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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.

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*B. pH Regime:* This is indicative of the mineral richness of estuarine waters and falls into three main categories:

1. Acid: Waters with a pH of less than 5.5.

2. Circumneutral: A condition where the pH ranges from 5.5 to 7.4.

3. Alkaline: Waters with a pH greater than 7.4.

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

SOURCE: 60 FR 66877, Dec. 27, 1995, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 922 appear at 62 FR 3789, Jan. 27, 1997 and at 62 FR 67724, Dec. 30, 1997.

**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 ma-

rine 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

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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 hand- or electrically operated, hand-held or mounted. This term does not include bottom longlines.

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*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

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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.

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(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



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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 di-

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rectly 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

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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

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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,

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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 pallasii*), 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,

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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]



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**§ 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

Point	Latitude (N)	Longitude (W)
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 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 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

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**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

**TABLE C-1—ANACAPA ISLAND MARINE CONSERVATION AREA—Continued**

Point	Latitude	Longitude
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 ves-

sel'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

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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 ac-

tivities 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



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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]

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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

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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

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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

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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 Sanc-

tuary 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 Annu'u Unit is comprised of two adjacent zones.

(1) *Zone A.* The Annu'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 Annu'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 area 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



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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**

**§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 COORDI-  
NATES**

[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 posses-

sion 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.

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**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 nmi<sup>2</sup>. The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.50 nmi<sup>2</sup>. The area designated at Stetson Bank is located approximately 70 nmi southeast of Galveston, Texas, and encompasses 0.64 nmi<sup>2</sup>. The three areas encompass a total of 42.34 nmi<sup>2</sup> (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

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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)
<b>East Flower Garden Bank: (NAD 27)</b>		
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"

Point	Latitude (N)	Longitude (W)
<b>West Flower Garden Bank: (NAD 27)</b>		
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"

Point	Latitude (N)	Longitude (W)
<b>Stetson Bank: (NAD 27)</b>		
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)
<b>East Flower Garden Bank: (NAD 83)</b>		
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"

Point	Latitude (N)	Longitude (W)
<b>West Flower Garden Bank: (NAD 83)</b>		
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"

Point	Latitude (N)	Longitude (W)
<b>Stetson Bank: (NAD 83)</b>		
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)*  
SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>.

*Block A-376*

W<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-374*

W<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, W<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-375*

E<sup>1</sup>/<sub>2</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>.

*Block A-388*

NE<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>,

*Block A-389*

NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; N<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

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)*  
E<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>.

*Block A-384*

W<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>.

*Block A-385*

SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-397*

W<sup>1</sup>/<sub>2</sub>, W<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-398*

Entire block.

*Block A-399*

E<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-401*

NE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; N<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>.

*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 Janu-

ary 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 than 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



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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

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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
<b>Seaward Boundary</b>		
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
<b>Harbor Exclusions</b>		
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

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[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
<b>Santa Cruz Harbor/Twin Lakes Dredge Disposal Site</b>		
1 .....	36.9625	– 122.00056
2 .....	36.9625	– 121.99861
3 .....	36.96139	– 121.99833
4 .....	36.96139	– 122.00083
<b>SF–12 Dredge Disposal Site</b>		
1 .....	36.80207	– 121.79207
2 .....	36.80157	– 121.79218
3 .....	36.80172	– 121.79325
4 .....	36.80243	– 121.79295
<b>SF–14 Dredge Disposal Site</b>		
(circle with 500 yard radius)		
1 .....	36.79799	– 121.81907
<b>Monterey Harbor/Wharf II Dredge Disposal Site</b>		
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<sup>2</sup> 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<sup>2</sup> 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<sup>2</sup> 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] nmi<sup>2</sup> 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] nmi<sup>2</sup> 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

## § 922.141

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 adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works

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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, ap-

provals 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



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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 prac-

ticable 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 Octocorallia, 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 Bryozoa); 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 its 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 man-made 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 re-*

*sources.* 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



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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, re-

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store 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, Sec-

tion 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 than 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

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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 rule-making 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 para-

graph 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.

(1) 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 southeastern-most 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.

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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 published 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	Latitude	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.

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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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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**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



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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 Kaili 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 sea-

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ward 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 inter-agency 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

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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 pictorial (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.

