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CODE OF FEDERAL REGULATIONS

Title 15
Commerce and Foreign Trade

Part 800 to End

Revised as of January 1, 2026

Containing a codification of documents
of general applicability and future effect

As of January 1, 2026

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 15 CFR 801.1 *refers to title 15, part 801, section 1.*

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Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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OLIVER A. POTTS,
Director,
Office of the Federal Register
January 1, 2026

THIS TITLE

Title 15—COMMERCE AND FOREIGN TRADE is composed of four volumes. The parts in these volumes are arranged in the following order: Parts 0–299, 300–744, 745–799, and part 800–End. The first volume containing parts 0–299 is comprised of Subtitle A—Office of the Secretary of Commerce, Subtitle B, chapter I—Bureau of the Census, Department of Commerce, and chapter II—National Institute of Standards and Technology, Department of Commerce. The second volume containing parts 300–744, is comprised of a portion of chapter III—International Trade Administration, Department of Commerce. The third volume containing parts 745–799 is comprised of the remainder of chapter III—International Trade Administration, Department of Commerce, chapter IV—Foreign-Trade Zones Board, and chapter VII—Bureau of Industry and Security, Department of Commerce. The fourth volume containing part 800–End is comprised of chapter VIII—Bureau of Economic Analysis, Department of Commerce, chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce, chapter XI—Technology Administration, Department of Commerce, chapter XIII—East-West Foreign Trade Board, chapter XIV—Minority Business Development Agency, chapter XV—Office of the Under-Secretary for Economic Affairs, Department of Commerce, Subtitle C, chapter XX—Office of the United States Trade Representative, and Subtitle D, chapter XXIII—National Telecommunications and Information Administration, Department of Commerce. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 2026.

For this volume, Ann Worley was Chief Editor, aided by Michael Chambers. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 15—Commerce and Foreign Trade

(This book contains part 800–end)

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PART 800 [RESERVED]

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

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AUTHORITY: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

SOURCE: 77 FR 24374, Apr. 24, 2012, unless otherwise noted.

§ 801.1 Purpose.

The purpose of this part is to provide general information on international trade in services and direct investment data collection programs and analyses under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 to 3108, as amended) (the Act). The purpose of the Act is to provide for the collection of comprehensive and reliable information pertaining to international investment, including international trade in services and direct investment, and to do so with a minimum of burden on respondents and with no unnecessary duplication of effort.

§ 801.2 Definitions.

For purposes of the Act and for reporting requirements under this part:

(a) *United States,* when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign,* when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) *United States person* means any person resident in the United States or subject to the jurisdiction of the United States.

(e) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

(f) *Business enterprise* means any organization, association, branch, or venture which exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

(g) *Services* are economic activities whose outputs are other than tangible goods. This term includes, but is not limited to, banking, other financial services, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design, engineering, management consulting, real estate, professional services, entertainment, education, and health care.

(h) *International investment* means:

(1) The ownership or control, directly or indirectly, by contractual commitment or otherwise, by foreign persons

of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a United States person; and

(2) The ownership or control, directly or indirectly, by contractual commitment or otherwise, by United States persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person.

(i) *Direct investment* means the ownership or control, directly or indirectly, by one person of 10 percent or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

§ 801.3 Reporting requirements.

Except for surveys subject to rulemaking in §§ 801.7, 801.8, 801.10, 801.11, 801.12, and 801.13, reporting requirements for all other surveys conducted by the Bureau of Economic Analysis shall be as follows:

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Director of the Bureau of Economic Analysis in the FEDERAL REGISTER prior to the implementation of a survey;

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code, persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act; and

(c) Persons not notified in writing of their filing obligation by the Bureau of Economic Analysis are not required to complete the survey.

[85 FR 31052, May 22, 2020, as amended at 87 FR 54887, Sept. 8, 2022]

§ 801.4 Recordkeeping requirements.

In accordance with section 3104(b)(1) of title 22 of the United States Code, persons subject to the jurisdiction of the United States shall maintain any information essential for carrying out the surveys and studies provided for by the Act.

[79 FR 47575, Aug. 14, 2014, as amended at 79 FR 53291, Sept. 9, 2014; 79 FR 69759, Nov. 24, 2014]

§ 801.5 Confidentiality.

Information collected pursuant to 3104(c) of title 22 of the United States Code is confidential.

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under § 801.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer.

§ 801.6 Penalties specified by law.

(a) *Civil penalties.* Whoever fails to furnish any information required by the Act or to comply with any rule, regulation, order or instruction promulgated under the Act shall be subject to a civil penalty of not less than $2,500, and not more than $25,000, and to injunctive relief commanding such person to comply, or both (see 22 U.S.C. 3105(a) and (b)). These civil penalties

are subject to inflationary adjustments (15 CFR 6.4.).

(b) *Criminal penalties.* Whoever willfully fails to submit any information required by the Act or willfully violates any rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment or both (see 22 U.S.C. 3105(c)).

§ 801.7 Rules and regulations for the BE–13, Survey of New Foreign Direct Investment in the United States.

The BE–13, Survey of New Foreign Direct Investment in the United States, is conducted to collect data on the acquisition or establishment of U.S. business enterprises by foreign investors and the expansion of existing U.S. affiliates of foreign companies to establish new facilities where business is conducted. Foreign direct investment is defined as the ownership or control by one foreign investor of 10 percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent interest of an unincorporated U.S. business enterprise, including a branch. BEA will describe the proposed information collection in a public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–13 survey are given in paragraphs (a) through (d) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–13, Survey of New Foreign Direct Investment in the United States, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, who is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by filing the properly completed BE–13 report (BE–13A, BE–13B, BE–13D, BE–13E, or BE–13 Claim for Exemption).

(b) *Who must report.* A BE–13 report is required of any U.S. business enterprise, except certain private funds, see exception in item (b.4.), in which:

(1) A foreign direct investment in the United States relationship is created;

(2) An existing U.S. affiliate of a foreign parent establishes a new U.S. business enterprise, expands its U.S. operations, or acquires a U.S. business enterprise, or;

(3) BEA requests a cost update (Form BE–13E) for a U.S. business enterprise that previously filed Form BE–13B or BE–13D.

(4) Certain private funds are exempt from reporting on the BE–13 survey. If a U.S. business enterprise is a private fund and does not own, directly or indirectly, 10 percent or more of another business enterprise that is not also a private fund or a holding company, it is not required to file any BE–13 report except to indicate exemption from the survey if contacted by BEA.

(c) *Forms to be filed.* Depending on the type of investment transaction, U.S. affiliates would report their information on one of five forms—BE–13A, BE–13B, BE–13D, BE–13E, or BE–13 Claim for Exemption.

(1) Form BE–13A—Report for a U.S. business enterprise when a foreign entity acquires a voting interest (directly, or indirectly through an existing U.S. affiliate) in that U.S. business enterprise including segments, operating units, or real estate; and

(i) The total cost of the acquisition is greater than $40 million; and

(ii) By this acquisition, the foreign entity now owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the acquired U.S. business enterprise.

(2) Form BE–13B—Report for a U.S. business enterprise when it is established by a foreign entity or by an existing U.S. affiliate of a foreign parent; and

(i) The expected total cost to establish the new U.S. business enterprise is greater than $40 million; and

(ii) The foreign entity owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the new U.S. business enterprise.

