

**PART 91—GENERAL OPERATING AND FLIGHT RULES**

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 46507, 47122, 47508, 47528–47531; articles 12 and 29 of the Convention on International Civil Aviation 961 stat. 1180.

2. Section 91.157 is amended by revising paragraph (b)(4) introductory text to read as follows:

**§ 91.157 Special VFR weather minimums.**

\* \* \* \* \*

(b) Special VFR operations may only be conducted—

\* \* \* \* \*

(4) Except for helicopters, between sunrise and sunset (or in Alaska, when the sun is 6 degrees or more below the horizon) unless—

\* \* \* \* \*

Issued in Washington, D.C. on December 18, 1995.

Harold W. Becker,

*Acting Program Director for Air Traffic Rules and Procedures.*

[FR Doc. 95–31290 Filed 12–26–95; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

**15 CFR Parts 922, 924, 925, 935, 936, 938, 940, 941, 942, 943 and 944**

[Docket No. 951201283–5283–01]

RIN 0648–A151

**National Marine Sanctuary Program**

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is removing 15 CFR Parts 924, 925, 935, 936, 938, 940, 941, 942, 943, and 944 and revising 15 CFR Part 922 by consolidating therein the removed regulations. As revised, Part 922 implements the National Marine Sanctuaries Act, as amended, (Act), 16 U.S.C. 1431 *et seq.* and governs ten of the present twelve National Marine Sanctuaries. The rulemakings to implement the designations of the

eleventh and twelfth Sanctuaries, the Florida Keys National Marine Sanctuary and the Hawaiian Islands Humpback Whale National Marine Sanctuary, are presently ongoing and the regulations governing the old Key Largo and Looe Key National Marine Sanctuaries (15 CFR Parts 929 and 937) subsumed in the new Florida Keys Sanctuary will continue to be maintained until replaced by regulations governing the entire Florida Keys Sanctuary. This final rule does not make substantive changes to the existing regulations governing the other ten Sanctuaries, rather it removes duplicative and outdated provisions, makes technical changes to incorporate current term usage and achieve uniformity in regulatory language, and consolidates and reorganizes all remaining provisions in a more logical and cohesive order. The effect of this final rule is to make the regulations implementing the Act more concise, better organized, and thereby easier for the public to use.

**EFFECTIVE DATE:** December 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Harriet Sopher, Office of Ocean and Coastal Resource Management, at 301–713–3125 (ext. 109), fax: 301–713–0404, e-mail: hsopher@ocean.nos.noaa.gov.

**SUPPLEMENTARY INFORMATION:****I. Background**

The National Oceanic and Atmospheric Administration (NOAA) is removing 15 CFR Parts 924, 925, 935, 936, 938, 940, 941, 942, 943, and 944 and is revising 15 CFR Part 922 by consolidating therein the removed regulations.

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This final rule is intended to carry out the President's directive with respect to the regulations implementing the Act and the National Marine Sanctuary program and revises those regulations as follows:

**II. Consolidates National Marine Sanctuary Regulations in One CFR Part, 15 CFR Part 922, and removes Ten CFR Parts Containing Site-Specific Regulations**

Currently, regulations implementing the Act are included in 13 separate Parts

of title 15, Code of Federal Regulations. This rulemaking removes ten parts of the Code and consolidates the removed regulations, which addressed ten of the twelve National Marine Sanctuaries, in 15 CFR Part 922. The rulemakings to implement the designations of the eleventh and twelfth Sanctuaries, the Florida Keys National Marine Sanctuary and the Hawaiian Islands Humpback Whale National Marine Sanctuary, are presently ongoing and the regulations governing the old Key Largo and Looe Key National Marine Sanctuaries (15 CFR Parts 929 and 937) subsumed in the new Florida Keys Sanctuary will continue to be maintained until replaced by regulations governing the entire Florida Keys Sanctuary. As revised, subparts A, D and E of the 15 CFR Part 922 are applicable to all the ten Sanctuaries. Site-specific regulations for each of the ten appear in each Sanctuary's own subpart (subparts F through O). Subparts B and C apply to the Site Evaluation List (SEL) and to the designation of future Sanctuaries.

**III. Makes Technical Changes to Incorporate Current Term Usage and Achieve Uniformity in Regulatory Language, and Replaces the Duplicative Provisions in the Site-Specific Regulations With Uniform Definitions and Provisions in Subparts A, D and E Applicable to the Ten Covered Sanctuaries**

Many of the existing regulations for the ten Sanctuaries covered by this rulemaking contain identical or nearly identical provisions addressing matters such as definitions, emergency regulations, penalties, appeals of administrative action, and permit procedures and criteria. The consolidation of these provisions and the deletion of the duplicative provisions results in the deletion of many pages of text from the CFR.

The site specific prohibitions were retained for each Sanctuary in its own respective subpart. Site-specific definitions were only retained in those cases where application of a given term to other Sanctuaries other than the Sanctuary in question might create a conflict with either regulatory provisions or management practice at another Sanctuary.

**IV. Reorganizes Remaining Regulations**

The final rule reorganizes the remaining regulations of the present 15 CFR Part 922 in a more logical and cohesive order. For example, those provisions relating to the SEL and to the designation of future Sanctuaries have been moved to two separate subparts. Provisions pertaining to management

plan development and implementation have been moved to a single subpart. This reorganization will make the regulations easier for the public to use.

#### V. Removes Regulations Restating Statutory Language

The final rule removes those regulations in 15 CFR Part 922 that simply restate provisions contained in the Act relating to the designation of National Marine Sanctuaries. These provisions are replaced, where appropriate, with references to the applicable sections of the Act.

#### VI. Removes Site Selection and Identification Criteria and Other Outdated Provisions

The final rule removes Appendix 1 to 15 CFR Part 922 which sets forth National Marine Sanctuary site selection and identification criteria. Removal of these criteria is appropriate because the SEL is not presently active and the National Marine Sanctuary program intends to issue revised, updated criteria prior to its reactivation. This rulemaking does not affect the status of sites currently on the SEL; such sites remain on the SEL.

In addition, the final rule removes certain regulatory provisions that are no longer applicable because of the passage of the provision's effective period as specified in the regulations. The most notable of these are the provisions found in site-specific regulations for the Flower Garden Banks, Monterey Bay, Stellwagen Bank and Olympic Coast National Marine Sanctuaries which describe the process for obtaining certification of a valid lease, permit, license, other authorization, or right of subsistence use or access in existence on the date of Sanctuary designation. The 90-day period specified in these regulations for notifying NOAA of the existence of such authorizations or rights has long since expired. Since this type of certification is no longer available for those individual sites, these sections are obsolete and continued codification of them in the CFR is not necessary.

#### VII. Miscellaneous Rulemaking Requirements

##### *Executive Order 12612: Federalism Assessment*

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant the preparation of a Federalism Assessment under Executive Order 12612.

##### *Executive Order 12630: Takings Implication*

NOAA has concluded that this regulatory action does not have takings implications within the meaning of Executive Order 12630.

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

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

##### *Paperwork Reduction Act*

The revision of 15 CFR Part 922 and removal of 15 CFR Parts 924, 925, 935, 936, 938, 940, 941, 942, 943, and 944 does not impose any information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

##### *National Environmental Policy Act*

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

##### *Administrative Procedure Act*

Because this rule makes only technical nonsubstantive and consolidating and organizational changes to existing regulations, no useful purpose would be served by providing notice and opportunity for public comment. Accordingly, the Assistant Administrator for Ocean Services and Coastal Zone Management under 5 U.S.C. 553(b)(B) for good cause finds that providing notice and opportunity for public comment is unnecessary. Because this rule is not substantive, under 5 U.S.C. 553(d) it is not subject to a 30-day delay in effective date.

Authority: National Marine Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*

##### List of Subjects

##### *15 CFR Part 922*

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

##### *15 CFR 924*

Administrative practice and procedure  
Historic preservation  
Monitor  
Monuments and memorials  
National Oceanic and Atmospheric Administration

Penalties  
Reporting and recordkeeping requirements  
Vessels

##### *15 CFR 925*

Administrative practice and procedure  
Coastal zone  
Marine resources  
National Oceanic and Atmospheric Administration  
Penalties  
Recreation and recreation areas  
Reporting and recordkeeping requirements  
Research

##### *15 CFR 935*

Administrative practice and procedure  
Coastal zone  
Marine resources  
National Oceanic and Atmospheric Administration  
Penalties  
Recreation and recreation areas  
Reporting and recordkeeping requirements  
Research

##### *15 CFR 936*

Administrative practice and procedure  
Coastal zone  
Marine resources  
National Oceanic and Atmospheric Administration  
Penalties  
Recreation and recreation areas  
Reporting and recordkeeping requirements  
Research

##### *15 CFR 938*

Administrative practice and procedure  
Coastal zone  
Marine resources  
National Oceanic and Atmospheric Administration  
Penalties  
Recreation and recreation areas  
Reporting and recordkeeping requirements  
Research

##### *15 CFR 940*

Administrative practice and procedure  
Coastal zone  
Marine resources  
National Oceanic and Atmospheric Administration  
Penalties  
Recreation and recreation areas  
Reporting and recordkeeping requirements  
Research

##### *15 CFR 941*

Administrative practice and procedure  
American Samoa  
Coastal zone

Marine resources  
National Oceanic and Atmospheric  
Administration  
Penalties  
Recreation and recreation areas  
Reporting and recordkeeping  
requirements  
Research  
*15 CFR 942*

Administrative practice and procedure  
Coastal zone  
Marine resources  
National Oceanic and Atmospheric  
Administration  
Penalties  
Recreation and recreation areas  
Reporting and recordkeeping  
requirements  
Research  
*15 CFR 943*

Administrative practice and procedure  
Coastal zone  
Marine resources  
National Oceanic and Atmospheric  
Administration  
Penalties  
Recreation and recreation areas  
Reporting and recordkeeping  
requirements  
Research  
*15 CFR 944*

Administrative practice and procedure  
Coastal zone  
Marine resources  
National Oceanic and Atmospheric  
Administration  
Penalties  
Recreation and recreation areas  
Reporting and recordkeeping  
requirements  
Research

Dated: December 8, 1995.