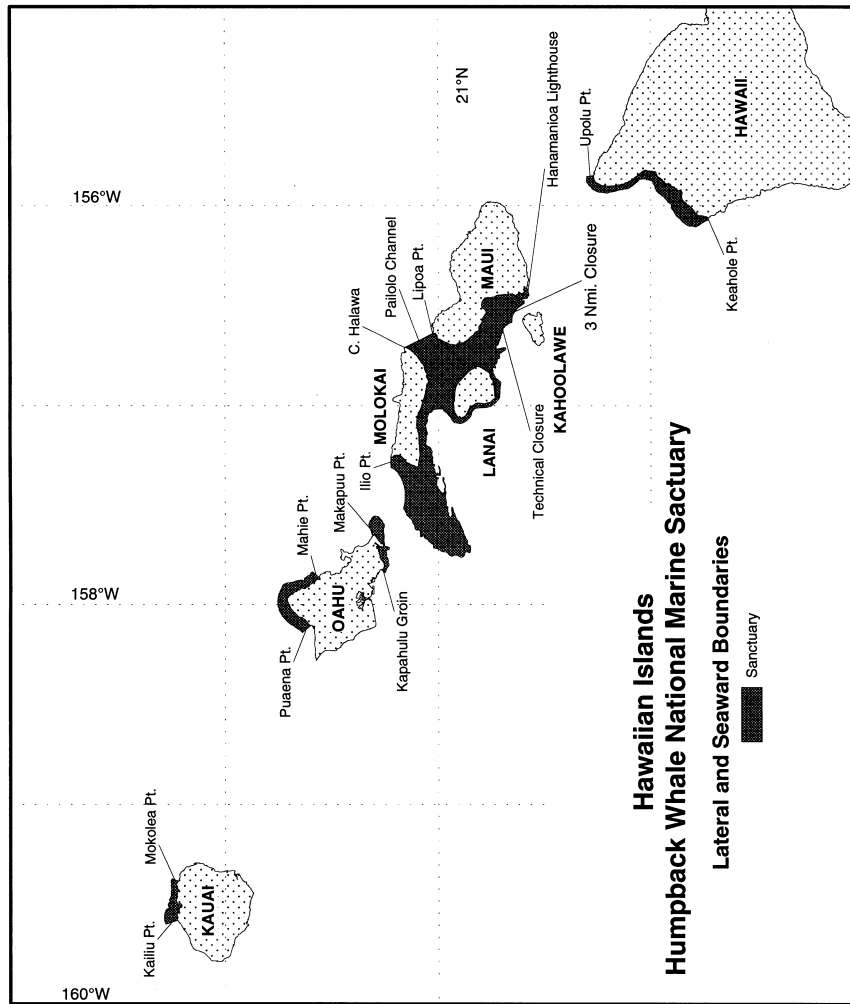


Figure 1

B. Lateral Closure Bounds for the Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary (see Figure 2).

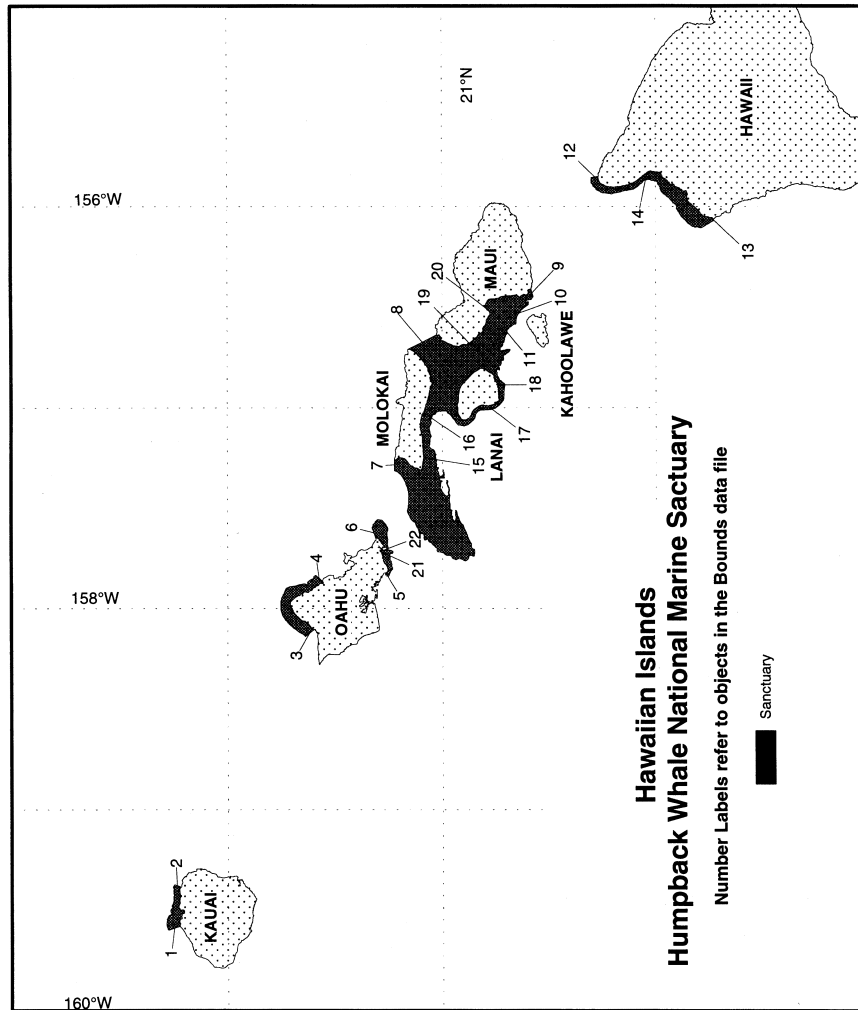


Figure 2

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
1	Kailiu Pt., Kauai	2	22°13'24.7" 22°16'33.5"	-159°34'52.2" -159°35'59.4"
2	Mokolea Pt., Kauai	2	22°13'29.9" 22°14'55.4"	-159°22'55.8" -159°22'19.3"
3	Puaena Pt., N. Oahu	2	21°38'24.6" 21°36'8.4"	-158°8'26.0" -158°6'24.5"
4	Mahie Pt., N. Oahu	2	21°33'37.3" 21°35'32.2"	-157°51'51.9" -157°50'5.5"
5	Kapahulu Groin, S. Oahu	3	21°15'5.7" 21°16'6.1" 21°16'6.2"	-157°50'27.5" -157°49'25.7" -157°49'23.8"
6	Makapuu Pt., S. Oahu	2	21°18'39.6" 21°19'44.7"	-157°38'56.7" -157°35'46.1"
7	Ilio Pt, Molokai	2	21°13'25.7" 21°13'27.0"	-157°18'45.8" -157°15'14.4"
8	Pailolo Channel, C. Halawa to Lipoa Pt.	2	21°1'29.8" 21°9'29.5"	-156°38'22.0" -156°42'37.2"

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
9 .....	Hanamanoia Lighthouse, Maui .....	2	20°34'21.8" 20°34'58.4"	– 156°26'51.1" – 156°24'45.2"
10 .....	3 Nmi. closure around Kahoolawe .....	51	20°35'58.1" 20°35'59.9" 20°36'3.9" 20°36'6.6" 20°36'16.3" 20°36'25.7" 20°36'34.6" 20°36'39.9" 20°36'43.8" 20°36'50.8" 20°36'59.0" 20°37'58.7" 20°37'18.1" 20°37'27.0" 20°37'35.5" 20°37'43.4" 20°37'50.9" 20°37'56.4" 20°37'59.0" 20°38'6.0" 20°38'8.6" 20°38'10.8" 20°38'17.2" 