

U.S.C. 553) because: (1) The 1998–99 fiscal year began on July 1, 1998, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable papayas handled during such fiscal year; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

#### PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 928.226 is revised to read as follows:

##### § 928.226 Assessment rate.

On and after July 1, 1998, an assessment rate of \$0.0063 per pound is established for papayas grown in Hawaii.

Dated: August 11, 1998.

**Eric M. Forman,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 971014245–8190–03]

RIN 0648–AK45

#### National Marine Sanctuary Program Regulations; Florida Keys National Marine Sanctuary Regulations; Anchoring on Tortugas Bank

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

**ACTION:** Final rule; environmental assessment.

**SUMMARY:** The National Oceanic and Atmospheric Administration amends the regulations for the Florida Keys National Marine Sanctuary (FKNMS or Sanctuary) to reinstate and make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length on Tortugas Bank. The preamble to this rule contains an environmental assessment for this action. The intent of this rule is to protect the coral reef at Tortugas Bank. The proposed rule was published on February 11, 1998 and the comment period ended on March 13, 1998.

**DATES:** The effective date of this rule is 12:01 a.m. on August 19, 1998.

**ADDRESSES:** Requests for copies of the management plan or the complete regulations for the Sanctuary should be sent to Billy Causey, Superintendent, Florida Keys National Marine Sanctuary, Post Office Box 500368, Marathon, Florida, 33050.

**FOR FURTHER INFORMATION CONTACT:** Billy Causey at (305) 743–2437.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Sanctuary was designated by an act of Congress entitled the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA, Pub. L. 101–605) which was signed into law on November 16, 1990. The FKNMSPA directed the Secretary of Commerce to develop a comprehensive management plan and regulations for the Sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (NMSA) (also known as Title III of the Marine Protection, Research and Sanctuaries Act of 1972), as amended, 16 U.S.C. 1431 et seq. The NMSA authorizes the development of management plans and regulations for national marine sanctuaries to protect their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

The authority of the Secretary to designate national marine sanctuaries and implement designated sanctuaries is delegated to the Under Secretary of Commerce for Ocean and Atmosphere by the Department of Commerce, Organization Order 10–15, § 3.01(x) (Jan. 26, 1996). The authority to administer the other provisions of the NMSA is delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83–38, Directive 05–50 (September 21, 1983, as amended). The final Sanctuary regulations implementing the designation were published in the **Federal Register** on June 12, 1997, (62 FR 32154) and were

effective July 1, 1997, and codified at 15 CFR Part 922, Subpart P.

In September 1997, NOAA became aware that significant injury to, and destruction of, living coral on the Tortugas Bank, west of the Dry Tortugas National Park, was being caused by the anchoring of vessels 50 meters or greater in registered length.

Section 922.165 of the Sanctuary regulations provides that, where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resources, any and all activities are subject to immediate temporary regulation, including prohibition, for up to 120 days. Emergency regulations cannot take effect until approved by the Governor of the State of Florida. In accordance with 15 CFR 922.165, and the Co-Trustees Agreement for Cooperative Management between NOAA and the State of Florida, in October 1997, NOAA consulted with and received approval by the Governor of the State of Florida to issue a temporary rule prohibiting the anchoring by vessels 50 meters or greater in length on Tortugas Bank west of the Tortugas National Park within the Sanctuary. The temporary rule (62 FR 54381; October 20, 1997), took effect at 12:01 a.m. October 17, 1997 and remained in effect until February 12, 1998. Proposed regulations were printed in the **Federal Register** on February 11, 1998 (63 FR 6883) and the review period for the proposed regulations ended on March 13, 1998. No written comments were received on the proposed regulations. The Florida Keys National Marine Sanctuary Advisory Council reviewed the proposed rule at its meeting on December 9, 1997. The Council recommended approval of the regulation. The Governor and Cabinet of the State of Florida reviewed the rule and approved it without objection on February 10, 1998.

#### II. Summary of the Regulatory Amendment

The rule reinstates and makes permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length on the Tortugas Bank west of the Dry Tortugas National Park within the Sanctuary. Current 15 CFR 922.163(a)(5)(ii) of the final Sanctuary regulations prohibits vessels from anchoring in the Sanctuary on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen. However, that regulation does not protect the coral located in the area covered by this rule because the water there is deeper than 40 feet.

