

**Related Information**

(g) To get copies of the AFM revisions referenced in this AD, contact Mitsubishi Heavy Industries America, Inc., 4951 Airport Parkway, Suite 800, Addison, Texas 75001; telephone: (972) 934-5480; fax: (972) 934-5488; Internet: <http://www.mu-2aircraft.com> or <http://www.turbineair.com>. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at <http://www.regulations.gov>.

Issued in Kansas City, Missouri, on November 9, 2009.

**Kim Smith,**

Manager, Small Airplane Directorate, Aircraft Certification Service.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 922**

[Docket No. 090122044-91248-01]

RIN 0648-AX58

**Marine Sanitation Device Discharge Regulations for the Florida Keys National Marine Sanctuary**

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

**ACTION:** Proposed rule; request for public comments.

**SUMMARY:** NOAA proposes to amend the regulations implementing the Florida Keys National Marine Sanctuary (FKNMS or sanctuary) to eliminate the exemption that allows discharges of biodegradable effluent incidental to vessel use and generated by marine sanitation devices, and to require marine sanitation devices be locked to prevent discharges. This action builds upon the Environmental Protection Agency's creation of a no discharge zone for the state waters of the FKNMS. This action will help protect the Florida Keys ecosystem from potentially harmful vessel sewage discharges and will eliminate at least one contributing factor to declining water quality within the FKNMS. Improved water quality is necessary for the maintenance and enhancement of the sanctuary's biological resources, as well as of the recreational opportunities they provide. A draft environmental assessment has been prepared for this proposed action

pursuant to the National Environmental Policy Act.

**DATES:** Comments on the proposed rule and the draft environmental assessment will be accepted if received on or before February 17, 2010.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Submit electronic comments via the Federal eRulemaking Portal, FDMS Docket Number NOAA-NOS-2009-0181;
- **Mail:** Sean Morton, Acting Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, Florida 33040.
- **Instructions:** All comments received are a part of the public record and will be generally posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Comments will be posted at the end of the public comment period.

The draft environmental assessment is available for download at <http://floridakeys.noaa.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Sean Morton, Acting Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, Florida 33040.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access:**  
This **Federal Register** document is also accessible via the Internet at [INSERT GPO ACCESS URL].

**Statutory and Regulatory History of the FKNMS**

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. Management of national marine sanctuaries has been delegated by the Secretary of Commerce to NOAA's Office of National Marine Sanctuaries. The primary objective of the NMSA is

to protect marine resources, such as coral reefs, sunken historical vessels or unique habitats.

The FKNMS was designated by Congress in 1990 through the Florida Keys National Marine Sanctuary Protection Act (FKNMSPA, Pub. L. 101-605) and extends approximately 220 nautical miles southwest from the southern tip of the Florida peninsula, and is composed of both state and Federal waters. The sanctuary's marine ecosystem supports over 6,000 species of plants, fishes, and invertebrates, including the Nation's only living coral reef that lies adjacent to the continent. The area includes one of the largest seagrass communities in this hemisphere. The primary goal of the sanctuary is to protect the marine resources of the Florida Keys.

Other goals of the sanctuary include facilitating human uses that are consistent with the primary objective of resource protection as well as educating the public about the Florida Keys marine environment. Attracted by this subtropical diversity, tourists spend more than thirteen million visitor days in the Florida Keys each year. In addition, the region's natural and man-made resources provide recreation and livelihoods for approximately 80,000 residents. The region also has some of the most significant maritime heritage and historical resources of any coastal community in the nation.

NOAA issued final regulations and a final management plan in 1997 for the FKNMS (62 FR 32161; June 12, 1997). Those regulations were designed to protect the fragile and nationally significant marine resources of the Florida Keys ecosystem. In doing so, these regulations established a series of fully protected marine zones, managed certain human activities, and established a permitting system for allowing some activities that would otherwise be prohibited. Sanctuary-wide prohibitions include restrictions on discharges into the sanctuary, disturbing the seafloor of the sanctuary, and taking certain marine species.