20°38'18.9" 20°38'23.4" 20°38'30.3" 20°38'36.6" 20°38'42.4" 20°38'43.4" 20°38'46.4" 20°38'51.5" 20°38'56.0" 20°38'59.8" 20°39'3.0" 20°39'4.0" 20°39'4.4" 20°39'5.3" 20°39'6.8" 20°39'8.6" 20°39'8.9" 20°39'9.7" 20°39'10.1" 20°39'11.0" 20°39'12.1" 20°39'12.5" 20°39'12.4" 20°39'12.6" 20°39'12.2" 20°39'11.8" 20°39'11.7" 20°39'11.3"	– 156°29'32.0" – 156°29'33.0" – 156°29'35.5" – 156°29'36.9" – 156°29'43.1" – 156°29'49.9" – 156°29'57.3" – 156°30'2.2" – 156°30'5.5" – 156°30'12.1" – 156°30'16.5" – 156°30'22.7" – 156°30'29.5" – 156°30'36.8" – 156°30'44.8" – 156°30'53.4" – 156°31'2.4" – 156°31'10.0" – 156°31'13.2" – 156°31'22.7" – 156°31'26.8" – 156°31'29.9" – 156°31'39.9" – 156°31'43.0" – 156°31'48.4" – 156°31'58.0" – 156°32'7.9" – 156°32'18.3" – 156°32'20.5" – 156°32'25.9" – 156°32'36.7" – 156°32'47.7" – 156°32'59.1" – 156°33'10.7" – 156°33'15.7" – 156°33'17.0" – 156°33'21.1" – 156°33'28.7" – 156°33'40.7" – 156°33'44.4" – 156°33'49.6" – 156°33'53.8" – 156°34'0.3" – 156°34'12.4" – 156°34'24.4" – 156°34'25.4" – 156°34'30.5" – 156°34'42.6" – 156°34'47.7" – 156°34'48.9" – 156°34'55.8"
11 .....	Technical Cosure .....	2	20°41'39.2" 20°41'45.0"	– 156°37'7.5" – 156°38'3.6"
12 .....	North of Kahoolawe. Upolu Pt., Hawaii (Big Island) .....	2	20°16'5.3" 20°17'59.9"	– 155°51'0.5" – 155°51'17.2"
13 .....	Keahole Pt., Hawaii (Big Island) .....	2	19°43'39.6" 19°43'41.5"	– 156°3'42.7" – 156°4'14.5"

