, electronic notices, e.g., web sites, shall not be the sole source of a public notification, but may be used in conjunction with other means. Web sites may be used to provide a location for the public to obtain additional information. The State agency may require the applicant to provide the public notice. State agencies shall not require that the Federal agency provide public notice. The State agency may rely 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 documents) 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,

and hold joint public hearings, whenever possible to minimize duplication of effort and to avoid unnecessary delays.

§ 930.62 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. The State agency may issue a general concurrence for minor activities (*see* § 930.53(b)). Concurrence by the State agency shall be conclusively presumed if the State agency's response is not received within six months following commencement of State agency review.

(b) 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.

(d) During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt, if necessary, 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 management program requirements (*see also* § 930.4).

§ 930.63 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 Director of the objection. A State agency may assert alternative bases for its objection, as described in paragraphs (b) and (c) of this section.

(b) State agency objections that are based on sufficient information to evaluate the applicant's consistency certification shall describe how the proposed activity is inconsistent with specific enforceable policies of the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(c) 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 § 930.58 or other information necessary for the State agency to determine consistency. If the State agency objects on the grounds of insufficient information, the objection shall 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. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(d) *Alternatives*. If a State agency proposes an alternative(s) in its objection letter, the alternative(s) shall be described with sufficient specificity to allow the applicant to determine whether to, in consultation with the State agency: adopt an alternative; abandon the project; or file an appeal under subpart H. Application of the specificity requirement demands a case specific approach. More complicated activities or alternatives generally need more information than less-complicated activities or alternatives. See

§ 930.121(c) for further details regarding alternatives for appeals under subpart H of this part.

(e) A State agency objection shall include a statement to the following effect:

Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the [Name of State] management program and the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

§ 930.64 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.

§ 930.65 Remedial action for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federal license or permit activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal license or permit activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program; or

(2) Previously determined not to be an activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally described and, as a result, the activity affects any coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant and the Director. Remedial actions shall be linked to coastal effects substantially different than originally described.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant is failing to comply substantially with the management program, the governor or State agency may file a written objection with the Director. If the Director finds that the applicant is conducting an activity that is substantially different from the approved activity, the applicant shall submit an amended or new consistency certification and supporting information to the Federal agency and to the State agency, or comply with the originally approved certification.

(e) An applicant shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally described by the applicant and, as a result, the activity is no longer being conducted in a manner consistent with the enforceable policies of the management program. The Director may make a finding that an applicant is conducting an activity substantially different from the approved activity only after providing 15 days for the applicant and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§ 930.66 Supplemental coordination for proposed activities.

(a) For federal license or permit proposed activities that were previously determined by the State agency to be

consistent with the management program, but which have not yet begun, applicants shall further coordinate with the State agency and prepare a supplemental consistency certification if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

(b) The State agency may notify the applicant, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant to implement the proposed activity consistent with the management program. State agency notification under subsection (b) does not remove the requirement under subsection (a) for applicants to notify State agencies.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

§ 930.70 Objectives.

The provisions of this subpart are intended to ensure that all federal license or permit activities described in detail in OCS plans and which affect any coastal use or resource are conducted in a manner consistent with approved 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 or 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 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 or permit activities affecting any coastal use or resource.

§ 930.75 State agency assistance to persons.

As a preliminary matter, any person intending to submit to the Secretary of the Interior an OCS plan which describes in detail federal license or permit activities affecting any coastal use or resource 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 management program. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document. Upon request by such persons, the State agency shall identify any enforceable policies applicable to the proposed activities, based upon the information submitted to the State agency.

§ 930.76 Submission of an OCS plan, necessary data and information and consistency certification.

Any person submitting any OCS plan to the Secretary of the Interior or designee shall:

(a) Any person submitting any OCS plan to the Secretary of the Interior or designee shall submit to the Secretary of the Interior or designee:

(1) A copy of the OCS plan;

(2) The consistency certification;

(3) The necessary data and information required pursuant to § 930.58; and

(4) The information submitted pursuant to the Department of the Interior's OCS operating regulations (*see* 30 CFR 250.203 and 250.204) and OCS information program regulations (*see* 30 CFR part 252).

(b) The Secretary of the Interior or designee shall furnish the State agency with a copy of the information submitted under paragraph (a) of this section (excluding confidential and proprietary information).