Currently, NOAA prohibits vessels from discharging or depositing materials or other matter in the sanctuary (15 CFR 922.163(a)(4)). Exceptions to this prohibition include discharging or depositing: (1) Fish, fish parts, and bait during traditional fishing operations; (2) cooling water or engine exhaust; (3) water generated by routine vessel operations (e.g., deck wash and graywater), excluding oily wastes from bilge pumping; and (4) biodegradable effluent from marine sanitation devices. However, in certain protected zones within the sanctuary, including

Ecological Reserves, Sanctuary Preservation Areas, and Research-only Areas, only discharges of engine exhaust and cooling water are allowed.

In addition to NOAA, the U.S. Environmental Protection Agency (EPA), National Park Service, U.S. Coast Guard, the State of Florida, and local municipalities (e.g., City of Key West, Marathon) also have regulations governing MSDs and vessel discharges within the Florida Keys region.

### Proposed Rule Background

Water quality in the Florida Keys has been a long-standing concern. Under section 163.3177 of the Florida Statutes, all counties and municipalities throughout the State of Florida are required to develop and adopt a comprehensive plan that address principles, guidelines, and standards for balancing future economic, social, physical, environmental, and fiscal development of the area. In addition, local governments can use local comprehensive plans to conserve, develop, utilize, and protect natural resources within their jurisdictions (Fla. Stat. § 163.3161(3)). The FKNMS resides in the jurisdiction of Monroe County. Monroe County developed the Monroe County Comprehensive Plan, which includes several objectives geared toward improving and protecting water quality from vessel discharges.

In 1999, the Board of County Commissioners of Monroe County adopted a resolution requesting that the Governor of the State of Florida petition the EPA to declare all waters of the State within the boundaries of the FKNMS to be a NDZ. A NDZ is an area of a waterbody or an entire waterbody into which the discharge of sewage (whether treated or untreated) from all vessels is completely prohibited. NDZs are designed to give states an additional tool to address water quality issues associated with sewage contamination. Monroe County believed that this action would be a major step in protecting water quality around the Keys and especially those areas where there is a high concentration of vessels. The Governor of the State of Florida supported Monroe County's decision and in December 2000 submitted the county's request to EPA Region 4, asking EPA to designate all state waters within the boundary of the FKNMS as a NDZ under the authority of section 312 of the Clean Water Act (33 U.S.C. 1322 *et seq.*).

Section 312 of the CWA gives the EPA and states the authority to designate NDZs in state waters. Pursuant to the authority provided in § 312(f)(4)(a) the CWA, in 2002, the EPA issued a final

rule that designated the state waters of the FKNMS a NDZ (67 FR 35735; May 21, 2002). Effective June 19, 2002, the EPA's final rule prohibited all sewage discharges from vessels in state waters of the FKNMS. Although the EPA's rule under the CWA was limited to only state waters of the FKNMS, EPA recognized NOAA's intention to expand the prohibition on sewage discharges from vessels into the federal waters of the sanctuary.

In December 2007, NOAA issued a revised management plan for the FKNMS that was the culmination of an extensive public process. The management plan included a water quality action plan and regulatory action plan. The strategies in the water quality action plan address sources of pollution, priority corrective actions and compliance schedule, and seek to maintain and improve a balanced, indigenous population of corals, shellfish, fish and wildlife, and recreation in and on the water. In particular, water quality Strategy L.1 identified the need to eliminate the discharge of wastewater, whether treated or not, from all vessels into sanctuary waters. The regulatory action plan identified the designation of a sanctuary-wide no discharge zone as a management priority.

### Summary of the Proposed Rulemaking

This rulemaking proposes to eliminate the exemption that allows discharges of biodegradable effluent incidental to vessel use and generated by MSDs and to add a new requirement that MSDs be locked to prevent discharges while in the FKNMS.