(3) Form BE–13D—Report for an existing U.S. affiliate of a foreign parent when it expands its operations to include a new facility where business is conducted, and the expected total cost of the expansion is greater than $40 million.

(4) Form BE–13E—Report for a U.S. business enterprise that previously filed Form BE–13B or BE–13D. Form BE–13E collects updated cost information and will be collected annually for three years after the year of the establishment or expansion of the U.S. business enterprise.

(5) Form BE–13 Claim for Exemption—Report for a U.S. business enterprise that:

(i) was contacted by BEA but does not meet the requirements for filing Forms BE–13A, BE–13B, or BE–13D; or

(ii) whether or not contacted by BEA, met all requirements for filing Forms BE–13A, BE–13B, or BE–13D except the $40 million reporting threshold.

(d) *Due date.* The BE–13 forms are due no later than 45 calendar days after the acquisition is completed, the new U.S. business enterprise is established, the expansion is begun, the cost update is requested, or a notification letter is received from BEA by a U.S. business enterprise that does not meet the filing requirements for the survey.

[90 FR 42534, Sept. 3, 2025]

§ 801.8 Rules and regulations for the BE–10, Benchmark Survey of U.S. Direct Investment Abroad.

A BE–10, Benchmark Survey of U.S. Direct Investment Abroad, will be conducted every five years and covers years ending in 4 and 9. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 and 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–10 survey are given in paragraphs (a) through (d) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted in writing by BEA about reporting in this survey must respond by filing a properly completed BE–10 report (BE–10A and BE–10B, BE–10C, BE–10D, and/or BE–10 Claim for Not Filing).

(b) *Who must report.* A BE–10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, including a branch—at the end of the U.S. person's fiscal year that ended in the calendar year covered by the survey. Foreign affiliates that are private funds and meet certain criteria are exempt from the BE–10 survey. Specifically, if a foreign affiliate meets all of the criteria in paragraphs (b)(1) though (3) of this section, the U.S. reporter is not required to file a BE–10 form for that affiliate except to indicate exemption from the survey if contacted by BEA:

(1) The foreign affiliate is a private fund; and

(2) The private fund foreign affiliate does not own, directly or indirectly through another business enterprise, an ''operating company''—*i.e.*, a business enterprise that is not a private fund or a holding company—in which the consolidated U.S. reporter owns at least 10 percent of the voting interest; and

(3) If the U.S. reporter owns the private fund indirectly (through one or more other business enterprises), there are no ''operating companies'' between the consolidated U.S. reporter and the indirectly-owned foreign private fund.

(c) *Forms to be filed.* (1) Form BE–10A must be completed by a U.S. reporter. Form BE–10A is required to cover the fully consolidated U.S. domestic business enterprise. It must also file Form(s) BE–10B, BE–10C, and/or BE–10D

for its foreign affiliates, whether held directly or indirectly.

(2) Form BE–10B must be filed for each majority-owned foreign affiliate (for purposes of this survey, a ''majority-owned'' foreign affiliate is one in which the combined direct and indirect ownership interest of all U.S. parents of the foreign affiliate exceeds 50 percent) for which any of the items in paragraph (c)(2)(i) through (iii) of this section (not just the U.S. reporter's share) was greater than $80 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey:

(i) Total assets (without netting liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; or

(iii) Net income after provision for foreign income taxes.

(3) Form BE–10C must be filed:

(i) For each majority-owned foreign affiliate for which any one of the three items listed in paragraph (c)(2) of this section was greater than $25 million but for which none of these items was greater than $80 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey; and

(ii) For each minority-owned foreign affiliate (for purposes of this survey, a ''minority-owned'' foreign affiliate is one in which the combined direct and indirect ownership interest of all U.S. parents of the foreign affiliate is 50 percent or less) for which any one of the three items listed in paragraph (c)(2) of this section was greater than $25 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(4) Form BE–10D must be filed for majority- or minority-owned foreign affiliates for which none of the three items listed in paragraph (c)(2) of this section was greater than $25 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey. Form BE–10D is a schedule; a U.S. reporter would submit one or more pages of the form depending on the number of affiliates that are required to be filed on this form.

(5) BE–10 Claim for Not Filing will be provided for response by:

(i) Persons that are not subject to the reporting requirements of the BE–10 survey but have been contacted by BEA concerning their reporting status; or

(ii) U.S. reporters that have been contacted by BEA concerning their reporting status for foreign affiliates that are no longer subject to the reporting requirements of the BE–10 survey.

(d) *Due date.* A fully completed and certified BE–10 report comprising Form BE–10A and Form(s) BE–10B, BE–10C, BE–10D, and/or BE–10 Claim for Not Filing (as required) is due to be filed with BEA not later than May 31 of the year after the year covered by the survey, for those U.S. reporters filing fewer than 50, and June 30, for those U.S. reporters filing 50 or more, foreign affiliate Forms BE–10B, BE–10C, and/or BE–10D.

[84 FR 60915, Nov. 12, 2019]

§ 801.9 [Reserved]

§ 801.10 Rules and regulations for BE–12, Benchmark Survey of Foreign Direct Investment in the United States.

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States, will be conducted once every five years and covers years ending in 2 and 7. BEA will describe the proposed information collection in a public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 and 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States, contained in this section, whether or not

they are contacted by BEA. Also, a person, or their agent, contacted by BEA about reporting in this survey must respond in writing pursuant to this section. This may be accomplished by filing a properly completed BE–12 report (BE–12A, BE–12B, BE–12C, or BE–12 Claim for Not Filing).

(b) *Who must report.* A BE–12 report is required for each U.S. affiliate (except certain private funds as described in paragraphs (b)(1) through (3) of this section), that is, for each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at the end of the business enterprise's fiscal year that ended in the calendar year covered by the survey. Certain private funds are exempt from reporting on the BE–12 survey. If a U.S. business meets ALL of the following 3 criteria, it is not required to file any BE–12 report except to indicate exemption from the survey if contacted by BEA:

(1) The U.S. business enterprise is a private fund;

(2) The private fund does not own, directly or indirectly through another business enterprise, an ''operating company''—*i.e.,* a business enterprise that is not a private fund or a holding company—in which the foreign parent owns at least 10 percent of the voting interest; and

(3) If the foreign parent owns the private fund indirectly (through one or more other U.S. business enterprises), there are no U.S. ''operating companies'' between the foreign parent and the indirectly-owned private fund.

(c) *Forms to be filed.* (1) Form BE–12A must be completed by a U.S. affiliate that was majority-owned by one or more foreign parents (for purposes of this survey, a ''majority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent) if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the following three items for the U.S. affiliate (not just the foreign parent's share) was greater than $300 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey:

(i) Total assets (do not net out liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; or

(iii) Net income after provision for U.S. income taxes.

(2) Form BE–12B must be completed by:

(i) A majority-owned U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than $60 million (positive or negative) but none of these items was greater than $300 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(ii) A minority-owned U.S. affiliate (for purposes of this survey, a ''minority-owned'' U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than $60 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey .

(3) Form BE–12C must be completed by a U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, none of the three items listed in paragraph (c)(1) of this section for a U.S. affiliate (not just the foreign parent's share), was greater than $60 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(4) Any U.S. person that is contacted by BEA concerning the BE–12 survey, but is not subject to the reporting requirements, must file a BE–12 Claim for Not Filing. The requirement in this paragraph (c)(4) is necessary to ensure

compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately on the same type of report that would have been required if the real estate holdings were aggregated.