(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 management program(s) and will be conducted in a manner consistent with such program(s).

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

§ 930.77 Commencement of State agency review and public notice.

(a)(1) Except as provided in § 930.60(a), State agency review of the person's consistency certification begins at the time the State agency receives the certification and information required pursuant to § 930.76(a) and (b). If a person has submitted the documents required by § 930.76(a) and (b), then a State agency's assertion that the information contained in the submitted documents is substantively deficient, or a State agency's request for clarification of the information provided, or information and data in addition to that required by § 930.76 shall not delay or otherwise change the date on which State agency review begins.

(2) To assess consistency, the State agency shall use the information submitted pursuant to § 930.76. If a State agency wants to augment the necessary data and information required by § 930.76 to start the six-month review period for OCS plans, then the State can only do so if it amends its management program to include the information under § 930.58(a)(2).

(3) After the State agency's review begins, if the State agency requests additional information, it shall describe in writing to the person and to the Secretary of the Interior or its designee the reasons why the information provided under § 930.76 is not adequate to complete its review, and the nature of the information requested and the necessity of having such information to determine consistency with the enforceable policies of the management program. The State agency shall make its request for additional information no later than three months after commencement of the State agency's review period. The State agency shall not request additional information after the three-month notification period described in § 930.78(a). However, the State agency may request additional information after the three-month notification period if the person or the Secretary of the Interior or its designee changes the OCS plan after the

three-month notification period such that the plan describes activities or coastal effects not previously described and for which information was not previously provided pursuant to § 930.76.

(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 § 930.61.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

§ 930.78 State agency concurrence or objection.

(a) At the earliest practicable time, the State agency shall notify in writing the person, the Secretary of the Interior or designee and the Director 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 reasonably inform the public, obtain sufficient comment, and develop a 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 Director 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 commencement of the State agency's review. 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 if the State agency's response to the consistency certification is not received 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 § 930.63.

§ 930.79 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 or permits to which such concurrence applies.

(b) Unless the State agency indicates otherwise, copies of federal license or 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.

§ 930.80 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.

§ 930.81 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 or permit activities affecting any coastal use or resource which are not required to be described in detail in OCS plans but which are subject 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). 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 or 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.

§ 930.82 Amended OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and/or if, pursuant to subpart H of this part, 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, and if the person still intends to conduct the activities described in the OCS plan, the person shall submit an amended plan to the Secretary of the Interior or designee along with a consistency certification and data and information necessary to support the amended consistency certification. 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 plan will be conducted in a manner consistent with the management program. When satisfied that the person has met the requirements of the OCSLA and this subpart, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding confidential and proprietary information), necessary data and information and consistency certification.

[71 FR 829, Jan. 5, 2006]

§ 930.83 Review of amended OCS plans; public notice.

After receipt of a copy of the amended OCS plan, consistency certification, and necessary data and information, State agency review shall begin. The requirements of §§ 930.77, 930.78, and 930.79, apply to the review of amended OCS plans, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

§ 930.84 Continuing State agency objections.

If the State agency objects to the consistency certification for an amended OCS plan, the prohibition in § 930.80 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 of this part may take place, and the development of an additional amended OCS plan and consistency certification may be required pursuant to §§ 930.82 through 930.83.

§ 930.85 Failure to substantially comply with an approved OCS plan.

(a) The Department of the Interior and State agencies shall cooperate in their efforts to monitor federally licensed or 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 to substantially comply with an approved OCS plan subject to the requirements of this subpart, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the Minerals Management Service region involved. Such claim shall include a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a

request for appropriate remedial action. A copy of the claim shall be sent to the person.

(c) If a person fails to substantially comply with an approved OCS plan, as determined by Minerals Management Service, pursuant to the Outer Continental Shelf Lands Act and applicable regulations, the person shall come into compliance with the approved plan or shall submit an amendment to such plan or a new plan to Minerals Management Service. When satisfied that the person has met the requirements of the OCSLA and this subpart, and the Secretary of the Interior or designee has made the determination required under 30 CFR 250.203(n)(2) or § 250.204(q)(2), as applicable, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding proprietary information), necessary data and information and consistency certification. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

Subpart F—Consistency for Federal Assistance to State and Local Governments

§ 930.90 Objectives.

