Title 15—Commerce and Foreign Trade
CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE
PART 924—MONITOR MARINE SANCTUARY

Interim Regulations

JANUARY 31, 1975.

On January 30, 1975, the Secretary of Commerce, as described in a marine sanctuary an area of the Atlantic Ocean around and above the submerged wreckage of the Civil War ironclad Monitor pursuant to the authority of section 302(a) of the Marine Protection, Research and Sanctuaries Act of 1972 (38 Stat. 1052, 1061, hereafter the Act), the sanctuary area (hereafter the Sanctuary) is about 16,10 miles south-southeast of Cape Hatteras (North Carolina) Light.

Section 302(f) of the Act directs the Secretary to issue necessary and reasonable regulations to control any activities permitted within a designated marine sanctuary. This section also provides that no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes of Title III of the Act ("marine sanctuaries"); and that it can be carried out within the regulations promulgated under section 302(f).

The authority of the Secretary to administer the provisions of the Act has been delegated to the Administrator of National Oceanic and Atmospheric Administration, U.S. Department of Commerce (hereafter the Administrator, 39 FR 10555, March 19, 1974).

There are published herewith interim regulations relating to activities to be prohibited or permitted in the Sanctuary, relating to the certification requirements described above. Comments upon these regulations are invited through March 7, 1975. Comments should be addressed to the Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20230.

In accordance with the close of this period, any comments received will be reviewed. In the discretion of the Administrator, these interim regulations will be amended so as to reflect any such comments. The Administrator shall then publish final regulations in the Federal Register. As authorized by 5 U.S.C. 553(d) (3), these interim regulations are effective in order to protect the wreckage until final regulations become effective.

Sec.
924.1 Authority.
924.2 Description of the Sanctuary.
924.3 Activities Prohibited Within the Sanctuary.
924.4 Penalties for Commission of Prohibited Acts.
924.5 Permitted Activities.
924.6 Permit Procedures and Criteria.
924.7 Certification Procedures.
924.8 Appeals of Administrative Action.

§924.1 Authority.
The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of the Act. The following regulations are issued pursuant to the authorities of sections 302(f), 302(g) and 303 of the Act.

§924.2 Description of the Sanctuary.
The Sanctuary consists of a portion of the water column in the Atlantic Ocean one mile in diameter extending from the surface to the seabed and around and above the submerged wreckage of the Monitor. The central point of the Sanctuary is about 18.10 nautical miles south-southeast of Cape Hatteras (North Carolina) Light at the coordinates of 35°50'03" north latitude and 75°24'32" west longitude.

§924.3 Activities Prohibited Within the Sanctuary.
Except as may be permitted by the Administrator, no person subject to the jurisdiction of the United States shall conduct, nor cause to be conducted, any of the following activities in the Sanctuary:
(a) bottom anchoring;
(b) any type of subsurface salvage or recovery operation;
(c) any type of diving, 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) detonation below the surface of the water of any explosive or explosive charge;
(f) seabed drilling or coring;
(g) lowering, laying, positioning or raising any type of seabed cable or cable-laying device;
(h) trawling or;
(i) discharging waste material into the water.

§924.4 Penalties for Commission of Prohibited Acts.
Section 303 of the Act authorizes the assessment of a civil penalty of not more than $50,000 for each violation of any regulation issued pursuant to Title III of the Act, and further authorizes a proceeding in rem against any vessel or other property in violation of such regulation. Details are set out in Subpart (D) of Part 922 of this Chapter (39 FR 22354, 22357, June 27, 1974). Subpart (D) is applicable to any instance of a violation of these regulations.

§924.5 Permitted Activities.
Any person or entity may conduct in the Sanctuary any activity listed in this section of this Part if such person or entity has obtained the permission of the Administrator for such activity is either (1) for the purpose of research related to the Monitor, or (2) is in connection with an air or marine casualty or the avoidance of same; and (b) such person or entity shall submit to the Administrator, on a valid permit issued by the Administrator authorizing the conduct of such activity; and (c) such a permit is required for the conduct of any activity immediately necessary in connection with an air or marine casualty.

§924.6 Permit Procedures and Criteria. (a) Any person or entity who wishes to conduct in the Sanctuary an activity for which a permit is authorized by §924.5, subparagraph (B), (b) or (c) of this section, may apply in writing to the Administrator for a permit to conduct such activity citing this Section as the basis for the application. Such application should be made to the Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20230. Upon receipt of such application, the Administrator shall request, and such person or entity shall submit to the Administrator, pertinent information and in such form as the Administrator may require to enable him to act upon the application.