(e) *Due date.* A fully completed and certified Form BE–12A, BE–12B, BE–12C, or BE–12 Claim for Not Filing is due to be filed with BEA not later than May 31 of the year after the year covered by the survey (or by June 30 for reporting companies that use BEA's eFile system).

[87 FR 58954, Sept. 29, 2022]

§ 801.11 Rules and regulations for the BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons.

The BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons will be conducted once every five years and covers years ending in 2 and 7. BEA will describe the proposed information collection in a public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520).

All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–120 survey are given in this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

(a) *Response required.* A response is required, every fifth year, from persons subject to the reporting requirements of the BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons, contained in this section, whether or not they are contacted by BEA. Also, a person, or its agent, that is contacted by BEA about reporting on this survey, either by sending a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:

(1) Completing and returning the BE–120 by the due date of the survey; or

(2) If exempt, by completing the determination of reporting status section of the BE–120 survey and returning it to BEA by the due date of the survey.

(b) *Who must report.* A BE–120 report is required of each U.S. person that had transactions with foreign persons in the categories covered by the survey during the fiscal year covered by the survey.

(c) *What must be reported.* (1) A U.S. person that had combined sales to foreign persons that exceeded $2 million, and/or combined purchases from foreign persons that exceeded $1 million in the services and intellectual property categories covered by the survey during its fiscal year, on an accrual basis, is required to provide data on total sales and/or purchases of each of the covered types of transactions and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated). The $2 million threshold for sales and the $1 million threshold for purchases should be applied to the covered transactions categories with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the $2 million and $1 million thresholds apply separately to sales and purchases, the mandatory reporting requirement may apply to sales only, to purchases only, or to both. The determination of whether a U.S. services provider is subject to this reporting requirement can be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(2) A U.S. person that had combined sales to foreign persons that were $2 million or less, and combined purchases from foreign persons that were $1 million or less in the transaction

categories covered by the survey during its fiscal year, on an accrual basis, is required to provide the total sales and/or purchases for each type of transaction in which they engaged. The $2 million threshold for sales and the $1 million threshold for purchases should be applied to the covered transactions categories with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the $2 million and $1 million thresholds apply separately to sales and purchases, the mandatory reporting requirement may apply to sales only, to purchases only, or to both.

(i) *Voluntary reporting of transactions.* If, during the reporter's fiscal year, combined sales were $2 million or less, and combined purchases were $1 million or less, on an accrual basis, the U.S. person may, in addition to providing the required total for each type of transaction, report sales at a country and affiliation level of detail on the applicable mandatory schedule(s). The estimates can be judgmental, that is, based on recall, without conducting a detailed records search.

(ii) [Reserved]

(3) Exemption claims: Any U.S. person that receives the BE–120 survey form from BEA, but is not subject to the reporting requirements, must file an exemption claim by completing the determination of reporting status section of the BE–120 survey and returning it to BEA by the due date of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(d) *Covered types of services and intellectual property.* Services transactions covered by this survey consist of: Advertising and related services; Architectural, engineering, scientific, and other technical services; Computer services; Construction; Financial services (for reporters who are not a financial services providers); Franchises and trademarks licensing fees; Information services; Legal, accounting, management consulting, and public relations services; Licenses for the use of outcomes of research and development; Licenses to reproduce and/or distribute computer software; Licenses to reproduce and/or distribute audiovisual products; Maintenance and repair services; Manufacturing services; Operating leasing services; Other business services; Personal, cultural, and recreational services; Research and development services; Primary insurance premiums and losses (for reporters who are not a U.S. insurance company); Space transport services; Telecommunications services; Trade-related services; Waste treatment and depollution, agricultural, and mining services.

(e) *Types of transactions excluded from the scope of this survey.* (1) Financial services transactions conducted by a U.S. financial services provider, all insurance services conducted by a U.S. insurance company, and all travel and transport activities that are not space transport services.

(2) Sales and purchases of goods. Trade in goods involves products that have a physical form, and includes payments or receipts for electricity.

(3) Sales and purchases of financial instruments, including stocks, bonds, financial derivatives, loans, mutual fund shares, and negotiable CDs. (However, securities brokerage is a service).

(4) Income on financial instruments (interest, dividends, capital gain distributions, etc.).

(5) Compensation paid to, or received by, employees.

(6) Penalties and fines and gifts or grants in the form of goods and cash (sometimes called ''transfers'').

(f) *Due date.* A fully completed and certified BE–120 report, or qualifying exemption claim with the determination of reporting status section completed, is due to be filed with BEA by July 31 of the year after the year covered by the survey.

[87 FR 54887, Sept. 8, 2022]

§ 801.12 Rules and regulations for the BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons.

The BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons will be conducted once every five calendar years and covers years ending in 3 and 8. BEA will describe the proposed

information collection in a public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–140 survey are given in this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

(a) *Response required.* A response is required from U.S. insurance companies subject to the reporting requirements of the BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons, contained in this section, whether or not they are contacted by BEA. Also, a U.S. insurance company, or its agent, that is contacted by BEA about reporting on this survey, either by transmission of a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:

(1) Completing and returning the BE–140 by the due date of the survey; or

(2) If exempt, by completing the determination of reporting status section of the BE–140 survey and returning it to BEA by the due date of the survey.

(b) *Who must report.* A BE–140 report is required of each U.S. insurance company that had insurance transactions with foreign persons in the categories covered by the survey during the calendar year covered by the survey.

(c) *What must be reported.* (1) A U.S. insurance company that had transactions with foreign persons that exceeded $2 million in the insurance categories covered by the survey during its calendar year, on an accrual basis, is required to provide data on the total transactions of each of the covered types of insurance transactions and must disaggregate the totals by country and by relationship to the foreign counterparty (foreign affiliate, foreign parent group, or unaffiliated). The $2 million threshold should be applied to insurance services transactions with foreign persons by all parts of the consolidated domestic U.S. Reporter. The determination of whether a U.S. insurance company is subject to this reporting requirement may be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(2) A U.S. insurance company that had transactions with foreign persons that were $2 million or less in the insurance categories covered by the survey during its calendar year, on an accrual basis, is required to provide the total for each type of transaction in which they engaged.

(i) *Voluntary reporting of insurance transactions.* If, during the calendar year covered by the survey, total transactions were $2 million or less in the insurance categories covered by the survey, on an accrual basis, the U.S. insurance company may, in addition to providing the required total for each type of transaction, voluntarily report transactions at a country and affiliation level of detail on the applicable mandatory schedule(s).

(ii) [Reserved]

(3) Exemption claims: Any U.S. person that receives the BE–140 survey form from BEA but is not subject to the reporting requirements must file an exemption claim by completing the determination of reporting status section of the BE–140 survey and returning it to BEA by the due date of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(d) *Covered types of insurance services.* Insurance services covered by the BE–140 survey consist of transactions between U.S. insurance companies and foreign persons for premiums and losses on primary insurance, premiums on reinsurance assumed and ceded, losses on reinsurance assumed and ceded, as well as receipts and payments for auxiliary insurance services.

(e) *Types of transactions excluded from the scope of this survey.* Premiums paid to, or losses received from, foreign insurance companies on direct insurance.

(f) *Due date.* A fully completed and certified BE–140 report, or qualifying

exemption claim with the determination of reporting status section completed, is due to be filed with BEA by July 31 of the year after the year covered by the survey.