A major challenge to scientists and managers working in the Florida Keys and elsewhere is being able to differentiate the natural variability of ecosystems from human-caused disturbances. Signs of ecosystem stress in the Florida Keys include loss of coral cover and diversity, particularly at offshore bank reefs, increasing nitrogen and phosphorus concentrations in the near shore waters, decreased water clarity, and changes in the natural benthic community composition. Comprehensive monitoring of coral reef resources was initiated in 1996 because of the observed but poorly quantified loss of coral cover throughout the Florida Keys, and has documented a 37% reduction in stony coral coverage between 1996 and 2000. Habitat and water quality degradation in canals and other semi-confined waters within the Florida Keys has been measured and is related to human population density.

There are many variables to consider in assessing the impacts of discharges

from vessels transiting Keys waters including the volume of discharge, level of treatment, number of vessels, depth and distance from shore or other sources of pollution, current patterns, and habitat type at the discharge point. For example, the dilution of wastewater from a single vessel transiting the Keys may be great, but the discharge may not cause serious ecological problems and may not be detectable within a short distance from the point of discharge. However, the cumulative impact of discharges from many transiting vessels could significantly and negatively impact the sanctuary.

In response to an increasing boating population, and the resulting higher discharge potential in south Florida, NOAA proposes to prohibit discharges of biodegradable effluent incidental to vessel use and generated by MSDs from all vessels while in the sanctuary. Recent data show a continued upward trend in the number of registered boaters in southern Florida, which would suggest an increased potential of transient visits to the Florida Keys and discharge in the FKNMS. The potential impacts are increased if the transiting vessels discharge in close proximity to coral reef or seagrass habitats. In consideration of the ever increasing boating population (discharge potential) in south Florida, the status quo is not compatible with long-term marine ecosystem protection strategies. NOAA considered an alternative that would allow vessels to discharge at various locations within the FKNMS, however this alternative was rejected as it may lead to confusion among boaters and enforcement problems. Thus, the prudent and expedient course of action is to eliminate all discharges of wastewater from all vessels in the FKNMS.

If this rule is implemented, vessels would have to use a pump out station or discharge biodegradable effluent beyond the boundaries of the sanctuary. Florida boaters are already familiar with using pump out stations. Since discharges are prohibited in the EPA NDZ for the state waters of the FKNMS, many boaters already utilize the 38 pump out stations in the Florida Keys. In addition, access to pump out facilities is expected to increase due to additional funding under the Clean Water Act.

NOAA is proposing to require that all vessels secure MSDs while in the boundaries of the FKNMS. This requirement would achieve the goal of helping to protect the Florida Keys ecosystem by prohibiting the discharge of potentially harmful vessel sewage because it would enhance the

enforceability of the prohibition. Without this requirement, enforcement personnel would have to witness the discharge of biodegradable effluent. The probability that personnel would be present at the exact moment of discharge is beyond reasonable expectations. In addition, although NDZ designation by EPA does not specifically require that MSDs be in a locked position, the final rule designating the state waters of the FKNMS as a NDZ does state that MSDs should be secured to prohibit discharge while navigating within the NDZ. Specifically, "The NDZ designation would not cause existing Type 1 and 2 MSDs to be in violation by their mere presence onboard the vessel. However, it would be illegal for vessel operators to discharge from these devices while inside the NDZ. Type 1 and 2 MSDs should be secured to prohibit discharge while navigating or otherwise situated within the NDZ" (67 FR 35740). If this rule were implemented, all vessels in the sanctuary would have to secure MSDs to prevent discharges of biodegradable effluent into the sanctuary.

### Classification

#### *National Environmental Policy Act*

A draft environmental assessment (EA) has been prepared to evaluate the proposed rulemaking. NOAA proposes to prohibit discharges of biodegradable effluent incidental to vessel use and generated by MSDs in the entire FKNMS and to require MSDs be locked. This action will eliminate at least one contributing factor to declining water quality within the FKNMS. Improved water quality is necessary for the maintenance and enhancement of the sanctuary's biological resources, as well as of the recreational opportunities they provide. The no action alternative would continue the discharge of treated sewage from MSDs into the federal waters of the FKNMS and will continue to contribute to the decline of water quality. Poor water quality threatens not only the unique biological resources of the FKNMS, but also the viability of the local economy, which depends on the ability of these resources to attract visitors. Copies of the EA are available at the address and Web site listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on this proposed rule will be published in the final environmental assessment and preamble to the final rule.