The provisions of this subpart are intended to ensure that federal assistance to applicant agencies for activities affecting any coastal use or resource is granted only when such activities are consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal assistance activities having interstate coastal effects.

§ 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 applicant agencies.

§ 930.94 State review process for consistency.

(a) States with approved management programs should review applications from applicant agencies for federal assistance in accordance with E.O. 12372 and implementing regulations.

(b) The applicant agency shall submit an application for federal assistance to the State agency for consistency review, through the intergovernmental review process or by direct submission to the State agency, for any proposed federal assistance activity that is listed in the management program as a type of activity that will have a reasonably foreseeable effect on any coastal use or resource and occurring within the coastal zone (*see* § 930.95(a)) or within a described geographic area outside of the coastal zone (*see* § 930.95(b)).

(c) *Applicant agency evaluation*. The applicant agency shall provide to the State agency, in addition to the federal application, a brief evaluation on the relationship of the proposed activity and any reasonably foreseeable coastal effects to the enforceable policies of the management program.

§ 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 State agency

consultation with affected Federal agencies and approval by the Director as a program change.

(b) In the event the State agency chooses to review applications for federal assistance activities outside of the coastal zone but with reasonably foreseeable coastal effects, the State agency shall 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 State agency consultation with affected Federal agencies and approval by the Director as a program change. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the coastal nonpoint pollution control program, or other ecologically identifiable areas.

(c) The State agency shall provide copies of any federal assistance list or geographic provision, and any refinements, to Federal agencies and units of applicant agencies empowered to undertake federally assisted activities within the coastal zone or described geographic area.

(d) For review of unlisted federal assistance activities, the State agency shall follow the same procedures as it would follow for review of listed federal assistance activities outside of the coastal zone or the described geographic area. (*See* § 930.98.)

§ 930.96 Consistency review.

(a)(1) If 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 (so long as they do not approve) 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.

(2) During the period when the State agency is reviewing the activity, the applicant agency and the State agency should attempt, if necessary, to agree upon conditions which, if met by the applicant agency, would permit State agency approval. The parties shall also consult with the Federal agency responsible for providing the federal assistance to ensure that proposed conditions satisfy federal requirements as well as management program requirements.

(b) If the State agency objects to the proposed project, the State agency shall notify the applicant agency, Federal agency and the Director of the objection pursuant to § 930.63.

§ 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.

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 documents, FEDERAL REGISTER) 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 will have reasonably foreseeable coastal effects and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Director. The Director, in his/her discretion, may review the State agency's decision to review the activity. The Director may disapprove the State agency's decision to review the activity only if the Director finds that the activity will not affect any coastal use or resource. The

Director shall be guided by the provisions in §930.54(c). For purposes of this subpart, 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.

§930.99 Availability of mediation for federal assistance disputes.

In the event of a serious disagreement between a Federal agency and the State agency regarding whether a federal assistance activity is subject to the consistency requirement either party may request the OCRM mediation or 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 Director has disapproved a State agency decision to review an activity.

§930.100 Remedial action for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federal assistance activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal assistance activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program, or

(2) Previously determined not to be a project affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result the project affects a coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant agency and the Director.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant agency is failing to comply substantially with the management program, the State agency may file a written objection with the Director. If the Director finds that the applicant agency is conducting an activity that is substantially different from the approved activity, the State agency may reinitiate its review of the activity, or the applicant agency may conduct the activity as it was originally approved.

(e) An applicant agency shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally determined by the State agency and, as a result, the activity is no longer being conducted in a manner consistent with the management program. The Director may make a finding that an applicant agency is conducting an activity substantially different from the approved activity only after providing a reasonable opportunity for the applicant agency and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§930.101 Supplemental coordination for proposed activities.

(a) For federal assistance activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, the applicant agency shall further coordinate with the State

agency if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

(b) The State agency may notify the applicant agency, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant agency to implement the proposed activity consistent with the management program. State agency notification under paragraph (b) of this section does not remove the requirement under paragraph (a) of this section for applicant agencies to notify State agencies.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

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 OCRM mediation.

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. OCRM shall be available to assist the parties in these efforts.

§ 930.112 Request for Secretarial mediation.