[87 FR 54888, Sept. 8, 2022]

§ 801.13 Rules and regulations for the BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons.

The BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons will be conducted every five years and covers fiscal years ending in 4 and 9. BEA will describe the proposed information collection in a public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–180 survey are given in this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons, contained in this section, whether or not they are contacted by BEA. Also, a person, or its agent, that is contacted by BEA about reporting on this survey, either by sending a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:

(1) Completing and returning the BE–180 by the due date of the survey; or

(2) If exempt, completing the determination of reporting status section of the BE–180 survey and returning it to BEA by the due date of the survey.

(b) *Who must report.* A BE–180 report is required of each U.S. person that is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and that had financial services transactions with foreign persons in the categories covered by the survey during the fiscal year covered by the survey.

(c) *BE–180 definition of financial services provider.* The definition of financial services provider used for this survey is identical to the definition of the term as used in the North American Industry Classification System, United States, Sector 52-Finance and Insurance, and holding companies that own or influence, and are principally engaged in making management decisions for, these firms (part of Sector 55—Management of Companies and Enterprises). For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation); nondepository credit intermediation (including credit card issuing, sales financing, and other non-depository credit intermediation); activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation); securities and commodity contracts intermediation and brokerage (including investment banking and securities dealing, securities brokerage, commodity contracts and dealing, and commodity contracts brokerage); securities and commodity exchanges; other financial investment activities (including miscellaneous intermediation, portfolio management, investment advice, and all other financial investment activities); insurance carriers; insurance agencies, brokerages, and other insurance related activities; insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds); other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles); and holding companies that

own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

(d) *What must be reported.* (1) A U.S. person that had combined sales to, or purchases from foreign persons that exceeded $3 million in the financial services categories covered by the survey during its fiscal year, on an accrual basis, is required to provide data on total sales and/or purchases of each of the covered types of financial services and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated). The $3 million threshold for sales and purchases should be applied to financial services transactions with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the $3 million threshold applies separately to sales and purchases, the mandatory reporting requirement may apply to sales only, to purchases only, or to both. The determination of whether a U.S. financial services provider is subject to this reporting requirement can be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(2) A U.S. person that had combined sales to, or purchases from foreign persons that were $3 million or less in the financial services categories covered by the survey during its fiscal year, on an accrual basis, is required to provide the total sales and/or purchases for each type of transaction in which they engaged. The $3 million threshold for sales and purchases should be applied to financial services transactions with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the $3 million threshold applies separately to sales and purchases, the mandatory reporting requirement may apply to sales only, to purchases only, or to both.

(e) *Voluntary reporting of financial services transactions.* If, during the fiscal year, combined sales and purchases were $3 million or less, on an accrual basis, the U.S. person may, in addition to providing the required total for each type of transaction, report sales at a country and affiliation level of detail on the applicable mandatory schedule(s). The estimates can be judgmental, that is, based on recall, without conducting a detailed records search.

(f) *Exemption claims.* Any U.S. person that receives the BE–180 survey form from BEA, but is not subject to the reporting requirements, must file an exemption claim by completing the determination of reporting status section of the BE–180 survey and returning it to BEA by the due date of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(g) *Covered types of financial services.* Financial services covered by the BE–180 survey consist of transactions between U.S. financial services companies and foreign persons for brokerage, underwriting, financial management, credit-related, credit-cards, financial advisory, financial custody, securities lending, electronic funds transfers, and other financial services.

(h) *Due date.* A fully completed and certified BE–180 report, or qualifying exemption claim with the determination of reporting status section completed, is due to be filed with BEA by July 31 of the year after the year covered by the survey.

[87 FR 54889, Sept. 8, 2022]

PARTS 814–899 [RESERVED]

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

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SUBCHAPTER A—GENERAL REGULATIONS

PARTS 900–901 [RESERVED]

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

AUTHORITY: 44 U.S.C. 3501 *et seq.*

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays the control numbers assigned to information collection requirements of the National Oceanic and Atmospheric Administration (NOAA) by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA). NOAA intends that this part comply with the requirements of section 3507(c)(B)(i) of the PRA, which requires that agencies inventory and display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
15 CFR	
Part 908	–0025
Part 911	–0157
917.11	–0008, –0019, and –0034
917.22	–0008, –0019, and –0034
917.30(b)	–0008, –0019, and –0034
917.41	–0008, –0019, and –0034
917.43(c)	–0119
918.7	–0147
Part 921, subpart B	–0121
Part 923	–0119
924.6	–0141
928.3	–0119
929.10	–0141
935.9	–0141
936.8	–0141
937.8	–0141
938.8	–0141
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942.8	–0141
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Part 960, subpart B	–0174
Part 970	–0145
Part 971	–0170
Part 981	–0144
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216.22	–0178
216.23	–0179
216.24(f)(2)	–0387
216.24(h)(9)(iii)	–0651
216.26	–0084
216.27	–0084
216.33	–0084
216.37	–0084
216.38	–0084
216.39	–0084
216.41	–0084
216.45	–0084
216.72	–0699
216.74	–0699
216.104	–0151
216.106	–0151
216.108	–0151
216.145	–0151
222.301(i)	–0084
222.307	–0230
222.308	–0084
223.203(b)	–0399
223.206(a)	–0230
223.206(b) and (c)	–0178
223.207(e)	–0309
223.210	–0613
224.105(c)	–0580
229.4	–0293
229.5	–0292
229.6	–0292
230.8	–0311
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259.30	–0090
259.35	–0041
260.15	–0266
260.36	–0266
260.37	–0266
260.96	–0266
260.97	–0266
260.103	–0266
270.3	–0556
270.6	–0556
270.8	–0556
270.10	–0556
270.12	–0556
270.13	–0556
270.14	–0556
270.15	–0556
270.19	–0556
270.20	–0556
270.23	–0556
296.5	–0082
300.22	–0148
300.22(b)(3)	–0387
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300.25	–0239
300.26	–0690
300.26(c)	–0239
300.26(d)	–0239
300.27	–0040
300.32	–0218
300.34	–0218
300.35	–0361
300.45	–0218
300.65(c)(5)	–0575, –0592, and –0665
300.65(d)	–0575 and –0592
300.65(h) through (l)	–0512
300.67(a) through (j)	–0592
300.67(k) and (l)	–0592 and –0665
300.103(b) and (c)	–0194