W. Stanley Wilson,  
*Assistant Administrator for Ocean Services  
and Coastal Zone Management.*

1. Accordingly, for the reasons set forth above, 15 CFR Part 922 is revised to read as follows:

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

### **Subpart A—General**

Sec.  
922.1 Applicability of regulations.  
922.2 Mission, goals, and special policies.  
922.3 Definitions.  
922.4 Effect of National Marine Sanctuary designation.

### **Subpart B—Site Evaluation List (SEL)**

922.10 General.

### **Subpart C—Designation of National Marine Sanctuaries**

922.20 Standards and procedures for designation.  
922.21 Selection of active candidates.

922.22 Development of designation materials.  
922.23 Coordination with States and other Federal agencies.  
922.24 Congressional documents.  
922.25 Designation determination and findings.

### **Subpart D—Management Plan Development and Implementation**

922.30 General.  
922.31 Promotion and coordination of Sanctuary use.

### **Subpart E—Regulations of General Applicability**

922.40 Purpose.  
922.41 Boundaries.  
922.42 Allowed activities.  
922.43 Prohibited or otherwise regulated activities.  
922.44 Emergency regulations.  
922.45 Penalties.  
922.46 Response costs and damages.  
922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.  
922.48 National Marine Sanctuary permits—application procedures and issuance criteria.  
922.49 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.  
922.50 Appeals of administrative action.

### **Subpart F—Monitor National Marine Sanctuary**

922.60 Boundary.  
922.61 Prohibited or otherwise regulated activities.  
922.62 Permit procedures and criteria.

### **Subpart G—Channel Islands National Marine Sanctuary**

922.70 Boundary.  
922.71 Prohibited or otherwise regulated activities.  
922.72 Permit procedures and criteria.  
Appendix A to Subpart G of Part 922—Channel Islands National Marine Sanctuary Boundary Coordinates

### **Subpart H—Point Reyes/Farallon Islands National Marine Sanctuary**

922.80 Boundary.  
922.81 Definitions.  
922.82 Prohibited or otherwise regulated activities.  
922.83 Permit procedures and criteria.  
922.84 Certification of other permits.  
Appendix A to Subpart H of Part 922—Point Reyes/Farallon Islands National Marine Sanctuary Boundary Coordinates

### **Subpart I—Gray's Reef National Marine Sanctuary**

922.90 Boundary.  
922.91 Prohibited or otherwise regulated activities.  
922.92 Permit procedures and criteria.

### **Subpart J—Fagatele Bay National Marine Sanctuary.**

922.100 Scope of regulations.  
922.101 Boundary.

922.102 Prohibited or otherwise regulated activities.  
922.103 Management and enforcement.  
922.104 Permit procedures and criteria.

### **Subpart K—Cordell Bank National Marine Sanctuary**

922.110 Boundary.  
922.111 Prohibited or otherwise regulated activities.  
22.112 Permit procedures and criteria.  
9Appendix A to subpart K of Part 922—Cordell Bank National Marine Sanctuary Boundary Coordinates

### **Subpart L—Flower Garden Banks National Marine Sanctuary**

922.120 Boundary.  
922.121 Definitions.  
922.122 Prohibited or otherwise regulated activities.  
922.123 Permit procedures and criteria.  
Appendix A to Subpart L of Part 922—Flower Garden Banks  
National Marine Sanctuary Boundary Coordinates.  
Appendix B to Subpart L of Part 922—Coordinates for the Department of the Interior Topographic Lease Stipulations for OCS Lease Sale 112

### **Subpart M—Monterey Bay National Marine Sanctuary**

922.130 Boundary.  
922.131 Definitions.  
922.132 Prohibited or otherwise regulated activities.  
922.133 Permit procedures and criteria.  
922.134 Notification and review.  
Appendix A to Subpart M of Part 922—Monterey Bay National Marine Sanctuary Boundary Coordinates  
Appendix B to Subpart M of Part 922—Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary  
Appendix C to Subpart M of Part 922—Zones Within the Sanctuary Where Overflights Below 1000 Feet Are Prohibited  
Appendix D to Subpart M of Part 922—Zones and Access Routes Within the Sanctuary Where the Operation of Motorized Personal Watercraft Is Allowed

### **Subpart N—Stellwagen Bank National Marine Sanctuary**

922.140 Boundary.  
922.141 Definitions.  
922.142 Prohibited or otherwise regulated activities.  
922.143 Permit procedures and criteria.  
Appendix A to Subpart N of Part 922—Stellwagen Bank National Marine Sanctuary Boundary Coordinates

### **Subpart O—Olympic Coast National Marine Sanctuary**

922.150 Boundary.  
922.151 Definitions.  
922.152 Prohibited or otherwise regulated activities.  
922.153 Permit procedures and criteria.

922.154 Consultation with the State of Washington, affected Indian tribes, and adjacent county governments.

Appendix A to Subpart O of Part 922—  
Olympic Coast National Marine  
Sanctuary Boundary Coordinates  
Authority: 16 U.S.C. 1431 *et seq.*

### Subpart A—General

#### § 922.1 Applicability of regulations.

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

#### § 922.2 Mission, goals, and special policies.

(a) In accordance with the standards set forth in title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, also known as the National Marine Sanctuaries Act (Act) the mission of the National Marine Sanctuary program (Program) is to identify, designate and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

(b) The goals of the Program are to carry out the mission to:

(1) Identify and designate as National Marine Sanctuaries areas of the marine environment which are of special national significance;

(2) Provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

(3) Support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;

(4) Enhance public awareness, understanding, appreciation, and wise use of the marine environment;

(5) Facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

(6) Develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the

continuing health and resilience of these marine areas;

(7) Create models of, and incentives for, ways to conserve and manage these areas;

(8) Cooperate with global programs encouraging conservation of marine resources; and

(9) Maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.

(c) To the extent consistent with the policies set forth in the Act, in carrying out the Program's mission and goals:

(1) Particular attention will be given to the establishment and management of marine areas as National Marine Sanctuaries for the protection of the area's natural resource and ecosystem values; particularly for ecologically or economically important or threatened species or species assemblages, and for offshore areas where there are no existing special area protection mechanisms;

(2) The size of a National Marine Sanctuary, while highly dependent on the nature of the site's resources, will be no larger than necessary to ensure effective management;

(d) Management efforts will be coordinated to the extent practicable with other countries managing marine protected areas;

(4) Program regulations, policies, standards, guidelines, and procedures under the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, the Archeological and Historical Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa *et seq.* The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated National Marine Sanctuaries. The management of historical resources under the authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR part 7) and other relevant Federal regulations. The Secretary of the Interior's Standards and Guidelines for Archeology may also be consulted for guidance. These guidelines are available from the Office

of Ocean and Coastal Management at (301) 713-3125.

#### § 922.3 Definitions.

*Act* means title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*, also known as the National Marine Sanctuaries Act.

*Active Candidate* means a site selected by the Secretary from the Site Evaluation List for further consideration for possible designation as a National Marine Sanctuary.

*Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), or designee.

*Benthic community* means the assemblage of organisms, substrate, and structural formations found at or near the bottom that is periodically or permanently covered by water.

*Commercial fishing* means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals.

*Conventional hook and line gear* means any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand- or electrically operated, hand-held or mounted. This term does not include bottom longlines.

*Cultural resources* means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.

*Director* means, except where otherwise specified, the Director of the Office of Ocean and Coastal Resource Management, NOAA, or designee.

*Exclusive economic zone* means the exclusive economic zone as defined in the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

*Fish wastes* means waste materials resulting from commercial fish processing operations.

*Historical resource* means a resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events. Historical resource also includes "historical properties" as defined in the National Historic Preservation Act, as amended, 16 U.S.C. 470 *et seq.*, 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 particular and essential characteristic of a Sanctuary, including, but not limited to, water, sediment, and air quality.

*Sanctuary resource* means any living or none-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.

*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 Samos, 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 of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which lives in a direct relationship with live bottom communities.

*Vessel* means a watercraft of any description capable of being used as a means of transportation in/on the waters of a Sanctuary.

#### **§ 922.4 Effect of National Marine Sanctuary designation.**

The designation of a National Marine Sanctuary, and the regulations implementing it, are binding on any person subject to the jurisdiction of the United States. Designation does not

constitute any claim to territorial jurisdiction on the part of the United States for designated sites beyond the U.S. territorial sea, and the regulations implementing the designation shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with:

(a) Generally recognized principles of international law;

(b) An agreement between the United States and the foreign state of which the person is a citizen; or

(c) An agreement between the United States and the flag state of the foreign vessel, if the person is a crew member of the vessel.