#### *Executive Order 12866: Regulatory Impact*

This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

#### *Executive Order 13132: Federalism Assessment*

NOAA has concluded this regulatory action does not have federalism implications as that term is defined under Executive Order 13132.

#### *Paperwork Reduction Act*

This rule does not contain any new or revisions to the existing information collection subject to the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is analyzed in the EA and is summarized as follows:

In response to an increasing boating population, and the resulting higher discharge potential, in south Florida, NOAA proposes to prohibit discharges of biodegradable effluent incidental to vessel use and generated by MSDs, and to add a new requirement that MSDs be locked to prevent discharges while in the FKNMS from all vessels in the sanctuary.

There were 25,370 pleasure and 2,653 commercial vessels registered in Monroe County in 2007. Since no studies exist on transient vessels in the Florida Keys, these registrations represent the approximate population of vessels that utilize the Florida Keys. For purposes of this analysis, only commercial vessels will be analyzed since pleasure vessels are not considered small entities under the Regulatory Flexibility Act. Of the total number of commercial vessels, NOAA currently does not have an estimate of the number of vessels that use the Florida Keys that have MSDs on board. However, vessels 26 feet or longer with an enclosed cabin with berthing facilities (as noted in the Florida Clean Vessel Act) are currently required to

have a holding tank installed. Therefore, NOAA will use this criteria to approximate the number of impacted entities as they are most likely to be required to use a pump out facility or discharge their waste outside of the sanctuary boundaries. But, NOAA acknowledges that the total universe of affected entities may be larger as there may be some unknown number of vessels smaller than 26 feet that may have MSDs. In Monroe County, 1,080 of the 2,653 (40.7%) registered commercial vessels are 26 feet or longer. Of the 1,080 registered commercial vessels, NOAA is not able to estimate the number of small entities as it does not collect this data, and thus will consider all 1,080 vessels to be small entities.

Any economic impact of the proposed regulation would be limited to those vessel operators who currently discharge sewage waste into the federal waters area of the FKNMS. FKNMS does not have any data on the number of vessels that do this as opposed to utilizing one of the 38 pump out stations located throughout the sanctuary. FKNMS also does not have complete information on the number of boats that do use pump out stations to dispose of waste. Therefore, it is assumed that all 1,080 estimated commercial vessels with MSDs that use the Florida Keys would be affected. The additional costs to those vessel operators could include additional fuel costs to travel to pump out stations, the cost of the pump outs, and the value of their travel time to the pump out station. Vessels 26 feet or longer with an enclosed cabin with berthing facilities (as noted in the Florida Clean Vessel Act) are currently required to have a holding tank installed. Therefore, the installation of that equipment would not be considered an additional cost under the proposed regulation.

EPA, Florida Department of Environmental Protection, and Monroe County conducted a survey of the existing pump outs in the Florida Keys and determined that the range of costs to pump out was from \$5.00 to \$25.00, with the majority of pump out facilities charging \$5.00. It is a condition of State grant funds that a marina that receives a grant for installation of pumpout facilities must charge a maximum of \$5.00 per pump out. The number of times a tank will need to be pumped out will depend on usage. Live-aboards will have to pump out regularly while less frequent boat users will need to empty the tank much less often. Using a range between \$5 (most pump outs cost) to \$10.00 (high end of pump out cost), and one pump out per week, results in an estimated annual cost of \$130 to \$520

per vessel per year. Therefore, if every registered vessel in Monroe County were previously discharging all waste into the federal waters as opposed to using a pumpout station, the annual cost to Monroe County boaters (assuming 1,080 vessels are affected) is expected to be \$140,400 to \$561,600. It should also be noted that pump out fees may qualify as a business expense and may be tax deductible for some vessel owners, so the actual economic impact may be less.