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
300.104	–0194
300.105	–0194
300.106	–0194
300.107(c) and (l)	–0194
300.107(k)	–0724
300.108	–0194
300.109(c)	–0194
300.110(e)	–0194
300.111	–0194
300.112	–0194
300.113(a)	–0194
300.123	–0205
300.124(b)	–0016
300.125	–0358
300.152	–0228
300.153(b)	–0228
300.154(b)	–0228
300.154(c)	–0228
300.154(d)	–0228
300.206(b)(2)	–0651
300.207(c)	–0651
300.208(c)	–0651
300.209(c)	–0651
300.212	–0595
300.213	–0595
300.215	–0649
300.217	–0595
300.218	–0649
300.219	–0596
300.225	–0649
300.322	–0732
300.323	–0732
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600.215	–0314
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600.506	–0075
600.507	–0075
600.508	–0329
600.510	–0075
600.512	–0309
600.520	–0075
600.630	–0314
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622.5	–0016
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622.6	–0358
622.8	–0205 and –0593
622.9	–0205
622.15	–0013 and –0262
622.16	–0551
622.18	–0205 and –0593
622.19	–0205
622.20	–0205
622.21	–0551
622.22	–0551
622.26	–0013 and –0016
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622.28	–0544
622.40(a)(2)	–0205
622.40(d)(2)	–0013
622.41	–0345
622.41(a)	–0016 and –0305
622.41(g)(3)	–0345
622.45	–0365
622.45(a)	–0013
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622.51(a)(3)	–0542
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622.53	–0345
622.70	–0205
622.71	–0016
622.75	–0205
622.90(a)	–0013
622.170	–0205
622.170(c)	–0013
622.171	–0205
622.172	–0013 and –0551
622.176	–0016
622.176(a)(2)	–0593
622.176(b)(2)	–0593
622.176(c)	–0013
622.176(d)	–0593
622.177	–0359
622.178	–0603
622.192(h)	–0365
622.200	–0205
622.200(c)	–0013
622.201	–0205
622.203	–0016
622.203(a)	–0591
622.203(b)	–0013
622.204	–0593
622.205	–0544
622.207	–0345
622.220	–0205
622.221	–0016
622.225	–0205
622.240	–0205
622.240(b)	–0013
622.241	–0205
622.242	–0016
622.242(b)	–0013
622.243	–0359
622.244	–0593
622.270	–0205
622.270(d)	–0013
622.271	–0016
622.271(c)	–0013
622.300	–0593
622.370	–0205
622.371	–0205
622.372	–0205
622.373	–0205
622.374	–0016
622.374(c)	–0013
622.376	–0359
622.400	–0205

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
622.402	–0358 and –0359
622.430	–0359
622.450	–0359
622.470	–0205
622.473	–0013
635.2	–0327
635.4(b)	–0327
635.4(c)	–0327
635.4(d)	–0327
635.4(e)(4)	–0205
635.4(g)	–0202 and –0205
635.4(j)	–0327
635.5(a)	–0371, –0328, and –0452
635.5(a)(4)	–0328
635.5(b)	–0013 and –0239
635.5(c)	–0328
635.5(d)	–0323
635.5(f)	–0380
635.6(c)	–0373
635.7(c)	–0374
635.9(e)	–0328
635.14(d)	–0677
635.15(a)(2), (c)(2) and (k)(4).	–0677
635.21(d)	–0202
635.26	–0247
635.31(b)	–0216
635.32	–0309
635.33	–0338
635.42	–0040
635.43	–0040
635.44	–0040
635.46	–0363
635.69(a) and (e)(4)	–0372
648.4	–0202, –0212, –0529, and –0679
648.5	–0202
648.6	–0202 and –0555
648.7	–0018, –0202, –0212, –0229, –0590, and –0605
648.8	–0350
648.9	–0202, –0404, and –0529
648.10	–0202, –0529, and –0605
648.11	–0202, –0546, –0555, and –0679
648.13	–0391 and –0481
648.14	–0202, –0212, –0469, –0602, and –0605
648.15	–0202
648.15(b)	–0558
648.17	–0202
648.26	–0601
648.53	–0202 and –0491
648.54	–0202
648.56	–0321
648.58	–0202 and –0416
648.60	–0491 and –0541
648.70	–0238
648.74	–0240
648.76	–0202
648.80	–0202, –0422, and –0602
648.81	–0202, –0412, and –0605
648.82	–0202 and –0605
648.84	–0202 and –0351
648.85	–0202, –0212, and –0605
648.86	–0202, –0391, and –0605
648.87	–0202 and –0605
648.88	–0202 and –0605
648.89	–0202, –0412, and –0605
648.90	–0202 and –0605
648.91	–0202
648.92	–0202 and –0561
648.93	–0202
648.94	–0202 and –0489
648.95	–0202
648.96	–0202
648.100	–0202
648.106	–0202
648.122	–0469
648.123	–0305
648.144	–0305
648.160	–0202
648.205	–0404
648.207	–0348–0043, 0348–0044, 0348–0040, and 0348–0046
648.262	–0202
648.264	–0351
648.291	–0590
648.322	–0480 and –0489
654.6	–0358 and –0359
660.13	–0573, –0619, and –0738
660.14	–0573
660.15	–0619 and –0738
660.16	–0593
660.17	–0619 and –0738
660.20	–0355
660.25	–0203, –0620, and –0737
660.113	–0271, –0573, –0618, –0619, –0737, and –0794
660.114	–0618
660.140	–0593, –0619, –0620, and –0737
660.150	–0593 and –0620
660.160	–0593 and –0620
660.216	–0593
660.219	–0352
660.316	–0593
660.319	–0352
660.404	–0433
660.408	–0433
660.504	–0361
660.512	–0204
660.704	–0361
660.705(l), (o), and (p)	–0498
660.707	–0204
660.708	–0498
660.712(d) and (f)	–0498
660.713(f)(2) through (g)(5)	–0498
663.4	–0271
663.10	–0203
663.11	–0203
663.22	–0305
663.33	–0203
665.13	–0463, –0490, –0577, –0584, –0586, –0589, and –0664
665.14	–0214, –0462, –0577, –0584, –0586, –0589, and –0664
665.16	–0361, –0584, –0586, –0589, and –0664
665.17	–0214 and –0490
665.19	–0441, –0519, and –0584
665.20	–0612
665.105	–0214
665.124	–0463
665.126	–0462
665.128	–0360
665.142	–0490 and –0586
665.144	–0214
665.145	–0214
665.162	–0490
665.203	–0490 and –0577
665.205	–0214
665.207	–0214