### **Subpart B—Site Evaluation List (SEL)**

#### **§ 922.10 General.**

(a) The Site Evaluation List (SEL) was established as a comprehensive list of marine sites with high natural resource values and with historical qualities of special national significance that are highly qualified for further evaluation for possible designation as National Marine Sanctuaries.

(b) The SEL is currently inactive. Criteria for inclusion of marine sites on a revised SEL will be issued, with public notice and opportunity to comment, when the Director determines that the SEL should be reactivated.

(c) Only sites on the SEL may be considered for subsequent review as active candidates for designation.

(d) Placement of a site on the SEL, or selection of a site from the SEL as an active candidate for designation as provided for in § 922.21, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

### **Subpart C—Designation of National Marine Sanctuaries**

#### **§ 922.20 Standards and procedures for designation.**

In designating a National Marine Sanctuary, the Secretary shall apply the standards and procedures set forth in section 303 and section 304 of the Act.

#### **§ 922.21 Selection of active candidates.**

(a) The Secretary shall, from time to time, select a limited number of sites from the SEL for Active Candidate consideration based on a preliminary assessment of the designation standards set forth in section 303 of the Act.

(b) Selection of a site as an Active Candidate shall begin the formal Sanctuary designation-evaluation process. A notice of intent to prepare a draft environmental impact statement shall be published in the Federal Register and in newspapers in the area(s) of local concern. A brief written analysis describing the site shall be provided. The Secretary, at any time, may drop a site from consideration if the Secretary determines that the site does not meet the designation standards and criteria set forth in the Act.

**§ 922.22 Development of designation materials.**

(a) In designating a National Marine Sanctuary, the Secretary shall prepare the designation materials described in section 304 of the Act.

(b) If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional Fishery Management Council(s) which shall have one hundred and twenty (120) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishery regulations and to submit them to the Secretary. In preparing its recommendations and draft regulations, the Council(s) shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed Sanctuary designation. Fishery activities not proposed for regulation under section 304(a)(5) of the Act may be listed in the draft Sanctuary designation document as potentially subject to regulation, without following the procedures specified in section 304(a)(5) of the Act. If the Secretary subsequently determines that regulation of any such fishery activity is necessary, then the procedures specified in section 304(a)(5) of the Act shall be followed.

**§ 922.23 Coordination with States and other Federal agencies.**

(a) The Secretary shall consult and cooperate with affected States throughout the National Marine Sanctuary designation process. In particular the Secretary shall:

(1) Consult with the relevant State officials prior to selecting any site on the SEL as an Active Candidate pursuant to § 922.21, especially concerning the relationship of any site to State waters and the consistency of the proposed designation with a federally approved State coastal zone management program. For the purposes of a consistency review by States with federally approved coastal zone

management programs, designation of a National Marine Sanctuary is deemed to be a Federal activity, which, if affecting the State's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved State coastal zone program as provided by section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, and implementing regulations at 15 CFR part 930, subpart.

(2) Ensure that relevant State agencies are consulted prior to holding any public hearings pursuant to section 304(a)(3) of the Act.

(3) Provide the Governor(s) of any State(s) in which a proposed Sanctuary would be located an opportunity to certify the designation or any of its terms as unacceptable as specified in section 304(b)(1) of the Act.

(b) The Secretary shall develop proposed regulations relating to activities under the jurisdiction of one or more other Federal agencies in consultation with those agencies.

**§ 922.24 Congressional documents.**

In designating a National Marine Sanctuary, the Secretary shall prepare and submit to Congress those documents described in section 304 of the Act.

**§ 922.25 Designation determination and findings.**

(a) In designating a National Marine Sanctuary, the Secretary shall prepare a written Designation Determination and Findings which shall include those findings and determinations described in section 303 of the Act.

(b) In addition to those factors set forth in section 303 of the Act, the Secretary, when making a designation determination, shall consider the Program's fiscal capability to manage the area as a National Marine Sanctuary.

**Subpart D—Management Plan Development and Implementation**

**§ 922.30 General.**

(a) The Secretary shall implement each management plan, and applicable regulations, including carrying out surveillance and enforcement activities and conducting such research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of the Act.

(b) Consistent with Sanctuary management plans, the Secretary shall develop and implement site-specific contingency and emergency-response plans designed to protect Sanctuary resources. The plans shall contain alert procedures and actions to be taken in

the event of an emergency such as a shipwreck or an oil spill.

**§ 922.31 Promotion and coordination of Sanctuary use.**

The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of National Marine Sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, or other persons to promote use of one or more Sanctuaries for research, monitoring and education, including coordination with the National Estuarine Research Reserve System.

**Subpart E—Regulations of General Applicability**

**§ 922.40 Purpose.**

The purpose of the regulations in this subpart and in subparts F through O is to implement the designations of the ten National Marine Sanctuaries for which site-specific regulations appear in subparts F through O, 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.

**§ 922.41 Boundaries.**

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

**§ 922.42 Allowed activities.**

All activities except those site-specific activities prohibited or otherwise regulated in subparts F through O, may be conducted subject to any emergency regulations promulgated pursuant to §§ 922.44 and 922.111(c), subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act.

**§ 922.43 Prohibited or otherwise regulated activities.**

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

**§ 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 activities are subject to

immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank National Marine Sanctuary. See § 922.111(c) for the authority to issue emergency regulations with respect to that Sanctuary.

**§ 922.45 Penalties.**

(a) Each violation of the Act, 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.

**§ 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 O 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 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, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as he or she deems necessary to achieve the purpose for which the Sanctuary was designated.

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

(a) A person may conduct an activity prohibited by this part if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O.

(b) Applications for such permits should be addressed to the Director and sent to the address specified in subparts F through O. 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. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

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

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or subparts F through O 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.

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

(a) The prohibitions set forth in regulations found in subparts L through O, do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designated by any Federal, State or local authority of competent jurisdiction, 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 application or of the effective date of Sanctuary designation, whichever is later;

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

(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 necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for a lease, permit, license, approval or other authorization for any Federal, State or local authority (or for an amendment, renewal or extension of such authorization) 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 regulations in this part.

(c) Notifications of filings of applications and requests for findings should be addressed to the address found in subparts F through O. A copy of the application must accompany the notification.

(d) The Director may request additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, approval or other authorization (or to issuance of an amendment, extension or renewal of such authorization), or what terms and conditions are 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 review of the application and possible objection to issuance. After review of the application and information received with respect

thereto, the Director, or designee 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 necessary to protect Sanctuary resources and qualities. The Director shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed necessary to protect Sanctuary resources and qualities.

(f) The Director may amend the terms and conditions deemed 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 section 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 in accordance with the procedures set forth in § 922.50.

#### **§ 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 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 O, 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 O, 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 paragraphs (a)(1) (i) and (ii) of this section. 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 the reason(s) therefore in writing. The Assistant Administrator's decision shall constitute final agency action for the purpose of the Administrative Procedure Act.

(e) Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal may be extended by the Assistant

Administrator or hearing office for good cause.

#### **Subpart F—Monitor National Marine Sanctuary**

##### **§ 922.60 Boundary.**

The Monitor National Marine Sanctuary (Sanctuary) consists of a vertical water column in the Atlantic Ocean one mile in diameter extending from the surface to the seabed, the center of which is at 35°00'23" north latitude and 75°24'32" west longitude.

##### **§ 922.61 Prohibited or otherwise regulated activities.**

Except as may be permitted by the Director, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(a) Anchoring in any manner, stopping, remaining, or drifting without power at any time;

(b) Any type of subsurface salvage or recovery operation;

(c) Diving of any type, whether by an individual or by a submersible;

(d) Lowering below the surface of the water any grappling, suction, conveyor, dredging or wrecking device;

(e) Detonating below the surface of the water any explosive or explosive mechanism;

(f) Drilling or coring the seabed;

(g) Lowering, laying, positioning or raising any type of seabed cable or cable-laying device;

(h) Trawling; or

(i) Discharging waster material into the water in violation of any Federal statute or regulation.

##### **§ 922.62 Permit procedure and criteria.**

(a) Any person or entity may conduct in the Sanctuary any activity listed in § 922.61 if such activity is either: (1) For the purpose of research related to the Monitor, or (2) Pertains to salvage or recovery operations in connection with an air or marine casualty and such person or entity is in possession of a valid permit issued by the Director authorizing the conduct of such activity; except that, no permit is required for the conduct of any activity immediately and urgently necessary for the protection of life, property or the environment.

(b) Any person or entity who wishes to conduct in the Sanctuary an activity for which a permit is authorized by this section (hereafter a permitted activity) may apply in writing to the Director for a permit to conduct such activity citing this section as the basis for the application. Such application should be made to: Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Monitor National Marine

Sanctuary, Building 1519, NOAA, Fort Eustis, VA 23604-5544.

(c) In considering whether to grant a permit for the conduct of a permitted activity for the purpose of research related to the Monitor, the Secretary shall evaluate such matters as:

- (1) The general professional and financial responsibility of the applicant;
- (2) The appropriateness of the research method(s) envisioned to the purpose(s) of the research;
- (3) The extent to which the conduct of any permitted activity may diminish the value of the MONITOR as a source of historic, cultural, aesthetic and/or maritime information;
- (4) The end value of the research envisioned; and
- (5) Such other matters as the Director deems appropriate.