(a) The Secretary or other head of a Federal agency, or the Governor or the State agency, may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, to the Assistant Administrator, and to the Director.

(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. A party may also provide the hearing officer with written comments. 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 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—Appeal to the Secretary for Review Related to the Objectives of the Act and National Security Interests

§930.120 Objectives.

This subpart sets forth the 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 a State agency has found to be inconsistent with the enforceable policies of the 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.

A federal license or permit activity, or a federal assistance activity, is ''consistent with the objectives or purposes of the Act'' if it satisfies each of the following three requirements:

(a) The activity furthers the national interest as articulated in §302 or §303 of the Act, in a significant or substantial manner,

(b) The national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively.

(c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of

the management program. The Secretary may consider but is not limited to considering previous appeal decisions, alternatives described in state objection letters and alternatives and other information submitted during the appeal. The Secretary shall not consider an alternative unless the State agency submits a statement, in a brief or other supporting material, to the Secretary that the alternative would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

§ 930.122 Necessary in the interest of national security.

A federal license or permit activity, or a federal assistance activity, is ''necessary in the interest of national security'' if a national defense or other national security interest would be significantly impaired were the activity 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 Definitions.

(a) The ''appellant'' is the applicant, person or applicant agency submitting an appeal to the Secretary pursuant to this subpart.

(b) For the purposes of this subpart, the ''Federal agency'' is the agency whose proposed issuance of a license or permit or grant of assistance is the subject of the appeal to the Secretary.

(c) The term ''energy project'' means projects related to the siting, construction, expansion, or operation of any facility designed to explore, develop, produce, transmit or transport energy or energy resources that are subject to review by a coastal State under subparts D, E, F or I of this part.

(d) The term ''consolidated record'' means the record of all decisions made or actions taken by the lead Federal permitting agency or by another Federal or State administrative agency or officer, maintained by the lead Federal permitting agency, with the cooperation of Federal and State administrative agencies, related to any federal authorization for the permitting, approval or other authorization of an energy project.

(e) The term ''lead Federal permitting agency'' means the Federal agency required to: issue a federal license or permit under subparts D or I of this part; approve an OCS plan under subpart E of this part; or provide federal financial assistance under subparts F or I of this part for an energy project.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

§ 930.124 Computation of time.

The first day of any period of time allowed or prescribed by these rules, shall not be included in the computation of the designated period of time. The last day of the time period computed shall be included unless it is a Saturday, Sunday or a Federal holiday, in which case the period runs until the next day which is not one of the aforementioned days.

§ 930.125 Notice of appeal and application fee to the Secretary.

(a) To obtain Secretarial review of a State agency objection, the appellant shall file a notice of appeal with the Secretary within 30 days of receipt of a State agency objection.

(b) The appellant's notice of appeal shall include a statement explaining the appellant's basis for appeal of the State agency's objection under §§ 930.121 and/or 930.122 of this title, including any procedural arguments pursuant to § 930.129(b). Bases for appeal (including procedural arguments) not identified in the appellant's notice of appeal shall not be considered by the Secretary.

(c) The appellant's notice of appeal shall be accompanied by payment of an application fee or a request for a waiver of such fees. An appeal involving a project valued in excess of $1 million shall be considered a major appeal and

the application fee is $500.00. All other appeals shall be considered minor appeals and the application fee is $200.00.

(d) The appellant shall send the Notice of appeal to the Secretary, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230; a copy of the notice of appeal to the objecting State agency; and to the Assistant General Counsel for Ocean Services (GCOS), 1305 East West Highway, Room 6111 SSMC 4, Silver Spring, Maryland 20910.

(e) No extension of time will be permitted for the filing of a notice of appeal.

(f) The Secretary shall waive any or all fees if the Secretary concludes upon review of the appellant's fee waiver request that such fees impose an economic hardship on appellant. The request for a waiver and demonstration of economic hardship shall accompany the notice of appeal. If the Secretary denies a request for a waiver and the appellant wishes to continue with the appeal, the appellant shall submit the appropriate fees to the Secretary within 10 days of receipt of the Secretary's denial. If the fees are not received by the 10th day, then the Secretary shall dismiss the appeal.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 830, Jan. 5, 2006; 71 FR 75865, Dec. 19, 2006]

§930.126 Consistency appeal processing fees.