Anchoring of vessels 50 meters or greater in registered length on Tortugas Bank has been documented as having caused significant injury to living coral reef resources. Vessels of such size have anchor gear (ground tackle) of massive weight and size with heavy chains hundreds of feet in length weighing as much as 8 to 10 tons. Proper anchoring requires that a length of chain five to seven times the depth of the water be lowered, this act of prudent seamanship allows for safe anchoring under any sea conditions. In most circumstances, much of this chain will drop to and remain on the bottom. The weight of the chain holds the vessel in place. In this area, the heavy chain crushes the coral and sponges. In addition, as the tide changes or the wind shifts, vessels often change position and drag their anchor chain over the seabed, further damaging the reef.

For example, a 180 foot Coast Guard Cutter uses a 2000 pound anchor and chain sized appropriately to deploy it; whereas a Coast Guard 110 foot Patrol Boat uses an 80 pound anchor and rather than chain, nylon line is used as ground tackle (anchor gear).

Coast Guard patrol boats regularly in the area around Tortugas Bank report that they encounter either very large vessels (50 meters or greater in length), or fishing vessels or pleasure craft generally less than 35 meters in length.

Vessels smaller than 50 meters in registered length have not been documented as having caused injury or loss of living coral on Tortugas Bank. Their anchoring gear is less massive in size, length and weight. Therefore, this rule does not prohibit anchoring by vessels less than 50 meters in registered length on the Tortugas Bank. The location by coordinates of the prohibited anchoring area is set forth in the text of the final rule. Vessels greater than 50 meters in registered length are already prohibited by the FKNMSPA from operating in certain other areas of the Sanctuary, referred to in that statute and Sanctuary regulations as Areas to be Avoided (15 CFR 922.164(a)).

Transit, fishing and all other activities currently allowed in the area are not affected by this rule. Alternative anchor sites for vessels 50 meters or greater in length are located within approximately two nautical miles of the prohibited area. The close proximity of these alternative anchoring sites should mitigate any potential economic impact on such vessels since cost of the time and fuel to maneuver to this area and the additional time and labor in letting out and pulling in the additional anchor chain should be minimal.

The recommended alternative anchoring location in the vicinity of the area closed to anchoring by vessels 50 meters or greater in registered length is:

An area approximately 2 nautical miles west of the living coral reefs that form the Tortugas Bank, where anchoring damage to the corals is occurring. The bottom type in this area is sand/mud or sand/shell. This area is indicated on NOAA Nautical Chart Numbers 11434 and 11420. Mariners should note the existence of a submerged shipwreck located at 24°38' N 83°08.00' W. This shipwreck is a landing ship transport which was lost in 1948.

### III. Miscellaneous Rulemaking Requirements

#### *National Environmental Policy Act*

NOAA has prepared an environmental assessment (EA), pursuant to the National Environmental Policy Act of 1969, 42 U.S.C 4321 et seq., for the Florida Keys National Marine Sanctuary on this rule. The text of the EA follows.

#### *Environmental Assessment*

##### A. Description of the Affected Environment

The Dry Tortugas Banks are located at the westernmost extent of the Florida Keys. These banks are separated from the remainder of the Keys by a 24 meter deep channel. The Banks have a rim of Holocene coral reef development surrounding an inner basin containing several sandy islands including Loggerhead Key, Garden Key, Bush Key, and Hospital Key. A little-known deep-water coral reef, informally named Sherwood Forest, is found at Tortugas Bank. The seabed includes corals, sponges, and other delicate coral reef organisms.

Human uses of the affected environment includes snorkeling and diving, shrimping, day tours on charter boats, and pleasure boating on private boats. All of these vessels are less than 50 meters in registered length and none have been documented as causing damage to the reef by anchoring.

##### B. Need for the Rule

The region within the Sanctuary known as Tortugas Bank has traditionally been an anchoring area for large, foreign flag vessels holding up and waiting order to enter a port within the region. However, personnel from the adjacent Dry Tortugas National Park have noticed that vessels have begun to anchor on the Bank itself.

On August 30, Florida Keys National Marine Sanctuary staff received a video

from a recreational diver charter captain documenting anchoring damage caused by a large, foreign-flagged vessel anchored within state waters on the Tortugas Bank, within the Sanctuary.