(d) In considering whether to grant a permit for the conduct of a permitted activity in the Sanctuary in relation to an air or marine casualty, the Director shall consider such matters as:

- (1) The fitness of the applicant to do the work envisioned;
- (2) The necessity of conducting such activity;
- (3) The appropriateness of any activity envisioned to the purpose of the entry into the Sanctuary;
- (4) The extent to which the conduct of any such activity may diminish the value of the Monitor as a source of historic, cultural, aesthetic and/or maritime information; and
- (5) Such other matters as the Director deems appropriate.

(e) In considering any application submitted pursuant to this section, the Director shall seek and consider the views of the Advisory Council on Historic Preservation.

(f) The Director may observe any activity permitted by this section; and/or may require the submission of one or more reports of the status or progress of such activity.

#### **Subpart G—Channel Islands National Marine Sanctuary**

##### **§ 922.70 Boundary.**

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of the waters off the coast of California of approximately 1252.5 square nautical miles (NM) adjacent to 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 (collectively the Islands) extending seaward to a distance of six NM. The boundary coordinates are listed in appendix A to this subpart.

##### **§ 922.71 Prohibited or otherwise regulated activities.**

(a) Except as may be necessary for the national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or 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 § 922.72, 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, and producing hydrocarbons except pursuant to leases executed prior to March 30, 1981, and except the laying of pipeline, if the following oil spill contingency equipment is available at the site of such operations:

(i) 1500 feet of open ocean containment boom and a boat capable of deploying the boom;

(ii) One oil skimming device capable of open ocean use; and

(iii) Fifteen bales of oil sorbent material, and subject to all prohibitions, restrictions and conditions imposed by applicable regulations, permits, licenses or other authorizations and consistency reviews including those issued by the Department of the Interior, the Coast Guard, the Corps of Engineers, the Environmental Protection Agency and under the California Coastal Management Program and its implementing regulations.

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

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

(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by:

(A) Marine sanitation devices;

(B) Routine vessel maintenance, e.g., deck wash down;

(C) Engine exhaust; or

(D) Meals on board vessels;

(iii) Effluents incidental to hydrocarbon exploration and exploitation activities allowed by paragraph (a)(1) of this section.

(3) Except in connection with the laying of any pipeline as allowed by paragraph (a)(1) of this section, within 2 NM of any Island:

(i) Constructing any structure other than a navigation aid,

(ii) Drilling through the seabed, or

(iii) Dredging or otherwise altering the seabed in any way, other than

(A) To anchor vessels, or

(B) To bottom trawl from a commercial fishing vessel.

(4) Except to transport persons or supplies to or from an Island, operating

within one NM of an Island any vessel engaged in the trade of carrying cargo, including, but not limited to, tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing (including kelp harvesting), recreational, or research vessels.

(5) Disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one NM of any Island except:

- (i) For enforcement purposes;
- (ii) To engage in kelp bed surveys; or
- (iii) To transport persons or supplies to or from an Island.

(6) Removing or damaging any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impact shall be determined in consultation between the Director and the Department of Defense.

##### **§ 922.72 Permit procedures and criteria.**

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct any activity in the Sanctuary prohibited under § 922.71 if such activity is either:

(1) Research related to the resources of the Sanctuary,

(2) To further the educational value of the Sanctuary; or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to: Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109.

(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 envisioned to 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, or as a source of educational or scientific information;

(4) The end value of the activity and

(5) Such other matters as may be deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained shall be available to the public.

**Appendix A to Subpart G of Part 922—  
Channel Islands National Marine  
Sanctuary Boundary Coordinates**

Point No.	Latitude north	Longitude west
<b>Northern Channel Islands Section</b>		
01 ....	33°56'28.959"	119°16'23.800"
02 ....	33°58'03.919"	119°14'56.964"
03 ....	34°01'33.846"	119°14'07.740"
04 ....	34°04'24.203"	119°15'21.308"
05 ....	34°06'06.653"	119°17'27.002"
06 ....	34°06'54.809"	119°19'46.046"
07 ....	34°06'57.988"	119°23'24.905"
08 ....	34°06'51.627"	119°24'04.198"
09 ....	34°07'01.640"	119°25'40.819"
10 ....	34°06'59.904"	119°26'50.959"
11 ....	34°08'02.002"	119°28'47.501"
12 ....	34°08'17.693"	119°29'27.698"
13 ....	34°08'52.234"	119°30'39.562"
14 ....	34°09'16.780"	119°35'22.667"
15 ....	34°09'05.106"	119°36'41.694"
16 ....	34°08'02.782"	119°39'33.421"
17 ....	34°08'46.870"	119°41'48.621"
18 ....	34°09'35.563"	119°45'57.284"
19 ....	34°09'32.627"	119°46'37.335"
20 ....	34°09'33.396"	119°47'32.285"
21 ....	34°09'43.668"	119°48'09.018"
22 ....	34°10'10.616"	119°50'07.659"
23 ....	34°10'21.586"	119°51'05.146"
24 ....	34°10'33.161"	119°53'17.044"
25 ....	34°10'36.545"	119°55'57.373"
26 ....	34°10'21.283"	119°50'07.659"
27 ....	34°08'07.255"	120°01'07.233"
28 ....	34°08'13.144"	120°02'27.930"
29 ....	34°07'47.772"	120°05'05.449"
30 ....	34°07'29.314"	120°07'29.314"
31 ....	34°07'30.691"	120°09'35.238"
32 ....	34°06'36.285"	120°12'39.335"
33 ....	34°06'40.634"	120°13'33.940"
34 ....	34°08'10.759"	120°15'07.017"
35 ....	34°09'12.290"	120°17'07.046"
35A ..	34°09'50.706"	120°17'31.649"
36 ....	34°10'56.346"	120°18'40.520"
36B ..	34°11'28.249"	120°19'29.213"
37 ....	34°12'08.078"	120°21'00.835"
37C ..	34°12'25.468"	120°25'01.261"
38 ....	34°12'18.754"	120°25'39.373"
38D ..	34°11'33.184"	120°27'33.921"
39 ....	34°12'19.470"	120°30'22.620"
39E ..	34°12'17.540"	120°32'19.959"
40 ....	34°10'54.592"	120°35'57.887"
40F ..	34°06'07.491"	120°38'27.883"
41 ....	34°04'53.454"	120°38'16.602"
41G ..	34°03'30.539"	120°37'39.442"
42 ....	34°01'09.860"	120°35'04.808"
42H ..	34°00'48.573"	120°34'25.106"
43 ....	33°59'13.122"	120°33'53.385"
44 ....	33°57'01.427"	120°31'54.590"
45 ....	33°55'36.973"	120°27'37.188"
46 ....	33°55'30.037"	120°25'14.587"
47 ....	33°54'50.522"	120°22'29.536"
48 ....	33°55'01.640"	120°19'26.722"
49 ....	33°54'34.409"	120°18'27.344"
50 ....	33°53'23.129"	120°17'39.927"
51 ....	33°50'39.990"	120°15'13.874"
52 ....	33°49'53.260"	120°13'41.904"
53 ....	33°49'03.437"	120°12'06.750"
54 ....	33°48'36.087"	120°11'10.821"
55 ....	33°47'39.280"	120°07'59.707"
56 ....	33°47'37.617"	120°06'04.002"
57 ....	33°47'59.351"	120°04'08.370"
58 ....	33°48'38.700"	120°02'33.188"
59 ....	33°48'52.167"	120°01'50.244"

Point No.	Latitude north	Longitude west
60 ....	33°50'28.486"	119°57'50.820"
61 ....	33°50'55.128"	119°55'19.934"
62 ....	33°52'13.338"	119°52'53.439"
63 ....	33°52'04.900"	119°52'10.719"
64 ....	33°51'39.919"	119°47'21.152"
65 ....	33°51'48.592"	119°46'13.213"
66 ....	33°51'35.798"	119°44'34.589"
67 ....	33°51'44.374"	119°41'12.738"
68 ....	33°52'23.857"	119°39'14.708"
69 ....	33°53'09.365"	119°37'30.784"
70 ....	33°53'12.754"	119°35'35.793"
71 ....	33°53'17.114"	119°34'54.567"
72 ....	33°53'38.865"	119°32'51.578"
73 ....	33°54'02.277"	119°31'06.274"
74 ....	33°54'56.444"	119°28'54.052"
75 ....	33°54'39.349"	119°27'37.512"
76 ....	33°54'15.236"	119°25'23.779"
77 ....	33°54'07.847"	119°24'22.849"
78 ....	33°54'04.682"	119°22'58.006"
79 ....	33°54'14.311"	119°21'44.573"
80 ....	33°54'22.824"	119°21'09.003"
81 ....	33°54'46.904"	119°19'54.677"
82 ....	33°55'05.834"	119°19'16.027"
<b>Santa Barbara Island Section</b>		
83 ....	33°28'56.904"	119°10'04.092"
84 ....	33°26'32.364"	119°10'01.328"
85 ....	33°24'19.904"	119°08'52.236"
86 ....	33°23'26.019"	119°07'54.826"
87 ....	33°22'04.836"	119°05'16.716"
88 ....	33°21'49.387"	119°04'01.551"
89 ....	33°21'44.594"	119°02'49.887"
90 ....	33°21'49.556"	119°01'37.839"
91 ....	33°22'07.538"	118°59'49.357"
92 ....	33°22'27.774"	118°58'51.623"
93 ....	33°22'47.957"	118°58'07.633"
94 ....	33°23'06.805"	118°57'14.375"
95 ....	33°24'18.458"	118°56'08.450"
96 ....	33°26'24.130"	118°54'51.352"
97 ....	33°29'02.820"	118°54'22.276"
98 ....	33°31'27.917"	118°54'50.367"
99 ....	33°32'17.935"	118°55'18.396"
100 ..	33°35'10.090"	118°59'40.091"
101 ..	33°35'24.575"	119°01'22.108"
102 ..	33°35'06.497"	119°03'59.463"
103 ..	33°34'48.322"	119°05'03.374"
104 ..	33°32'37.151"	119°08'37.201"
105 ..	33°30'41.731"	119°09'45.845"

**Subpart H—Point Reyes/Farallon  
Islands National Marine Sanctuary**

**§ 922.80 Boundary.**

(a) The Point Reyes/Farallon Islands Marine Sanctuary (Sanctuary) consists of an area of the waters adjacent to the coast of California north and south of the Point Reyes Headlands, between Bodega Head and Rocky Point and the Farallon Islands (including Noonday Rock), and includes approximately 948 square nautical miles (NM). The boundary coordinates are listed in Appendix A to this subpart.