The Secretary shall collect as a processing fee such other fees from the appellant as are necessary to recover the full costs of administering and processing appeals to the Secretary under section 307(c) of the Act. All processing fees shall be assessed and collected no later than 60 days after publication of the FEDERAL REGISTER Notice closing the decision record. Failure to submit processing fees shall be grounds for extending the time for issuance of a decision pursuant to section 319(a)(2) of the Act (16 U.S.C. 1465(a)(2)) and §930.130 of this subpart.

§930.127 Briefs and supporting materials.

(a) Within 30 days of submitting the notice of appeal, as specified in §930.125, the appellant shall submit to the Secretary its principal brief accompanied by the appendix described in paragraph (c) of this section. Within 60 days of the appellant's filing of the notice of appeal, the State agency shall submit to the Secretary its principal brief accompanied by a supplemental appendix, if any, described in paragraph (c) of this section. Not later than 20 days after appellant's receipt of the State agency's brief, appellant may submit to the Secretary a reply brief accompanied by a supplemental appendix, if any, described in paragraph (c) of this section.

(b) A principal brief shall not exceed 30 double-spaced pages; appellant's reply brief shall not exceed 15 double-spaced pages. Any table of contents, table of citations, or certifications of mailing and/or service do not count toward the page limitations.

(c) The appellant must prepare and file an appendix with its brief containing:

(1) Its consistency certification;

(2) The State agency's objection; and

(3) All such supporting documentation and material as the appellant deems necessary for consideration by the Secretary. The State agency (or appellant on reply) shall cite to appellant's appendix or may file a supplemental appendix to include additional documentation and material as the State agency (or appellant on reply) deems necessary for consideration by the Secretary that was not included in appellant's appendix (or the State agency's supplemental appendix). The parties are encouraged to discuss the contents of appellant's appendix in order to include in the appendix as much of the supporting documentation and material as any party deems necessary for consideration by the Secretary. In an appeal for an energy project, supporting documentation and material shall be limited to the parts of the consolidated record described in paragraph (i)(1) of this section to which the appellant or the State agency wishes to direct the Secretary's attention.

(d)(1) Both the appellant and State agency shall send two copies of their briefs and supporting materials to the Office of General Counsel for Ocean Services (GCOS), NOAA, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910. One copy must

be in an electronic format compatible (to the extent practicable) with the website maintained by the Secretary to provide public information concerning appeals under the CZMA.

(2) The appellant and State agency shall serve on each other at least one copy of their briefs, supporting materials, and all requests and communications submitted to the Secretary, at the same time that materials are submitted to the Secretary.

(3) Each submission to the Secretary shall be accompanied by a certification of mailing and/or service on the other party. Service may be done by mail or hand delivery. Materials or briefs submitted to the Secretary not in compliance with this subpart may be disregarded and not entered into the Secretary's decision record of the appeal.

(e)(1) The Secretary has broad authority to implement procedures governing the consistency appeal process to ensure efficiency and fairness to all parties. The appeal decision record is composed of the briefs and supporting materials submitted by the State agency and appellant, public comments and the comments, if any, submitted by interested Federal agencies. As noted in § 930.128(c)(1), the Secretary gives deference to the views of interested Federal agencies when commenting in their areas of expertise and takes notice of relevant administrative decisions, including licenses or permits, related to an appellant's proposed activity when submitted to the appeal decision record. The Secretary determines the content of the appeal decision record. The Secretary may determine, on the Secretary's own initiative, that additional information is necessary to the Secretary's decision, including documents prepared by Federal agencies pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and may request such information.

(2) To promote efficient use of time and resources, the Secretary may, upon the Secretary's own initiative, require the appellant and the State agency to submit briefs and supporting materials relevant only to procedural or jurisdictional issues presented in the Notice of Appeal or identified by the Secretary. Following a decision of the procedural or jurisdictional issues, the Secretary may require briefs on substantive issues raised by the appeal if necessary.

(3) The Secretary may require the appellant and the State agency to submit briefs in addition to those described in paragraphs (a) and (e) of this section as necessary.

(4) Any briefs not requested or required by the Secretary may be disregarded and not entered into the Secretary's decision record of the appeal.

(f) The appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion.