Shortly, thereafter, Sanctuary biologists visited the reported anchoring site to conduct a biological assessment of the injury to the living coral reef. When they arrived on Tortugas Bank, there were four foreign ships ranging from over 400 to 800 feet in length anchored on the 60' deep coral reef bank. Although staff was unable to locate the original site which was reported in the video, they were able to assess and photo-document the reef damage caused by the four vessels.

Staff noted significant damage to corals, sponges, and other delicate coral reef organisms. Wide swaths of barren seabed and overturned coral heads were evidence of the ongoing disruption to the coral reef community caused by the ships' anchors and anchor chains.

The rule reinstates and makes permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length in an area approximately 39.53 square nautical miles. Transit, fishing and all other activities currently allowed in the area are not affected by this rule.

NOAA has identified and recommended alternative anchor sites within approximately two nautical miles of the prohibited area. Vessels greater than 50 meters in registered length are already prohibited by the FKNMSPA from operating in certain other areas of the Sanctuary, referred to in that statute and Sanctuary regulations as Areas to be Avoided (15 CFR 922.164(a)).

##### C. Alternatives, Including This Action and Their Environmental Impacts

###### *No Action*

One alternative is to take no action, thus maintaining the status quo. This alternative is not acceptable because the coral reef located at Tortugas Bank would continue to be injured or destroyed by the anchoring of vessels 50 meters or greater in length.

###### *Prohibit Anchoring by Vessels 50 Meters or Greater in Registered Length on Tortugas Bank Within the Florida Keys National Marine Sanctuary*

The preferred alternative is to reinstate and make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length on Tortugas Bank within the Florida Keys National Marine Sanctuary. This alternative would protect the coral reef at Tortugas Bank

while not unduly restricting the passage and anchoring of vessels which have not been documented as having caused harm in the area.

*Prohibit Anchoring by All Vessels on Tortugas Bank Within the Florida Keys National Marine Sanctuary*

This alternative, to prohibit anchoring by all vessels on Tortugas Bank within the Florida Keys National Marine Sanctuary, would unduly restrict the vessels which have not been documented as having caused harm in the area. Vessels smaller than 50 meters in registered length have not been documented as having caused injury or loss of living coral on Tortugas Bank. Their anchoring gear is less massive in size, length and weight than that of vessels of 50 meters or greater in registered length.

Current uses of the Tortugas Bank, west of the Dry Tortugas National Park, include snorkeling and diving, shrimping, day tours on charter boats, and pleasure boating on private boats. All of these vessels are less than 50 meters in registered length and none have been documented as causing damage to the reef by anchoring. To prohibit anchoring by these vessels on the Tortugas Bank, west of the Dry Tortugas National Park, would likely be an unreasonable economic burden on small businesses and an unnecessary impact on the public relative to the apparently minimal environmental benefit of such a restriction.

*Extend the Area to be Avoided to Include Tortugas Bank West of the Dry Tortugas National Park*

Extending the existing statutory Area to be Avoided to include Tortugas Bank west of the Dry Tortugas National Park is an alternative that was considered and rejected. This alternative would eliminate the safe passage and transit through the area by all vessels greater than 50 meters registered length. The passage of vessels through this area has not been determined to be detrimental to the environment. Vessels 50 meters or greater in registered length frequently pass through this area enroute to major Gulf coast ports, including Galveston and Houston, Texas; Mobile, Alabama; New Orleans, Louisiana; Tampa, Florida and the ships transit this area enroute to the Panama Canal. The overly broad restriction that would be caused if this alternative were accepted would cause a great economic burden to the shipping industry, and therefore was not selected as the preferred alternative.

**D. List of Agencies and Persons Consulted**

In an effort to inform all affected parties of the temporary rule, NOAA sent electronic mail messages to major international shipping companies, and notified the US Coast Guard which resulted in a Notice to Mariners. NOAA issued a press release that was reported by the media throughout the area. Sanctuary staff notified all international underwriters for the relevant shipping companies to apprise them of the temporary rule and soliciting their help in notifying their shipping clients. Additionally, Sanctuary staff contacted all the Pilots' Associations around the Gulf Coast and solicited their help in spreading the word to the shipping companies about the rule. In addition, NOAA consulted with, and received approval from the State of Florida. NOAA continued to consult, as appropriate, with all relevant parties during the development of this rule. [End of Environmental Assessment]