C. Excluded Ports and Harbors Bounds (see Figure 3).

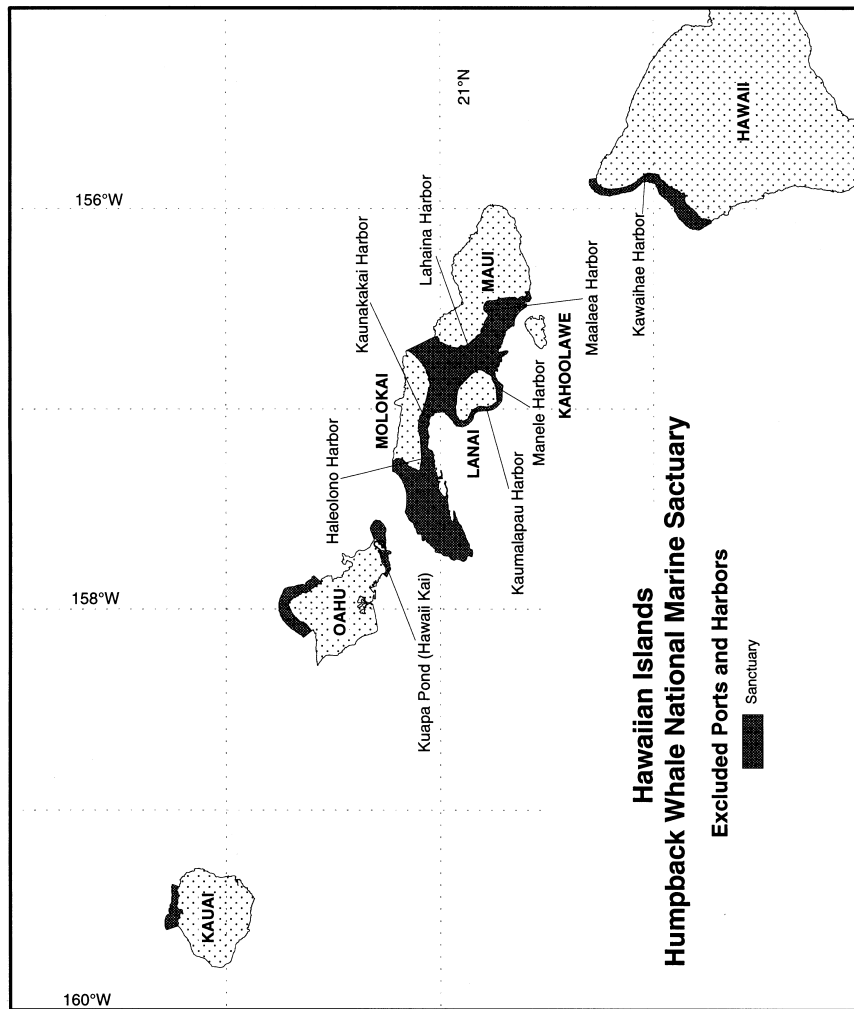


Figure 3

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	Maalea 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.

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(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

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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 measured 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

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(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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