(b) The shoreward boundary follows the mean high tide line and the seaward limit of Point Reyes National Seashore. Between Bodega Head and Point Reyes Headlands, the Sanctuary extends seaward 3 NM beyond State waters. The Sanctuary also includes the waters

within 12 NM of the Farallon Islands, and between the Islands and the mainland from Point Reyes Headlands to Rocky Point. The Sanctuary includes Bodega Bay, but not Bodega Harbor.

**§ 922.81 Definitions.**

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

*Areas of Special Biological Significance* (ASBS) means those areas established by the State of California prior to the designation of the Sanctuary except that for purposes of the regulations in this subpart, the area established around the Farallon Islands shall not be included.

**§ 922.82 Prohibited or otherwise regulated activities.**

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or 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, 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 and producing oil or gas except that pipelines related to hydrocarbon operations outside the Sanctuary may be placed at a distance greater than 2 NM from the Farallon Islands, Bolinas Lagoon, and ASBS where certified to have no significant effect on Sanctuary resources in accordance with § 922.84.

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

(i) Fish or fish parts and chumming materials (bait).

(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by:

- (A) Marine sanitation devices;
- (B) Routine vessel maintenance, e.g., deck wash down;
- (C) Engine exhaust; or
- (D) Meals on board vessels.

(iii) Dredge material disposed of at the interim dumpsite now established approximately 10 NM south of the southeast Farallon Island and municipal sewage provided such discharges are certified in accordance with § 922.84.

(3) Except in connection with the laying of pipelines or construction of an outfall if certified in accordance with § 922.84:

- (i) Constructing any structure other than a navigation aid,
- (ii) Drilling through the seabed, and

(iii) Dredging or otherwise altering the seabed in any way other than by anchoring vessels or bottom trawling from a commercial fishing vessel, except for routine maintenance and navigation, ecological maintenance, mariculture, and the construction of docks and piers in Tomales Bay.

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

(5) Disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one NM of the Farallon Islands, Bolinas Lagoon, or any ASBS except to transport persons or supplies to or from the Islands or for enforcement purposes.

(6) Removing or damaging any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

**§ 922.83 Permit procedures and criteria.**

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct any activity in the Sanctuary, prohibited user § 922.82, if such an activity is

- (1) Research related to the resources of the Sanctuary,
- (2) To further the educational value of the Sanctuary, or
- (3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Point Reyes/Farallon Islands National Marine Sanctuary, Fort Mason, building #201, San Francisco, CA 94123.

(c) In considering whether to grant a permit, the Director shall evaluate

- (1) The general professional and financial responsibility of the applicant,
- (2) The appropriateness of the methods envisioned to 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,

(4) The end value of the activity, and  
(5) Other matters as deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

**§ 922.84 Certification of other permits.**

(a) A permit, license, or other authorization allowing the discharge of municipal sewage, the laying of any pipeline outside 2 NM from the Farallon Islands, Bolinas Lagoon and ASBS, or the disposal of dredge material at the interim dumpsite now established approximately 10 NM south of the Southeast Farallon Island prior to the selection of a permanent dumpsite shall be valid if 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.

(b) 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.

(c) 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.

(d) 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—Point Reyes/Farallon Islands National Marine Sanctuary Boundary Coordinates**

Point No.	Latitude north	Longitude west
1 .....	38°15'50.349"	123°10'48.933"
2 .....	38°12'36.338"	123°07'04.846"
3 .....	38°09'57.033"	123°05'27.435"
4 .....	38°08'26.872"	123°04'52.524"
5 .....	38°07'42.125"	123°05'10.714"
6 .....	38°06'08.017"	123°05'48.920"
7 .....	38°05'26.765"	123°06'09.922"
8 .....	38°04'44.587"	123°06'29.251"
9 .....	38°03'54.439"	123°06'57.591"
10 .....	38°03'07.527"	123°07'37.755"
11 .....	37°59'32.425"	123°08'24.905"

Point No.	Latitude north	Longitude west
12 ....	37°59'22.344"	123°14'06.127"
13 ....	37°57'31.931"	123°19'19.187"
14 ....	37°54'16.943"	123°23'18.456"
15 ....	37°50'05.522"	123°25'28.791"
16 ....	37°45'33.799"	123°25'32.666"
17 ....	37°41'20.351"	123°23'29.811"
18 ....	37°38'01.053"	123°19'37.445"
19 ....	37°36'04.665"	123°14'30.483"
20 ....	37°35'30.191"	123°13'31.060"
21 ....	37°33'47.197"	123°11'50.904"
22 ....	37°31'12.270"	123°07'39.618"
23 ....	37°30'29.706"	123°08'42.221"
24 ....	37°29'39.287"	123°00'23.711"
25 ....	37°30'34.337"	122°54'18.139"
26 ....	37°31'47.784"	122°51'31.592"
27 ....	37°34'17.533"	122°48'10.415"
28 ....	37°36'58.627"	122°46'05.779"
29 ....	37°39'59.303"	122°44'59.838"
30 ....	37°52'56.355"	122°37'35.195"

**Subpart I—Gray's Reef National Marine Sanctuary**

**§ 922.90 Boundary.**

The Gray's Reef National Marine Sanctuary (Sanctuary) consists of 16.68 square nautical miles (NM) of high sea waters off the coast of Georgia. The Sanctuary boundary includes all waters within a rectangle starting at coordinate 31°21'45"N, 80°55'17"W, commencing to coordinate 31°25'15"N, 80°55'17"W, thence to coordinate 31°25'15"N, 80°49'42"W, thence to coordinate 31°21'45"N, 80°49'42"W, thence back to the point of origin.

**§ 922.91 Prohibited or otherwise regulated activities.**

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or 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 § 922.92, 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, or otherwise altering the seabed in any way nor constructing any structure other than a navigation aid.
- (2) Discharging or depositing any material or other matter except:
  - (i) Fish or parts, bait, and chumming materials;
  - (ii) Effluent from marine sanitation devices; and
  - (iii) Vessel cooling waters.
- (3) Operating a watercraft other than in accordance with the Federal rules and regulations that would apply if there were no Sanctuary.
- (4) Using, placing, or possessing wire fish traps.

(5) Using a bottom trawl, specimen dredge, or similar vessel-towed bottom sampling device.

(6)(i)(A) Breaking, cutting, or similarly damaging, taking, or removing any bottom formation, marine invertebrate, or marine plant.

(B) Taking any tropical fish.

(C) Using poisons, electric charges, explosives, or similar methods to take any marine animal not otherwise prohibited to be taken.

(ii) There shall be a rebuttable presumption that any bottom formation, marine invertebrate, tropical fish, marine plant, or marine animal found in the possession of a person within the Sanctuary have been collected within or removed from the Sanctuary.

(7) Tampering with, damaging, or removing any historic or cultural resources.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

#### § 922.92 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct the specific activity in the Sanctuary including any activity specifically prohibited under § 922.91, if such activity is

(1) Research related to the resources of the Sanctuary,

(2) To further the educational value of the Sanctuary, or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

(c) In considering whether to grant a permit, the Director shall evaluate

(1) The general professional and financial responsibility of the applicant,

(2) The appropriateness of the methods envisioned to 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,

(4) The end value of the activity, and

(5) Other matters as deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any

information obtained will be made available to the public.

### Subpart J—Fagatele Bay National Marine Sanctuary

#### § 922.100 Scope of regulations.

The provisions of this subpart J apply only to the area of the Territory of American Samoa within the boundary of the Fagatele Bay National Marine Sanctuary (Sanctuary). Neither the provisions of this subpart J nor any permit issued under their 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 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 (MHHW) line between Fagatele Point (14°22'15" S, 170°46'5" W) and Steps Point (14°22'44" S, 170°45'27" W). The seaward boundary of the Sanctuary is defined by a straight line between Fagatele Point and Steps Point.

#### § 922.102 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense or to respond to an emergency threatening life, property, or the environment, or as may be permitted by the Director in accordance with § 922.48 and § 922.104, 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)(A) Gathering, taking, breaking, cutting, damaging, destroying, or possessing any invertebrate, coral, bottom formation, or marine plant.