(b) In considering whether to grant a permit for the conduct of a permitted activity, 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 method or method(s) 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; and (5) such other matters as the Administrator deems appropriate.

(c) 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 Administrator 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 Administrator deems appropriate.
(d) In considering any application submitted pursuant to this section, the Administrator may seek and consider the views of any person or entity, within or outside of the Federal Government, as he deems appropriate; except that, he shall seek and consider the views of the Advisory Council on Historic Preservation.

(e) The Administrator may, in his discretion, grant a permit which has been applied for pursuant to this Section, in whole or in part, and subject to such condition(s) as he deems appropriate, except that the Administrator shall attach to any permit granted for research related to the Monitor the condition that any information and/or artifact(s) obtained in the research shall be made available to the public. The Administrator 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.

(f) A permit granted pursuant to this section is nontransferable.

(g) The Administrator may amend, suspend or revoke a permit granted pursuant to this Section, in whole or in part, temporarily or indefinitely, if, in his view, the permit holder (hereafter the holder) has failed to comply with the terms of the permit or the Administrator may do so for other good cause shown. Any such action shall be in writing to the Holder, and shall set forth the reason(s) for the action taken. Any holder in relation to whom such action has been taken may appeal the action as provided in §924.8 of this Part.

924.7 Certification Procedures.

Any Federal agency, which, as of the effective date of these regulations, already has permitted, licensed or otherwise authorized any activity in the Sanctuary shall notify the Administrator of such fact in writing. The writing shall include: (a) a description of such activity, the person(s) involved, the beginning and ending dates of such permission, the reason(s) and purpose(s) for same, and a description of the effect the activity may have on the condition of the area affected. The Administrator shall then decide whether to take the continuation of the permitted activity, in whole or in part, or subject to such condition(s) as he may deem appropriate, is consistent with the purposes of Title II of the Act and can be carried out within these regulations. He shall inform the Federal agency of his decision in these regards, and the reason(s) therefore, in writing. The decision of the Secretary made pursuant to this section shall be final action for the purpose of the Administrative Procedure Act.

§924.8 Appeals of Administrative Action.

(a) In any instance in which the Administrator, as regards a permit authorized by, or issued pursuant to, this Part: (1) denies a permit; (2) issues a permit embodying less authority than was requested; (3) conditions a permit in a manner unacceptable to the applicant; or (4) amends, suspends, or revokes a permit, the Administrator shall take appropriate action to prevent the violation of regulations issued under this Part, the applicant or the permit holder, as the case may be (hereafter the Applicant), may appeal the Administrator's action to the Secretary. In order to be considered by the Administrator, such appeal shall be in writing, shall state the action(s) appealed and the reason(s) therefor, and shall be submitted within 30 days of the action(s) by the Applicant to which the appeal is directed. The Applicant may request a hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Secretary may request, and if he does, the Applicant shall provide, such additional information and/or artifact(s) as the Secretary may request in order to enable him to act upon the appeal. If the Secretary has not requested a hearing, the Secretary shall decide the appeal upon (1) the regulations in §924.6 of this part, as appropriate, (2) information relative to the application on file in NOAA, (3) information provided by the Applicant, and (4) such other considerations as he deems appropriate. He shall notify the Applicant of his decision, and the reason(s) therefore, in writing within 30 days of the date of his receipt of the appeal.

(c) If the Applicant has requested a hearing, the Secretary shall grant an informal hearing before a Hearing Officer designated for that purpose by the Secretary after first giving notice of the time, place, and subject matter of the hearing in the Federal Register. Such hearing shall be held no later than 30 days following the Secretary's receipt of the appeal. The Applicant and any interested person may appear personally or by counsel at the hearing, present evidence, cross-examine witnesses, offer argument and file briefs. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Secretary based upon the considerations outlined in paragraph (b) of this section and based upon the record made at the hearing.

(d) The Secretary may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Secretary shall notify the Applicant of his decision, and the reason(s) therefore, in writing within 15 days of receipt of the recommended decisions of the Hearing Officer. The Secretary's action, whether without or after a hearing, as the case may be, shall constitute final action for the purposes of the Administrative Procedure Act.