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665.224	–0463
665.226	–0462
665.228	–0360
665.242	–0490 and –0586
665.244	–0214
665.246	–0360
665.247	–0214
665.262	–0490
665.404	–0490 and –0584
665.407	–0214
665.424	–0463
665.426	–0462
665.428	–0360
665.442	–0490 and –0586
665.444	–0214
665.445	–0214
665.462	–0490
665.603	–0490
665.606	–0214
665.624	–0463
665.628	–0360
665.642	–0490 and –0586
665.644	–0214
665.445	–0214
665.662	–0490
665.801	–0490 and –0589
665.803	–0214
665.804	–0360
665.807	–0490
665.808	–0214
665.815	–0456
665.819	–0689
665.905	–0664
665.935	–0664
665.965	–0664
679.4	–0206, –0272, –0334, –0393, –0513, –0545, –0565, –0665, and –0811
679.5(a)	–0213, –0269, –0515, and –0272
679.5(b), (h), and (k)	–0213
679.5(c), (e), and (f)	–0213, –0272, –0330, –0513, and –0515
679.5(e) and (f)	–0401
679.5(g)	–0213, –0272, and –0330
679.5(l)(1) through (l)(5)	–0272
679.5(l)(7)	–0711
679.5(l)(8)	–0665
679.5(n)	–0269
679.5(p)	–0428
679.5(q)	–0513
679.5(r)	–0213, –0445, and –0545
679.5(s)	–0213, –0445, and –0565
679.5(t)	–0665
679.5(u)	–0206 and –0711
679.5(v)	–0272
679.5(w)	–0272
679.5(x)	–0811
679.6	–0206
679.7	–0206, –0269, –0272, –0316, –0318, –0330, –0334, –0393, –0445, –0513, –0514, –0545, –0565, and –0811
679.7(a)(7)(i)	–0206
679.7(a)(7)(vii) through (ix)	–0334
679.7(b)(6) and (7) and (c)(3) and (c)(4).	–0206 and –0334
679.7(f)(1) through (f)(7) and (f)(9) through (16).	–0269 and –0272
679.7(f)(8)	–0206 and –0334
679.7(k)	–0393 and –0330
679.7(m)	–0811
679.7(n)(1)	–0334
679.7(n)(2) and (n)(4) through (8).	–0545
679.7(n)(3)	–0445
679.20(a)(7)(viii)	–0743
679.20(a)(8)(iii)	–0206
679.21(f) and (g)	–0393 and –0401
679.22(a)	–0206
679.24	–0353
679.26	–0316
679.28(a)	–0213 and –0330
679.28(b) through (e) and (i).	–0330
679.28(f)	–0206 and –0445
679.28(g)(2)(iv)	–0330.
679.28(h)	–0213 and –0515
679.28(j) and (k)	–0515
679.28(l)	–0330
679.31(c)	–0269
679.32(c)(1) through (3)	–0269
679.32(c)(3)	–0269 and –0318
679.32(d)	–0269, –0318, and –0330
679.32(e)	–0269
679.33	–0711
679.40	–0272
679.41(a)	–0272 and –0592
679.41(b), (c)(1) through (9), (d) through (f), (g)(1) through (4), (h) through (k), (m), and (n).	–0272
679.41(c)(10), (g)(5) through (8), and (l).	–0272 and –0665
679.42(a), and (c) through (j).	–0272 and –0665
679.42(b), (k)(2), and (l)	–0353
679.42(f)(1)	–0272 and –0592
679.42(f)(6)	–0272, –0592, –0665
679.42(k)	–0445
679.43	–0272, –0318, –0334, –0401, –0545, –0565, –0569, and –0711
679.45	–0272, –0592, and –0711
679.50(a)	–0206, –0269, and –0272
679.51	–0206, –0269, –0272, –0318, –0401, –0513, –0545, –0565, and –0811
679.52	–0318
679.53	–0318
679.54	–0318
679.55	–0206, –0272, and –0711
679.56	–0711
679.57	–0318
679.61(a) through (f)	–0393 and –0401
679.62	–0393
679.63	–0213 and –0330
679.65	–0213, –0515, and –0633
679.66	–0711
679.67	–0711
679.80	–0545
679.81	–0545
679.82	–0545
679.83	–0545
679.84	–0213, –0330, and –0545
679.84(c)(7)	–0318
679.85	–0545
679.90	–0565
679.91	–0565
679.93	–0213, –0330, and –0565
679.93(c)(7)	–0318
679.94	–0564
679.95	–0711

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
679.100(a)	–0330 and –0515
679.100(b)	–0318, –0330, and –0515
679.100(c)	–0515
679.100(d)	–0330
679.114	–0818
679.115	–0818
679.117(b)(1)(xiv)	–0445
679.118(f)(2)	–0818
679.120(b)	–0330
679.120(c), (d), and (e)	–0318
679.130	–0811
679.131	–0811
679.132	–0811
679.134	–0811
679.135	–0811
680.4(a) through (q)	–0514
680.5(a) and (h) through (l)	–0514
680.5(b)	–0515
680.5(f), (g), (m)	–0711
680.6	–0518
680.20	–0516
680.21	–0514
680.22	–0334
680.23(d)(1) and (d)(2)	–0445
680.23(e), (f), and (g)	–0330
680.40(f), (g), (h), (i), (j), (k), (l), and (m).	–0514
680.41	–0514
680.42(a) and (b)	–0514
680.43	–0514
680.44	–0514
697.4(a), (d) and (e)	–0202
697.5	–0202
697.6	–0202
697.7	–0202
697.8	–0350
697.12	–0202
697.21	–0351
697.22	–0309

[1] And –0305.

[60 FR 39248, Aug. 2, 1995]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §902.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

PART 903—PUBLIC INFORMATION

AUTHORITY: 5 U.S.C. 552 as amended by Pub. L. 93–502; 5 U.S.C. 553; Reorg. Plan No. 2 of 1965, 15 U.S.C. 311 note; 32 FR 9734, 31 FR 10752.

§903.1 Access to information.

The rules and procedures regarding public access to the records of the National Oceanic and Atmospheric Administration are found at 15 CFR part 4.

[57 FR 35749, Aug. 11, 1992]

PART 904—CIVIL PROCEDURES

Subpart A—General

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904.2 Definitions and acronyms.
904.3 Filing and service of notices, documents, and other papers.
904.4 Computation of time periods.
904.5 Appearances.

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904.103 [Reserved]
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904.106 Compromise of civil penalty.
904.107 Joint and several respondents.
904.108 Factors considered in assessing civil penalties.

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904.212 Failure to prosecute or defend.
904.213 Settlements.
904.214 Stipulations.
904.215 Consolidation.
904.216 Prehearing conferences.

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904.241 Depositions.
904.242 Interrogatories.
904.243 Admissions.
904.244 Production of documents and inspection.
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904.271 Initial decision.
904.272 Petition for reconsideration.
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904.301 Bases for permit sanctions or denials.
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904.320 [Reserved]
904.321 Reinstatement of permit.
904.322 Interim action.

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904.401 Written warning as a prior violation.
904.402 Procedures.
904.403 Review and appeal of a written warning.

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904.501 Notice of seizure.
904.502 Bonded release of seized property.
904.503 Appraisement.
904.504 Administrative forfeiture proceedings.
904.505 Summary sale.
904.506 Remission of forfeiture and restoration of proceeds of sale.
904.507 Recovery of certain storage costs.
904.508 Voluntary forfeiture by abandonment.
904.509 Disposal of forfeited property.
904.510 Return of seized property.

AUTHORITY: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 1361 *et seq.*, 16 U.S.C. 3371 *et seq.*, 16 U.S.C. 1431 *et seq.*, 16 U.S.C. 6901 *et seq.*, 16 U.S.C. 773 *et seq.*, 16 U.S.C. 951 *et seq.*, 16 U.S.C. 5001 *et seq.*, 16 U.S.C. 3631 *et seq.*, 42 U.S.C. 9101 *et seq.*, 30 U.S.C. 1401 *et seq.*, 16 U.S.C. 971 *et seq.*, 16 U.S.C. 781 *et seq.*, 16 U.S.C. 2431 *et seq.*, 16 U.S.C. 972 *et seq.*, 16 U.S.C. 916 *et seq.*, 16 U.S.C. 1151 *et seq.*, 16 U.S.C. 3601 *et seq.*, 16 U.S.C. 1851 note; 15 U.S.C. 330 *et seq.*, 16 U.S.C. 2461 *et seq.*, 16 U.S.C. 5101 *et seq.*, 16 U.S.C. 1371 *et seq.*, 16 U.S.C. 3601 *et seq.*, 16 U.S.C. 1822 note, 16 U.S.C. 4001 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 5601 *et seq.*, 16 U.S.C. 973 *et seq.*, 16 U.S.C. 1827a, 16 U.S.C. 7701 *et seq.*, 16 U.S.C. 7801 *et seq.*, 16 U.S.C. 1826g, 51 U.S.C. 60101 *et seq.*, 16 U.S.C. 7001 *et seq.*, 16 U.S.C. 7401 *et seq.*, 16 U.S.C. 2401 *et seq.*, 16 U.S.C. 1826k note, 1857 note, 22 U.S.C. 1980, Pub. L. 116–340, 134 Stat. 5128.