(B) Taking, gathering, cutting, damaging, destroying, or possessing any crown-of-thorns starfish (*Acanthaster planci*).

(C) Possessing or using poisons, electrical charges, explosives, or similar environmentally destructive methods.

(D) 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.

(E) Possessing or using a seine, trammel net, or any type of fixed net.

(ii) There shall be a rebuttable presumption that any items listed in this paragraph (a)(1) found in the possession of a person within the Sanctuary have been used, collected, or removed within or from the Sanctuary.

(2)(i) Operating a vessel closer than 200 feet (60.96 meters) from another vessel displaying a dive flag at a speed exceeding three knots.

(ii) Operating a vessel in a manner which causes the vessel to strike or otherwise cause damage to the natural features of the Sanctuary.

(3) Diving or conducting diving operations from a vessel not flying in a conspicuous manner the international code flag alpha "A."

(4) Littering, depositing, or discharging, into the waters of the Sanctuary, any material or other matter.

(5) Disturbing the benthic community by dredging, filling, dynamiting, bottom trawling, or otherwise altering the seabed.

(6) Removing, damaging, or tampering with any historical or cultural resource within the boundary of the Sanctuary.

(7) Ensnaring, entrapping, or fishing for any sea turtle listed as a threatened or endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(8) Except for law enforcement purposes, 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.

(9) 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.

(b) In addition to those activities prohibited or otherwise regulated under paragraph (a) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted landward of the straight line connecting Fagatele Point (14°22'15" S, 170°46'5" W) and Matautuloa Benchmark (14°22'18" S, 170°45'35" W).

(1) Possessing or using fishing poles, handlines, or trawls.

(2) Fishing commercially.

#### § 922.103 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 Economic and Development Planning Office (EDPO) will assist NOAA in the administration of the Sanctuary, and act as the lead agency, in conformance with the Designation Document, these regulations, and the terms and provisions of any grant or cooperative agreement. NOAA may act to deputize enforcement agents of the American Samoa Government (ASG) to enforce the regulations in this subpart in accordance with existing law. If NOAA chooses to exercise this provision, a memorandum of understanding shall be executed between NOAA and the ASG or the person(s) or entity authorized to act on their behalf.

**§ 922.104 Permit procedures and criteria.**

(a) Any person in possession of a valid permit issued by the Director, in consultation with the EDPO, in accordance with this section and § 922.48, may conduct an activity otherwise prohibited by § 922.102 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; or

(2) Intended to further the educational value of the Sanctuary and thereby enhance understanding of the Sanctuary environmental or improve resource management decisionmaking; or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Coordinator, Fagatele Bay 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. A permit granted for research related to the Sanctuary may include, but is not limited to, the following conditions:

(1) The Director may observe any activity permitted by this section;

(2) any information obtained in the research site shall be made available to the public; and

(3) The submission of one or more reports of the status of such research activity may be required.

**Subpart K—Cordell Bank National Marine Sanctuary**

**§ 922.110 Boundary**

The Cordell Bank National Marine Sanctuary (Sanctuary) consists of a 397.05 square nautical mile (NM) area of marine waters approximately 50 miles west-northwest of San Francisco, California extending at 180° from the northernmost boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the PRNMS boundary and back to the northwest along this boundary to the beginning point. The boundary coordinates are listed in appendix A to this subpart.

**§ 922.111 Prohibited or otherwise regulated activities.**

(a) Except as necessary for national defense or to respond to an emergency threatening life, property or the environment, or except as permitted in accordance with § 922.48 and § 922.112 or certified in accordance with § 922.47, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) (1) Depositing or discharging, from any location within the boundary of the Sanctuary, material or other matter of any kind except:

(A) Fish, fish parts, chumming materials (bait) produced and discarded during routine fishing activities conducted in the Sanctuary; and

(B) Water (including cooling water) and other biodegradable effluents incidental to use of a vessel in the Sanctuary and generated by: Marine sanitation devices approved by the United States Coast Guard; routine vessel maintenance, e.g., deck wash down; engine exhaust; or meals on board vessels.

(ii) Depositing or discharging, from any location beyond the boundaries of the Sanctuary, material or other matter of any kind, except for the exclusions listed in paragraph (a)(1)(i) of this section, which enter the Sanctuary and injure a Sanctuary resource.

(2) Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person. This prohibition does not apply to accidental removal, injury, or takings during normal fishing operations.

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

(b) 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.

(c) 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.

**§ 922.112 Permit procedures and criteria.**

(a) If a person wishes to conduct an activity prohibited under § 922.111, that person must apply for, receive, and have in possession on board any vessel used a valid permit issued pursuant to this section and § 922.48 authorizing that person to conduct that activity.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Cordell Bank National Marine Sanctuary, Fort Mason, Building #201, San Francisco, CA 94123.

(c) The Director, at his or her discretion, may issue a permit subject to such terms and conditions as deemed appropriate, to conduct an activity otherwise prohibited by § 922.111, if the Director finds that the activity will further research related to Sanctuary resources; further the educational or

historical 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 the management of 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 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 the values for which the Sanctuary was designated; and the end value of the applicant's overall activity.

**Appendix A to subpart K of Part 922—  
Cordell Bank National Marine  
Sanctuary Boundary Coordinates**

Point No.	Latitude	Longitude
1 .....	38°15'51.72"	123°10'52.44"
2 .....	38°07'55.88"	123°38'33.53"
3 .....	38°06'45.21"	123°38'00.40"
4 .....	38°04'58.41"	123°37'14.34"
5 .....	38°04'28.22"	123°37'17.83"
6 .....	38°03'42.75"	123°36'55.66"
7 .....	38°03'11.10"	123°36'19.78"
8 .....	38°02'46.12"	123°36'21.98"
9 .....	38°02'02.74"	123°35'56.56"
10 .....	38°01'27.10"	123°35'55.12"
11 .....	38°01'22.28"	123°36'55.13"
12 .....	38°01'11.54"	123°37'28.21"
13 .....	38°00'49.16"	123°37'29.77"
14 .....	37°59'54.49"	123°36'47.90"
15 .....	37°59'12.39"	123°35'59.55"
16 .....	37°58'39.40"	123°35'14.85"
17 .....	37°58'00.57"	123°34'42.93"
18 .....	37°57'18.99"	123°33'43.15"
19 .....	37°56'56.42"	123°32'51.97"
20 .....	37°56'18.90"	123°32'49.24"
21 .....	37°55'22.37"	123°32'36.96"
22 .....	37°54'26.10"	123°32'21.73"
23 .....	37°53'07.46"	123°31'46.81"
24 .....	37°52'34.93"	123°31'18.90"
25 .....	37°51'42.81"	123°31'19.10"
26 .....	37°50'59.58"	123°31'02.96"
27 .....	37°48'49.14"	123°28'44.61"
28 .....	37°49'22.64"	123°29'34.07"
29 .....	37°48'49.14"	123°28'44.61"
30 .....	37°48'36.95"	123°28'08.29"
31 .....	37°48'03.37"	123°28'23.27"
32 .....	37°47'41.54"	123°28'01.97"
33 .....	37°47'01.78"	123°27'16.78"
34 .....	37°46'51.92"	123°26'48.98"
35 .....	37°46'13.20"	123°26'04.79"
36 .....	37°46'00.73"	123°25'36.99"
37 .....	37°50'25.31"	123°25'26.53"
38 .....	37°54'32.28"	123°23'16.49"
39 .....	37°57'45.71"	123°19'17.72"
40 .....	37°59'29.27"	123°14'12.16"
41 .....	37°59'43.71"	123°08'27.55"
42 .....	38°03'10.20"	123°07'44.35"
43 .....	38°04'01.64"	123°06'58.92"
44 .....	38°08'33.32"	123°04'56.24"
45 .....	38°12'42.06"	123°07'10.21"

**Subpart L—Flower Garden Banks  
National Marine Sanctuary**

**§ 922.120 Boundary.**

The Flower Garden Banks National Marine Sanctuary (the Sanctuary) consists of two separate areas of ocean waters over and surrounding the East and West Flower Garden Banks, 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 (NM) south-southwest of Cameron, Louisiana, and encompasses 19.20 NM<sup>2</sup>, and the area designated at the West Bank is located approximately 110 NM southeast of Galveston, Texas, and encompasses 22.50 NM<sup>2</sup>. The two areas encompass a total of 41.70 NM<sup>2</sup> (143.21 square kilometers). The boundary coordinates for each area are listed in appendix A to this subpart.

**§ 922.121 Definitions.**

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

*No-activity zone* means one of 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 as areas in which activities associated with exploration for, development of, or production of hydrocarbons are prohibited. The precise coordinates of these areas are provided in appendix B of this subpart. These particular coordinates define the geographic scope of the "no-activity zones" for purposes of the regulations in this subpart. These coordinates are based on the "1/4 1/4 1/4" 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.

**§ 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 or otherwise mooring within the Sanctuary a vessel greater than 100 feet (30.48 meters) in registered length.

(ii) Anchoring a vessel of less than or equal to 100 feet (30.48 meters) in registered length within an area of the Sanctuary where a mooring buoy is available.

(iii) Anchoring a vessel within the Sanctuary using more than fifteen feet (4.57 meters) of chain or wire rope attached to the anchor.