**Administrative Procedure Act**

Under 5 U.S.C. 553(d)(3), the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA for good cause finds that delaying the effective date for this rule for 30 days is contrary to the public interest. First, substantial notice of the temporary rule was provided via notice to mariners, Sanctuary radio announcements, press releases, press conferences, and with assistance by the U.S. Coast Guard and Dry Tortugas National Park staff on the water within the area. Since expiration of the temporary rule and pending this rulemaking, there has been voluntary compliance with the prohibition. However, Sanctuary staff have recently received reports of vessels 50 meters or greater in registered length returning and anchoring on Tortugas Bank. Consequently, significant damage to the living resources could result if the rule is delayed for 30 days. Second, 30 days is not necessary to give notification to vessels which might anchor in the area in the future or for any vessel presently anchored to move to an alternative anchoring site. The U.S. Coast Guard will give immediate notification to vessels and they then can, in a short period of time, move and re-anchor in the recommended location. Additional notice will be provided in the manner described above. This rule, therefore, is effective on 12:01 am on the second day after the filing of this rule at the Office of the Federal Register, to allow adequate time for any vessels that are

anchored in the prohibited area to relocate.

**Executive Order 12866**

The Office of Management and Budget (OMB) has concurred that this rule is not significant within the meaning of Section 3(f) of Executive Order 12866.

**Executive Order 12612: Federalism Assessment**

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

**Regulatory Flexibility Act**

When this rule was proposed, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this regulatory action would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. No comments were received on the certification. Accordingly, the basis for the certification has not changed.

**Paperwork Reduction Act**

This rule does not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

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

Administrative practice and procedure, Coastal zone, Historic preservation, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research, Wildlife. (Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program) Dated: August 12, 1998.

**Nancy Foster,**

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

Accordingly, for the reasons set forth above, 15 CFR Part 922 is amended as follows:

**PART 922—[AMENDED]**

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

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

**Subpart P—Florida Keys National Marine Sanctuary**

2. Section 922.164 is amended by adding paragraph (g) to read as follows:

**§ 922.164 Additional activity regulations by Sanctuary area.**

\* \* \* \* \*

(g) Anchoring on Tortugas Bank. Vessels 50 meters or greater in registered length are prohibited from anchoring on the Tortugas Bank. The coordinates of the area on the Tortugas Bank, west of the Dry Tortugas National Park, closed to anchoring by vessels 50 meters or greater in registered length are:

- (1) 24° 45.75'N 82° 54.40'W
- (2) 24° 45.60'N 82° 54.40'W
- (3) 24° 39.70'N 83° 00.05'W
- (4) 24° 32.00'N 83° 00.05'W
- (5) 24° 37.00'N 83° 06.00'W
- (6) 24° 40.00'N 83° 06.00'W

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****21 CFR Part 178**

[Docket No. 97F-0467]

**Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of benzenesulfonic acid, 4-chloro-5-methyl-2-[[4,5-dihydro-3-methyl-5-oxo-1-(3-sulfophenyl)-1H-pyrazo-4-yl]azo], ammonium salt (C.I. Pigment Yellow 191:1) as a colorant in polymers intended for use in contact with food. This action is in response to a petition filed by Ciba Specialty Chemicals Corp.

**DATES:** The regulation is effective August 17, 1998. Submit written objections and requests for a hearing by September 16, 1998.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of November 19, 1997 (62 FR 61823), FDA announced that a food additive petition (FAP 8B4566) had been filed by Ciba Specialty Chemicals Corp., 335 Water St., Newport, DE 19804 (presently, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of benzenesulfonic acid, 4-chloro-5-methyl-2-[[4,5-dihydro-3-methyl-5-oxo-1-(3-sulfophenyl)-1H-pyrazo-4-yl]azo], ammonium salt (C.I. Pigment Yellow 191:1) as a colorant in polymers intended for use in contact with food. In this final rule the agency is using the alternate name 4-chloro-2-[[5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl]azo]-5-methylbenzenesulfonic acid, diammonium salt (1:2), (C.I. Pigment Yellow 191:1).

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this rule as announced in the notice of filing for FAP 8B4566 (62 FR 61823). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 16, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

**PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS**

1. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

**§ 178.3297 Colorants for polymers.**

\* \* \* \* \*

(e) \* \* \*