The elimination of vessel discharges in the federal waters of the FKNMS may have a positive socioeconomic impact from improved water quality and healthier reefs and the indirect effects that has on the economy. For example, the tourist-based economy of the Florida Keys depends upon clean water and abundant natural resources. If vessels were allowed to continue to discharge the impacted area, the sanctuary's water quality would decrease, which would negatively impact the health and quantity of the sanctuary's unique biological resources, and ultimately impact the sanctuary as a tourist destination.

For the reasons above, the Chief Counsel for Regulation certified that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

**John H. Dunnigan,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

#### List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Wildlife, Wildlife refuges, Wildlife Management Areas, Sanctuary Preservation Areas, Ecological Reserves, Areas to be Avoided, State of Florida, U.S. Coast Guard.

For the reasons above, NOAA proposes to amend title 15, part 922 of the Code of Federal Regulations as follows:

#### PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

**Authority:** 15 U.S.C. 1431 *et seq.*

2. Amend § 922.163 as follows:

- a. By removing paragraph (a)(4)(i)(B);
- b. By redesignating paragraphs (a)(4)(i)(C) and (a)(4)(i)(D) as (a)(4)(i)(B) and (a)(4)(i)(C), respectively;

c. By adding a new paragraph (a)(5)(vi) as follows:

#### § 922.163 Prohibited activities—Sanctuary wide.

(a) \* \* \*

(5) \* \* \*

(vi) Having a marine sanitation device that is unlocked or that allows discharge or deposit of sewage.

\* \* \* \* \*

[FR Doc. E9-27453 Filed 11-13-09; 8:45 am]

BILLING CODE 3510-NK-P

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

#### RIN 1506-AB04

#### Financial Crimes Enforcement Network; Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

**AGENCY:** Financial Crimes Enforcement Network ("FinCEN"), Treasury.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** FinCEN is issuing this notice of proposed rulemaking to amend the relevant Bank Secrecy Act ("BSA") information sharing rules to allow certain foreign law enforcement agencies, and State and local law enforcement agencies, to submit requests for information to financial institutions. The rule also clarifies that FinCEN itself, on its own behalf and on behalf of other appropriate components of the Department of the Treasury, may submit such requests. Modification of the information sharing rules is a part of the Department of the Treasury's continuing effort to increase the efficiency and effectiveness of its anti-money laundering and counter-terrorist financing policies.

**DATES:** Written comments are welcome and must be received on or before December 16, 2009.

**ADDRESSES:** Those submitting comments are encouraged to do so via the Internet. Comments submitted via the Internet may be submitted at <http://www.regulations.gov/search/index.jsp>, Docket number Fincen-2009-0005, with the caption in the body of the text, "Attention: Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, RIN 1506-XXXX." Comments may also be submitted by written mail to: Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183, Attention:

Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, RIN 1506-AB04. Please submit comments by one method only. All comments submitted in response to this notice of proposed rulemaking will become a matter of public record; therefore, you should submit only information that you wish to make available publicly.

**Inspection of comments:** Public comments received electronically or through the U.S. Postal Service sent in response to a "Notice and Request for Comment" will be made available for public review as soon as possible on <http://www.regulations.gov>. All comments received may be physically inspected in the FinCEN reading room located in Vienna, VA. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905-5034 (not a toll free call).

**FOR FURTHER INFORMATION CONTACT:** The FinCEN regulatory helpline at (800) 949-2732 and select Option 3.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ("USA PATRIOT ACT") Act of 2001, Public Law 107-56 ("the Act"). Title III of the Act amends the anti-money laundering provisions of the Bank Secrecy Act, codified at 12 U.S.C. 1829b and 1951-1959 and 31 U.S.C. 5311-5314 and 5316-5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR part 103. The authority of the Secretary of the Treasury ("the Secretary") to administer the BSA has been delegated to the Director of FinCEN.

Of the Act's many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering is of paramount importance. Section 314 of the Act furthers this goal by providing for the sharing of information between the government and financial institutions, and among financial institutions themselves. As with many other provisions of the Act, Congress has charged the U.S. Department of the Treasury with developing regulations to implement these information-sharing provisions.