SOURCE: 71 FR 12448, Mar. 10, 2006, unless otherwise noted.

Subpart A—General

§ 904.1 Purpose and scope.

(a) This part sets forth the procedures governing NOAA's administrative proceedings for assessment of civil penalties, suspension, revocation, modification, or denial of permits, issuance and use of written warnings, and release or forfeiture of seized property.

(b) This subpart defines terms appearing in this part and sets forth rules for the filing and service of documents in administrative proceedings covered by this part.

(c) The following statutes authorize NOAA to assess civil penalties, impose permit sanctions, issue written warnings, and/or seize and forfeit property in response to violations of those statutes:

(1) Anadromous Fish Products Act, 16 U.S.C. 1822 note;

(2) Antarctic Conservation Act of 1978, 16 U.S.C. 2401 *et seq.;*

(3) Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431 *et seq.;*

(4) Antarctic Mineral Resources Protection Act of 1990, 16 U.S.C. 2461 *et seq.;*

(5) Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.;*

(6) Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601 *et seq.;*

(7) Atlantic Striped Bass Conservation Act, 16 U.S.C. 1851 note;

(8) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971 *et seq.;*

(9) Billfish Conservation Act of 2012, 16 U.S.C. 1827a;

(10) DESCEND Act of 2020, Public Law 116–340, 134 Stat. 5128;
(11) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.;*
(12) Dolphin Protection Consumer Information Act, 16 U.S.C. 1371 *et seq.;*
(13) Driftnet Impact Monitoring, Assessment, and Control Act, 16 U.S.C. 1822 note;
(14) Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972 *et seq.;*
(15) Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.;*
(16) Ensuring Access to Pacific Fisheries Act, 16 U.S.C. 7701 *et seq.* (North Pacific), 16 U.S.C. 7801 *et seq.* (South Pacific);
(17) Fish and Seafood Promotion Act of 1986, 16 U.S.C. 4001 *et seq.;*
(18) Fisherman's Protective Act of 1967, 22 U.S.C. 1980;
(19) Fur Seal Act Amendments of 1983, 16 U.S.C. 1151 *et seq.;*
(20) High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826g;
(21) High Seas Fishing Compliance Act, 16 U.S.C. 5501 *et seq.;*
(22) Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.;*
(23) Land Remote Sensing Policy Act of 1992, as amended, 51 U.S.C. 60101 *et seq.;*
(24) Magnuson–Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.;*
(25) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.;*
(26) National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.;*
(27) North Pacific Anadromous Stocks Convention Act of 1992, 16 U.S.C. 5001 *et seq.;*
(28) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773 *et seq.;*
(29) Northwest Atlantic Fisheries Convention Act of 1995, 16 U.S.C. 5601 *et seq.;*
(30) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.;*
(31) Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631 *et seq.;*
(32) Pacific Whiting Act of 2006, 16 U.S.C. 7001 *et seq.;*
(33) Port State Measures Agreement Act of 2015, 16 U.S.C. 7401 *et seq.;*
(34) Shark Conservation Act of 2010, 16 U.S.C. 1826k note, 1857 note;
(35) South Pacific Tuna Act of 1988, 16 U.S.C. 973 *et seq.;*
(36) Sponge Act, 16 U.S.C. 781 *et seq.;*
(37) Tuna Conventions Act of 1950, 16 U.S.C. 951 *et seq.;*
(38) Weather Modification Reporting Act, 15 U.S.C. 330 *et seq.;*
(39) Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. 6901 *et seq.;* and
(40) Whaling Convention Act of 1949, 16 U.S.C. 916 *et seq.*

(d) The procedures set forth in this part are intended to apply to administrative proceedings under these and any other statutes or authorities administered by NOAA.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38935, June 30, 2022]

§ 904.2 Definitions and acronyms.

Unless the context otherwise requires, or as otherwise noted, terms in this Part have the meanings prescribed in the applicable statute or regulation. In addition, the following definitions apply:

Administrator means the Administrator of NOAA or a designee.

Agency means the National Oceanic and Atmospheric Administration (NOAA).

Applicable statute means a statute cited in § 904.1(c), and any regulations issued by NOAA to implement it.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG);

(2) Any special agent or fishery enforcement officer of NMFS;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary of Commerce to enforce the provisions of any statute administered by NOAA; or

(4) Any USCG personnel accompanying and/or acting under the direction of any person described in paragraph (1), (2), or (3) of this definition.

Citation means a written warning (see section 311(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1861(c), and section 11(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773i(c)).

Civil penalty means a civil administrative monetary penalty assessed under the civil administrative process described in this part.

Decision means an initial or final administrative decision of the Judge.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include inquiries regarding procedures, scheduling, and status.

Final administrative decision means an order or decision of NOAA assessing a civil penalty, permit sanction, or written warning, which is not subject to further Agency review under this part, and which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

Forfeiture includes, but is not limited to, surrender or relinquishment of any claim to an item by written agreement, or otherwise; or extinguishment of any claim to, and transfer of title to an item to the U.S. Government by court order or by order of the Administrator under a statute.

Hearing means a civil administrative hearing on a NOVA, NOPS and/or NIDP.

Initial decision means a decision of the Judge that, under applicable statute and regulation, is subject to review by the Administrator.

Judge means Administrative Law Judge.

NIDP means Notice of Intent to Deny Permit.

NMFS means the National Marine Fisheries Service.

NOAA (see *Agency*) means either the Administrator or a designee acting on behalf of the Administrator.

NOPS means Notice of Permit Sanction.

NOVA means Notice of Violation and Assessment of civil penalty.

Party means the respondent and the Agency; a joint and several respondent, vessel owner, or permit holder, if they enter an appearance; and any other person allowed to participate under § 904.204(b).

Permit means any license, permit, certificate, or other approval issued by NOAA under an applicable statute.

Permit holder means the holder of a permit or any agent or employee of the holder, and includes the owner and operator of a vessel for which the permit was issued.

Permit sanction means suspension, revocation, or modification of a permit (see § 904.320).

Respondent means a person issued a written warning, NOVA, NOPS, NIDP or other notice.

Settlement agreement means any agreement resolving all or part of an administrative or judicial action. The terms of such an agreement may include, but are not limited to, payment of a civil penalty, and/or imposition of a permit sanction.

USCG means the U.S. Coast Guard.

Vessel owner means the owner of any vessel that may be liable in rem for any civil penalty, or whose permit may be subject to sanction in proceedings under this part.

Written warning means a notice in writing to a person that a violation has been documented against the person or against the vessel which is owned or operated by the person, where no civil penalty or permit sanction is imposed or assessed.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38936, June 30, 2022]

§ 904.3 Filing and service.

(a) Service of a NOVA (§ 904.101), NOPS (§ 904.302), NIDP (§ 904.303), Notice of Proposed Forfeiture (§ 904.504), Notice of Seizure (§ 904.501), Notice of Summary Sale (§ 904.505), Written Warning (§ 904.402), or Initial Decision (§ 904.271) may be made by certified mail (return receipt requested), electronic transmission, or third party commercial carrier to an addressee's last known address or by personal delivery. Service of a notice under this subpart will be considered effective upon receipt.