(g) The Secretary may extend the time for submission, and length, of briefs and supporting materials for good cause.

(h) Where a State agency objection is based in whole or in part on a lack of information, the Secretary shall limit the record on appeal to information previously submitted to the State agency and relevant comments thereon, except as provided for in § 930.129(b) and (c).

(i) Appeal Decision Record for Energy Projects. The provisions of this paragraph apply only to appeals for energy projects.

(1) The Secretary shall use the consolidated record maintained by the lead Federal permitting agency as the initial record for an appeal under this subpart for energy projects.

(2) The appellant's notice of appeal required by § 930.125(a) and (b) must be accompanied by two copies of the consolidated record maintained by the lead Federal permitting agency. One copy of the consolidated record must be in an electronic format compatible (to the extent practicable) with the website maintained by the Secretary to provide public information concerning appeals under the CZMA. Notwithstanding § 930.125(e), the Secretary may extend the time for filing a notice of appeal in connection with an energy project for good cause shown to allow appellant additional time to prepare the consolidated record for filing.

(3) The appellant and the State agency shall submit briefs as required by paragraphs (a), (b) and (c) of this section.

(4) Supplemental information may be accepted and included in the decision record by the Secretary only as allowed by § 930.130(a)(2).

[71 FR 830, Jan. 5, 2006, as amended at 71 FR 75865, Dec. 19, 2006]

§ 930.128 Public notice, comment period, and public hearing.

(a) The Secretary shall provide public notice of the appeal within 30 days after the receipt of the Notice of Appeal by publishing a Notice in the FEDERAL REGISTER and in a publication of general circulation in the immediate area of the coastal zone likely to be affected by the proposed activity.

(b) Except in the case of appeals involving energy projects, the Secretary shall provide a 30-day period for the public and interested Federal agencies to comment on the appeal. Notice of the public and Federal agency comment period shall be provided in the Notice required in paragraph (a) of this section.

(c)(1) The Secretary shall accord greater weight to those Federal agencies whose comments are within the subject areas of their technical expertise.

(2) The Secretary may, on the Secretary's own initiative or upon written request, for good cause shown, reopen the period for Federal agency comments before the closure of the decision record.

(d) Except in the case of appeals involving energy projects, the Secretary may hold a public hearing in response to a request or on the Secretary's own initiative. A request for a public hearing must be filed with the Secretary within 30 days of the publication of the Notice in the FEDERAL REGISTER required in paragraph (a) of this section. If a hearing is held by the Secretary, it shall be noticed in the FEDERAL REGISTER and guided by the procedures described within § 930.113. If a hearing is held by the Secretary, the FEDERAL REGISTER notice for the hearing shall reopen the public and Federal agency comment period and shall close such comment period 10 days after the hearing.

[71 FR 831, Jan. 5, 2006]

§ 930.129 Dismissal, remand, stay, and procedural override.

(a) The Secretary may dismiss an appeal for good cause. A dismissal is the final agency action. Good cause shall include, but is not limited to:

(1) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(2) Failure of the appellant to submit a brief or supporting materials within the required period;

(3) Failure of the appellant to pay a required fee;

(4) Denial by the Federal agency of the federal license, permit or assistance application; or

(5) Failure of the appellant to base the appeal on grounds that the proposed activity is either consistent with the objectives or purposes of the Act, or necessary in the interest of national security.

(b) If the State agency's consistency objection is not in compliance with section 307 of the Act and the regulations contained in subparts D, E, F, or I of this part, the Secretary shall override the State's objection. The Secretary may make this determination as a threshold matter.

(c) The Secretary may stay the processing of an appeal in accordance with § 930.130.

(d) The Secretary may remand an appeal to the State agency for reconsideration of the project's consistency with the enforceable policies of the State's management program if significant new information relevant to the State agency's objection, not previously provided to the State agency during its consistency review, is submitted to the Secretary. The Secretary shall determine a time period for the remand to the State agency. The time period for remand must be completed within the period described in § 930.130 for the development of the Secretary's decision record. If the State agency responds that it still objects to the activity, then the Secretary shall continue to process the appeal. If the State agency concurs that the activity is consistent with the enforceable policies of the State's management program, then the Secretary shall declare the appeal moot and notify the Federal agency

that the activity may be federally approved.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 831, Jan. 5, 2006]

§ 930.130 Closure of the decision record and issuance of decision.