(iv) Anchoring a vessel within the Sanctuary using anchor lines (exclusive of the anchor chain or wire rope permitted by paragraph (a)(4) of this section) other than those of a soft fiber or nylon, polypropylene, or similar material.

(3)(i) Discharging or depositing, from within the boundaries of 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;

(B) Biodegradable effluents 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, 33 U.S.C. 1322;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down, and graywater as defined by section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(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) 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 by anchoring); 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) 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.

(8) 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).

(9) 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.

(10) 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), (iii), and (iv), (4) and (10) 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 (10) 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 (10) 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 (10) 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 (10) 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 (10) 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 (10) 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.

#### § 922.123 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.122(a)(2) through

(10) 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 Ocean and Coastal Resource Management; ATTN: Manager, Flower Garden Banks National Marine Sanctuary, 1716 Briarcrest Drive, Suite 702, Bryan, TX 77802.

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

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia*, make it a condition of any permit issued that any information obtained under the permit be made available to the public.

(f) The Director may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress, or results of any activity authorized by the permit.

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

The boundary coordinates are based on geographic positions of the North American Datum of 1927 (NAD 27).

Point No.	Latitude	Longitude
<b>East Flower Garden Bank</b>		
E-1 ...	27°52'52.13"	93°37'40.52"
E-2 ...	27°53'33.81"	93°38'22.33"
E-3 ...	27°55'13.31"	93°38'39.07"
E-4 ...	27°57'30.14"	93°38'32.26"
E-5 ...	27°58'27.79"	93°37'42.93"
E-6 ...	27°59'00.29"	93°35'29.56"
E-7 ...	27°58'59.23"	93°35'09.91"
E-8 ...	27°55'20.23"	93°34'13.75"
E-9 ...	27°54'03.35"	93°34'18.42"
E-10 ...	27°53'25.95"	93°35'03.79"
E-11 ...	27°52'51.14"	93°36'57.59"
<b>West Flower Garden Bank</b>		
W-1 ..	27°49'09.24"	93°50'43.35"
W-2 ..	27°50'10.23"	93°52'07.96"
W-3 ..	27°51'13.14"	93°52'50.68"
W-4 ..	27°51'31.24"	93°52'49.79"
W-5 ..	27°52'49.55"	93°52'21.89"
W-6 ..	27°54'59.08"	93°49'41.87"
W-7 ..	27°54'57.08"	93°48'38.52"
W-8 ..	27°54'33.46"	93°47'10.36"
W-9 ..	27°54'13.51"	93°46'48.96"
W-10	27°53'7.67"	93°46'50.67"
W-11	27°52'56.44"	93°47'14.10"
W-12	27°50'38.31"	93°47'22.86"
W-13	27°49'11.23"	93°48'42.59"

**Appendix B to Subpart L of Part 922—Coordinates for the Department of the Interior Topographic Lease Stipulations for OCS Lease Sale 112**

- East Flower Garden Bank
- Block A-366  
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-367  
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>, W<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>, 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>, SW<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>, 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>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SE<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>.
- West Flower Garden Bank
- Block A-383  
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>2</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>; N<sup>1</sup>/<sub>2</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 A-Block 134  
That portion of the block north of a line connecting points 17 and 18, defined under the universal transverse mercator grid system as follows: Point 17: X=1,378,080.00'; Y=10,096,183.00'; Point 18: X=1,376,079.41'; Y=10,096,183.00'; Block A-135  
That portion of the block northwest of a line connecting points 16 and 17, defined under the universal transverse mercator grid system as follows: Point 16: X=1,383,293.84'; Y=10,103,281.93'; Point 17: X=1,378,080.00'; Y=10,096,183.00'.

**Subpart M—Monterey Bay National Marine Sanctuary**

- § 922.130 Boundary.**
- (a) The Monterey Bay National Marine Sanctuary (Sanctuary) consists of an area of approximately 4,024 square nautical miles of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California.
- (b) The northern terminus of the boundary is located along the southern boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) and runs westward to approximately 123°07'W. The boundary then extends south in an arc which generally follows the 500 fathom isobath. At approximately 37°03'N, the boundary arcs south to 122°25'W, 36°10'N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121°41'W, 35°33'N, due west of Cambria. The boundary then extends shoreward towards the mean high-water line. The landward boundary is defined by the mean high-water line between the PRNMS and Cambria, exclusive of a small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point, Santa Cruz, Moss Landing and Monterey

harbors are excluded from the Sanctuary boundary shoreward from their respective International Collision at Sea regulation (Colreg.) demarcation lines except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge is included within the Sanctuary boundary. The boundary coordinates are listed in appendix A to this subpart.

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

*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.

*Motorized personal water craft* means any motorized vessel that is less than fifteen feet in length as manufactured, is capable of exceeding a speed of fifteen knots, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, jet skis, wet bikes, surf jets, miniature speed boats, air boats, and hovercraft.

**§ 922.132 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) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.
  - (2)(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;
    - (D) Engine exhaust; or
    - (E) 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.

(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)(2)(i) (A) through (D) of this section and dredged material deposited at the authorized disposal sites described in appendix B 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) 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 kelp harvesting, aquaculture or traditional fishing operations.

(4) 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) Aquaculture, kelp harvesting or traditional fishing operations;  
 (iii) Installation of navigation aids;  
 (iv) Harbor maintenance in the areas necessarily associated with Federal Projects in existence on January 1, 1993, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties; or  
 (v) Construction, repair, replacement or rehabilitation of docks or piers.  
 (5) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as permitted by regulations, as amended, promulgated under 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) Flying motorized aircraft, except as necessary for valid law enforcement purposes, at less than 1000 feet above any of the four zones within the Sanctuary described in appendix C to this subpart.

(7) Operating motorized personal water craft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in appendix D to this subpart.

(8) 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, sea turtle or seabird taken in violation of regulations, as amended, promulgated under the MMPA, ESA or MBTA.

(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 paragraphs (a)(2) through (9) of this section do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(c) (1) All Department of Defense activities shall 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 (9) 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, Suite D, Monterey, CA 93940). New activities may be exempted from the prohibitions in paragraphs (a)(2) through (9) of this section by the Director after consultation between the Director and the Department of Defense.

(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 respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(d) 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 § 922.133 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a) (2) through (8) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 1,

1993 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 National Marine Sanctuary permit under § 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; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 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 after January 1, 1993 for any of these activities within the Sanctuary shall be invalid.

#### § 922.113 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.132 (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 Ocean and Coastal Resource Management; ATTN: Manager, Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940.

(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 § 922.132 (a)(2) through (8) 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; assist in

managing the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels

or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia*, make it a condition of any permit issued that any 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.

**§ 922.134 Notification and review.**

(a) The authority granted the Director under § 922.49 to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after January 1, 1993 may not be delegated or otherwise assigned to other Federal officials below the Director's level.

(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 § 13377 of the California Water Code; and

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

(2) The MOA specifies how the process of § 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**

[Appendix based on North American datum of 1983.]

Point	Latitude	Longitude
1	37°52'56.09055"	122°37'39.12564"
2	37°39'59.06176"	122°45' 3.79307"
3	37°36'58.39164"	122°46' 9.73871"
4	37°34'17.30224"	122°48'14.38141"
5	37°31'47.55649"	122°51'35.56769"
6	37°30'34.11030"	122°54'22.12170"
7	37°29'39.05866"	123°00'27.70792"
8	37°30'29.47603"	123°05'46.22767"
9	37°31'17.66945"	123°07'47.63363"
10	37°27'10.93594"	123°08'24.32210"
11	37°20'35.37491"	123°07'54.12763"
12	37°13'50.21805"	123°06'15.50600"
13	37°07'48.76810"	123°01'43.10994"
14	37°03'46.60999"	122°54'45.39513"
15	37°02'06.30955"	122°46'35.02125"
16	36°55'17.56782"	122°48'21.41121"
17	36°48'22.74244"	122°48'56.29007"
18	36°41'30.91516"	122°48'19.40739"
19	36°34'45.76070"	122°46'26.96772"
20	36°28'24.18076"	122°43'32.43527"
21	36°22'20.70312"	122°39'28.42026"
22	36°16'43.93588"	122°34'26.77255"
23	36°11'44.53838"	122°28'37.16141"
24	36°07'26.88988"	122°21'54.97541"
25	36°04'07.08898"	122°14'39.75924"
26	36°01'28.22233"	122°07'00.19068"
27	35°59'45.46381"	121°58'56.36189"
28	35°58'59.12170"	121°50'26.47931"
29	35°58'53.63866"	121°45'22.82363"
30	35°55'45.60623"	121°42'40.28540"
31	35°50'15.84256"	121°43'09.20193"
32	35°43'14.26690"	121°42'43.79121"
33	35°35'41.88635"	121°41'25.07414"
34	35°33'11.75999"	121°37'49.74192"
35	35°33'17.45869"	121°05'52.89891"
36	37°35'39.73180"	122°31'14.96033"
37	37°36'49.21739"	122°37'00.22577"
38	37°46'00.98983"	122°39'00.40466"
39	37°49'05.69080"	122°31'46.30542"

**Appendix B to Subpart M of Part 922—  
Dredged Material Disposal Sites  
Adjacent to the Monterey Bay National  
Marine Sanctuary**

(Appendix based on 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	Latitude	Longitude
1 .....	37°45.875'	122°34.140'
2 .....	37°44.978'	122°37.369'
3 .....	37°44.491'	122°37.159'
4 .....	37°45.406'	122°33.889'
5 .....	37°45.875'	122°34.140'

In addition, the U.S. Environmental  
Protection Agency, as of January 1,  
1993, is (in consultation with the U.S.  
Army Corps of Engineers) in the process  
of establishing a dredged material  
disposal site outside the northern  
boundary of the Monterey Bay National  
Marine Sanctuary and within one of  
three study areas described in 57 FR  
43310, Sept. 18, 1992. When that  
disposal site is authorized, this  
appendix will be updated to incorporate  
its precise location.