(a)(1) With the exception of paragraph (a)(2) of this section, the Secretary shall close the decision record not later than 160 days after the date that the Secretary's Notice of Appeal is published in the FEDERAL REGISTER under § 930.128(a). After closing the decision record, the Secretary shall immediately publish a notice in the FEDERAL REGISTER stating that the decision record has been closed. The notice shall also state that the Secretary shall not consider additional information, briefs or comments.

(2) The Secretary may stay the closing of the decision record during the 160-day period described in paragraph (a)(1) of this section:

(i) For a specific period mutually agreed to in writing by the appellant and the State agency; or

(ii) As the Secretary determines necessary to receive, on an expedited basis:

(A) Any supplemental information specifically requested by the Secretary to complete a consistency review under the Act; or

(B) Any clarifying information submitted by a party to the proceeding related to information in the consolidated record compiled by the lead Federal permitting agency.

(3) The Secretary may only stay the 160-day period described in paragraph (a)(1) of this section for a period not to exceed 60 days.

(b) Not later than 60 days after the date of publication of a FEDERAL REGISTER notice stating when the decision record for an appeal has been closed, the Secretary shall issue a decision or publish a notice in the FEDERAL REGISTER explaining why a decision cannot be issued at that time. The Secretary shall issue a decision not later than 15 days after the date of publication of a FEDERAL REGISTER notice explaining why a decision cannot be issued within the 60-day period.

(c) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

(d) 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 in the decision record supports this conclusion.

(e)(1) 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.

(2) If the Secretary does not make either of these findings, the Federal agency shall not approve the activity.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 831, Jan. 5, 2006]

§ 930.131 Review initiated by the Secretary.

(a) The Secretary may, on her own initiative, 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 shall only be initiated after the completion of State agency review pursuant to the relevant subpart. 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 relevant Federal and State agencies. The notice shall include a statement describing the reasons for the review.

(b) With the exception of application and processing fees, all other provisions under this subpart governing the processing and administering of appeals will apply to Secretarial reviews initiated under this section.

Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

§930.150 Objectives.

(a) A federal activity may affect coastal uses or resources of a State other than the State in which the activity will occur. Effective coastal management is fostered by ensuring that activities having such reasonably foreseeable interstate coastal effects are conducted consistent with the enforceable policies of the management program of each affected State.

(b) The application of the federal consistency requirement to activities having interstate coastal effects is addressed by this subpart in order to encourage cooperation among States in dealing with activities having interstate coastal effects, and to provide States, local governments, Federal agencies, and the public with a predictable framework for evaluating the consistency of these federal activities under the Act.

§930.151 Interstate coastal effect.

The term ''interstate coastal effect'' means any reasonably foreseeable effect resulting from a federal action occurring in one State of the United States on any coastal use or resource of another State that has a federally approved management program. Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions. The term ''affects'' means have an effect on. Effects on any coastal use or resource may also be referred to as ''coastal effects.''

§930.152 Application.

(a) This subpart applies to federal actions having interstate coastal effects, and supplements the relevant requirements contained in 15 CFR part 930, subparts C (Consistency for Federal Agency Activities), D (Consistency for Activities Requiring a Federal License or Permit), E (Consistency for OCS Exploration, Development and Production Activities) and F (Consistency for Federal Assistance to State and Local Governments). Except as otherwise provided by this subpart, the requirements of other relevant subparts of part 930 apply to activities having interstate coastal effects.

(b) Federal consistency is a requirement on federal actions affecting any coastal use or resource of a State with a federally-approved management program, regardless of the activities' locations (including States without a federally approved management program). The federal consistency requirement does not alter a coastal State's jurisdiction. The federal consistency requirement does not give States the authority to review the application of laws, regulations, or policies of any other State. Rather, the Act allows a management program to review federal actions and may preclude federal action as a result of a State objection, even if the objecting State is not the State in which the activity will occur. Such objections to interstate activities under subparts D, E and F may be overridden by the Secretary pursuant to subpart H of this part.

§930.153 Coordination between States in developing coastal management policies.

Coastal States are encouraged to give high priority to:

(a) Coordinating State coastal management planning, policies, and programs with respect to contiguous areas of such States;

(b) Studying, planning, and implementing unified coastal management policies with respect to such areas; and

(c) Establishing an effective mechanism, and adopting a federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to activities having interstate coastal effects.

§ 930.154 Listing activities subject to routine interstate consistency review.

(a) *Geographic location of listed activities.* Each coastal State intending to conduct a consistency review of federal activities occurring in another State shall:

(1) List those Federal agency activities, federal license or permit activities, and federal assistance activities that the State intends to routinely review for consistency; and

(2) Generally describe the geographic location for each type of listed activity.

(b) In establishing the geographic location of interstate consistency review, each State must notify and consult with the State in which the listed activity will occur, as well as with relevant Federal agencies.

(c) *Demonstrate effects.* In describing the geographic location for interstate consistency reviews, the State agency shall provide information to the Director that coastal effects from listed activities occurring within the geographic area are reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas.

(d) *Director approval.* State agencies shall submit their lists and geographic location descriptions developed under this section to the Director for approval as a routine program change under subpart H of 15 CFR part 923. Each State submitting this program change shall include evidence of consultation with States in which the activity will occur, evidence of consultation with relevant Federal agencies, and any agreements with other States and Federal agencies regarding coordination of activities.

(e) *State failure to list interstate activities.* A coastal State that fails to list federal activities subject to interstate review, or to describe the geographic location for these activities, under paragraphs (a) through (d) of this section, may not exercise its right to review activities occurring in other States, until the State meets the listing requirements. The listing of activities subject to interstate consistency review, and the description of the geographic location for those listed activities, should ensure that coastal States have the opportunity to review relevant activities occurring in other States. States may amend their lists and geographic location descriptions pursuant to the requirements of this subpart and subpart H of 15 CFR part 923. States which have complied with paragraphs (a) through (d) of this section may also use the procedure at § 930.54 to review unlisted activities. States will have a transition period of 18 months from the date this rule takes effect. In that time a State may review an interstate activity pursuant to § 930.54 of this part. After the transition period States must comply with this subpart in order to review interstate activities.

§ 930.155 Federal and State agency coordination.

(a) Identifying activities subject to the consistency requirement. The provisions of this subpart are neither a substitute for nor eliminate the statutory requirement of federal consistency with the enforceable policies of management programs for all activities affecting any coastal use or resource. Federal agencies shall submit consistency determinations to relevant State agencies for activities having coastal effects, regardless of location, and regardless of whether the activity is listed.

(b) *Notifying affected States.* Federal agencies, applicants or applicant agencies proposing activities listed for interstate consistency review, or determined by the Federal agency, applicant or applicant agency to have an effect

on any coastal use or resource, shall notify each affected coastal State of the proposed activity. State agencies may also notify Federal agencies and applicants of listed and unlisted activities subject to State agency review and the requirements of this subpart.

(c) *Notice of intent to review.* Within 30 days from receipt of the consistency determination or certification and necessary data and information, or within 30 days from receipt of notice of a listed federal assistance activity, each State intending to review an activity occurring in another State must notify the applicant or applicant agency (if any), the Federal agency, the State in which the activity will occur (either the State's management program, or if the State does not have a management program, the Governor's office), and the Director, of its intent to review the activity for consistency. The State's notice to the parties must be received by the 30th day after receipt of the consistency determination or certification. If a State fails, within the 30 days, to notify the applicant or applicant agency (if any), the Federal agency, the State in which the activity will occur, and the Director, of its intent to review the activity, then the State waives its right to review the activity for consistency. The waiver does not apply where the State intending to review the activity does not receive notice of the activity.

§930.156 Content of a consistency determination or certification and State agency response.

(a) The Federal agency or applicant is encouraged to prepare one determination or certification that will satisfy the requirements of all affected States with approved management programs.

(b) State agency responses shall follow the applicable requirements contained in subparts C, D, E and F of this part.

§930.157 Mediation and informal negotiations.

The relevant provisions contained in subpart G of this part are available for resolution of disputes between affected States, relevant Federal agencies, and applicants or applicant agencies The parties to the dispute are also encouraged to use alternative means for resolving their disagreement. OCRM shall be available to assist the parties in these efforts.

PARTS 932–933 [RESERVED]