**Appendix C to Subpart M of Part 992—  
Zones Within the Sanctuary Where  
Overflights Below 1000 Feet Are  
Prohibited**

The four zones are:

(1) From mean high water out to three  
nautical miles (NM) between a line  
extending from Point Santa Cruz on a  
southwesterly heading of 220° and a  
line extending from 2.0 NM north of  
Pescadero Point on a southwesterly  
heading of 240°;

(2) From mean high water out to three  
NM between a line extending from the  
Carmel River mouth on a westerly  
heading of 270° and a line extending  
due west along latitude 35° 33'17.5612"  
off of Cambria;

(3) From mean high water and within  
a five NM arc drawn from a center point  
at the end of Moss Landing Pier; and

(4) Over the waters of Elkhorn Slough  
east of the Highway On bridge to  
Elkhorn Road.

**Appendix D to Subpart M of Part 922—  
Zones and Access Routes Within the  
Sanctuary Where the Operation of  
Motorized Personal Watercraft Is  
Allowed**

The four zones and access routes are:

(1) The approximately one [1.0] NM<sup>2</sup>  
area off Pillar Point Harbor from launch  
ramp (37°30' N, 122°29' W) through  
harbor entrance to the northern  
boundary of Zone One bounded by (a)

37°29.6' (breakwater buoy), 122°29' W;  
(b) 37°28.8' N (bell buoy), 122°28.9' W;  
(c) 37°28.8' N, 122°28' W; and (d)  
37°29.6' N, 122°28' W.

(2) The approximately three [3.0]  
NM<sup>2</sup> area off of Santa Cruz Small Craft  
Harbor ramp from 36°57.4' N along a  
100 yard wide access route due south  
along 122° W to the northern boundary  
of Zone Two (marked by the whistle  
buoy at 10 fathom curve) bounded by (a)  
36°55' N, 122°02' W; (b) 36°55' N,  
121°58' W; (c) 36°56.5' N, 121°58' W;  
and (d) 36°56.5' N, 122°02' W;

(3) The approximately five [5.0] NM<sup>2</sup>  
area off of Moss Landing Harbor/  
Elkhorn Yacht Club Launch Ramp from  
36°48.5' N along a 100 yard wide access  
route due west along harbor entrance to  
the eastern boundary of Zone Three  
bounded by (a) 36°50' N, 121°49.3' W;  
(b) 36°50' N, 121°50.8' W; (c) 36°46.7' N,  
121°50.8' W; (d) 36°46.7' N, 121°49' W;  
(e) 36°47.8' N, 121°48.2' W; and (f)  
36°48.9' N, 121°48.2' W; and

(4) The approximately five [5.0] NM<sup>2</sup>  
area off of the U.S. Coast Guard Pier  
(Monterey Harbor) Launch Ramp from  
36°36.5' N, 121°53.5' W along a 100 yard  
wide access route due north to the  
southern boundary of Zone Four  
bounded by (a) 36°38.7' N, 121°55.4' W;  
(b) 36°36.9' N, 121°52.5' W; (c) 36°38.3'  
N, 121°51.3' W; and (d) 36°40' N,  
121°54.4' W.

**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 x 70°16'42.77" W. From  
that point, the southern border then  
continues in a west-to-east direction  
along a line contiguous with the three-  
mile jurisdictional boundary of  
Massachusetts until reaching the most  
southeast point of the Sanctuary. The  
boundary coordinates are listed in  
appendix A to this subpart.

**§ 922.141 Definitions.**

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

*Industrial material* means mineral, as  
defined in § 922.3.

*Traditional fishing* means those  
commercial or recreational fishing  
methods which have been conducted in  
the past within the Sanctuary.

**§ 922.142 Prohibited or otherwise regulated activities.**

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

(1)(i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

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

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

(D) Engine exhaust.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(1)(i) (A) through (D) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(2) Exploring for, developing or producing industrial materials within the Sanctuary.

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

(i) Anchoring vessels;

(ii) Traditional fishing operations; or

(iii) Installation of navigation aids.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

(5) Taking any marine reptile, marine mammal or seabird in or above the Sanctuary, except as permitted by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(6) Lightering in the Sanctuary.

(7) Possessing within the Sanctuary (regardless of where taken, moved or removed from), except as necessary for valid law enforcement purposes, any historical resource, or any marine

mammal, marine reptile or seabird taken in violation of the MMPA, ESA or MBTA.

(8) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraphs (a) (1), and (3) through (8) of this section do not apply to any activity necessary to respond to an emergency threatening life, property or the environment.

(c)(1)(i) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(ii) Department of Defense military activities may be exempted from the prohibitions in paragraphs (a)(1) and (3) through (7) of this section by the Director after consultation between the Director and the Department of Defense.

(iii) If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practicable any advance impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph(c).

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

(d) The prohibitions in paragraphs (a) (1) and (3) through (7) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 922.48 and § 922.143 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a)(1) and (3) through (7) of this section do not apply any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation (November 4, 1992) and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the

authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a permit under § 922.48 and § 922.143, or under section 310 of the act, authorizing, or otherwise approving, the exploration for, development or production of industrial materials within the Sanctuary, or the disposal of dredged materials within the Sanctuary (except by a certification, pursuant to § 922.47, of valid authorizations in existence on November 4, 1992) and any leases, licenses, permits, approvals or other authorizations authorizing the exploration for, development or production of industrial materials in the Sanctuary issued by other authorities after November 4, 1992, shall be invalid.

**§ 922.143 Permit procedures and criteria.**

(a) A person may conduct an activity prohibited by § 922.142 (a) (1) and (3) through (7) if conducted in accordance with scope, purpose, manner, terms and conditions of a permit issued under this section and § 922.48.

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Stellwagen Bank National Marine Sanctuary, 14 Union Street, Plymouth, MA 02360.

(c) The Director, at his or her discretion may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.142(a) (1) and (3) through (7), if the Director finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director may consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant

for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy

thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia*, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(f) The Director may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe

any activity conducted under the permit an/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 2500 square nautical miles (NM) (approximately 8577 sq. kilometers) 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.

**§ 922.151 Definitions.**

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

*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.

*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.

*Traditional fishing* means fishing using a commercial or recreational fishing method that has been used in the Sanctuary before the effective date of Sanctuary designation (July 22, 1994), including the retrieval of fishing gear.

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

**§ 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 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;

(D) Engine exhaust; or

(E) Dredge spoil in connection with beach nourishment projects related to harbor maintenance activities.

(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) 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.

(4) 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;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with Federal Projects in existence on July 22, 1994, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties;

(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.

(5) 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.

(6) Flying motorized aircraft at less than 2,000 feet both above the Sanctuary within one NM of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, or within one NM 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.

(7) 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.

(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 paragraph (a)(2) through (4), (6) and (7) 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 (4), (6) and (7) 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 (7) 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 (7) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (d).

(2) The Department of Defense is prohibited from conducting bombing activities within the Sanctuary.

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

(e) The prohibitions in paragraphs (a) (2) through (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 § 922.153 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 (7) 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 (except by certification, pursuant to § 922.47, of valid authorizations in existence on July 22, 1994 and issued by other authorities of competent jurisdiction); the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; 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.

**§ 922.153 Permit procedures and criteria.**

(a) A person may conduct an activity prohibited by paragraphs (a) (2) through (7) of § 922.152 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 Ocean and Coastal Resource Management; ATTN: Manager, Olympic Coast National Marine Sanctuary, 138 West First Street, Port Angeles, WA 98362.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or her deems appropriate, to conduct an activity prohibited by paragraphs (a) (2) through (7) of § 922.152, 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 connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or promote the welfare of any Indian tribe adjacent to 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; the end value of the activity; and the impacts of the activity on adjacent Indian tribes. Where the issuance or denial of a permit is requested by the governing body of an 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 the regulations in this subpart. 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.

(g) The Director shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe.

(h) Removal, or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry onto a significant cultural site designated by a tribal governing body, the Director shall require the express written consent of the governing body of the tribe or tribes to which such cultural site pertains.

**§ 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"

2. For the reasons set forth in the Preamble, and under the authority of 16 U.S.C. 1431 15 CFR Parts 924—Monitor Marine Sanctuary, 925—Olympic Coast National Marine Sanctuary, 935—Channel Islands National Marine Sanctuary Regulations, 936—The Point Reyes/Farallon Islands Marine Sanctuary Regulations, 938—The Gray's Reef National Marine Sanctuary Regulations, 941—Fagatele Bay National Marine Sanctuary Regulations, 942—Cordell Bank National Marine Sanctuary, 943—Flower Garden Banks National Marine Sanctuary, 940—Stellwagen Bank National Marine Sanctuary, and 944—Monterey Bay National Marine Sanctuary are removed. [FR Doc. 30564 Filed 12-26-95; 8:45 am]