(b) Service of documents and papers, other than those described in paragraph (a) of this section, may be made by first class mail (postage prepaid), electronic transmission, or third party commercial carrier, to an addressee's last known address or by personal delivery. Service of documents and papers will be considered effective upon the date of postmark (or as otherwise shown for government-franked mail),

delivery to third party commercial carrier, electronic transmission, or upon personal delivery.

(c) Whenever this part requires service of a document or other paper referred to in paragraph (a) or (b) of this section, such service may effectively be made on the agent for service of process, on the attorney for the person to be served, or other representative. Refusal by the person to be served (including an agent, attorney, or representative) of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal. In cases where a document or paper described in paragraph (a) of this section is returned unclaimed, service will be considered effective if the U.S. Postal Service provides an affidavit stating that the party was receiving mail at the same address during the period when certified service was attempted.

(d) Any documents and other papers filed or served must be signed:

(1) By the person or persons filing the same;

(2) By an officer thereof if a corporation;

(3) By an officer or authorized employee if a government instrumentality; or

(4) By an attorney or other person having authority to sign.

[87 FR 38936, June 30, 2022]

§ 904.4 Computation of time periods.

For a NOVA, NOPS or NIDP, the 30-day response period begins to run on the date the notice is received. All other time periods begin to run on the day following the service date of the document, paper, or event that begins the time period. Saturdays, Sundays, and Federal holidays will be included in computing such time, except that when such time expires on a Saturday, Sunday, or Federal holiday, in which event such period will be extended to include the next business day. This method of computing time periods also applies to any act, such as paying a civil penalty, required by this part to take place within a specified period of time. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays will be excluded in the computation.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38936, June 30, 2022]

§ 904.5 Appearances.

(a) A party may appear in person or by or with counsel or other representative.

(b) Whenever an attorney or other representative contacts the Agency on behalf of another person with regard to any matter that has resulted in, or may result in, a written warning, a NOVA, NOPS, NIDP, or a forfeiture proceeding, that attorney or other representative shall file a Notice of Appearance with the Agency. Such notice shall indicate the name of the person on whose behalf the appearance is made.

(c) Each attorney or other representative who represents a party in any hearing shall file a written Notice of Appearance with the Judge. Such notice shall indicate the name of the case, the docket number, and the party on whose behalf the appearance is made.

Subpart B—Civil Penalties

§ 904.100 General.

This subpart sets forth the procedures governing NOAA administrative proceedings for the assessment of civil penalties under the statutes cited in § 904.1(c).

§ 904.101 Notice of violation and assessment (NOVA).

(a) A NOVA will be issued by NOAA and served on the respondent(s). The NOVA will contain:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act, regulation, license, permit, agreement, or order allegedly violated;

(3) The findings and conclusions upon which NOAA bases the assessment;

(4) The amount of the civil penalty assessed; and

(5) Information concerning the respondent's rights upon receipt of the NOVA, and will be accompanied by a

copy of the regulations in this part governing the proceedings.

(b) In assessing a civil penalty, NOAA will take into account information available to the Agency concerning any factor to be considered under the applicable statute, and any other information that justice or the purposes of the statute require.

(c) The NOVA may also contain a proposal for compromise or settlement of the case. NOAA may also attach documents that illuminate the facts believed to show a violation.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38937, June 30, 2022]

§ 904.102 Procedures upon receipt of a NOVA.

(a) The respondent has 30 days from receipt of the NOVA in which to respond. During this time the respondent may:

(1) Accept the penalty or compromise penalty, if any, by taking the actions specified in the NOVA;

(2) Seek to have the NOVA amended, modified, or rescinded under paragraph (b) of this section;

(3) Request a hearing under § 904.201(a);

(4) Request an extension of time to respond under paragraph (c) of this section; or

(5) Take no action, in which case the NOVA becomes a final administrative decision in accordance with § 904.104.

(b) The respondent may seek amendment or modification of the NOVA to conform to the facts or law as that person sees them by notifying Agency counsel at the telephone number or address specified in the NOVA. If amendment or modification is sought, Agency counsel will either amend the NOVA or decline to amend it, and so notify the respondent.

(c) The respondent may, within the 30-day period specified in paragraph (a) of this section, request an extension of time to respond. Agency counsel may grant an extension of up to 30 days unless he or she determines that the requester could, exercising reasonable diligence, respond within the 30-day period. If Agency counsel does not respond to the request within 48 hours of its receipt, the request is granted automatically for the extension requested, up to a maximum of 30 days. A telephonic response to the request within the 48-hour period is considered an effective response, and will be followed by written confirmation.

(d) Agency counsel may, for good cause, grant an additional extension beyond the 30-day period specified in paragraph (c) of this section.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38937, June 30, 2022]

§ 904.103 [Reserved]

§ 904.104 Final administrative decision.

(a) If no request for hearing is timely filed as provided in § 904.201(a), the NOVA becomes effective as the final administrative decision and order of NOAA 30 days after service of the NOVA or on the last day of any delay period granted.

(b) If a request for hearing is timely filed in accordance with § 904.201(a), the date of the final administrative decision is as provided in subpart C of this part.

§ 904.105 Payment of final civil penalty.

(a) Respondent must make full payment of the civil penalty within 30 days of the date upon which the NOVA becomes effective as the final administrative decision and order of NOAA under § 904.104 or the date of the final administrative decision as provided in subpart C of this part, as directed by NOAA. Payment must be made in accordance with the bill and instructions provided by NOAA.

(b) Upon any failure to pay the civil penalty assessed, NOAA may request the U.S. Department of Justice to recover the amount assessed in any appropriate district court of the United States, may act under § 904.106, or may commence any other lawful action.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38937, June 30, 2022]

§ 904.106 Compromise of civil penalty.

(a) NOAA, in its sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty assessed, or which is subject to assessment, except as stated in paragraph (d) of this section.

(b) The compromise authority of NOAA under this section may be exercised either upon the initiative of NOAA or in response to a request by the respondent or a representative subject to the requirements of § 904.5. Any such request should be sent to Agency counsel at the address specified in the NOVA.

(c) Neither the existence of the compromise authority of NOAA under this section nor NOAA's exercise thereof at any time changes the date upon which a NOVA becomes final.

(d) NOAA will not compromise, modify, or remit a civil penalty assessed, or subject to assessment, under the Deep Seabed Hard Mineral Resources Act while an action to review or recover the civil penalty is pending in a court of the United States.

§ 904.107 Joint and several respondents.

(a) A NOVA may assess a civil penalty against two or more respondents jointly and severally. Each joint and several respondent is liable for the entire penalty but, in total, no more than the amount finally assessed may be collected from the respondents.

(b) A hearing request by one joint and several respondent is considered a request by the other joint and several respondent(s). Agency counsel, having received a hearing request from one joint and several respondent, will send a copy of it to the other joint and several respondent(s) in the case. However, if the requesting joint and several respondent settles with the Agency prior to the hearing, upon notification by the Agency, any remaining joint and several respondent(s) must affirmatively request a hearing within the time period specified or the case will be removed from the hearing docket as provided in § 904.213.

(c) A final administrative decision by the Judge or the Administrator after a hearing requested by one joint and several respondent is binding on all parties including all other joint and several respondent(s), whether or not they entered an appearance unless they have otherwise resolved the matter through settlement with the Agency.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38937, June 30, 20222]

§ 904.108 Factors considered in assessing civil penalties.

(a) Factors to be taken into account in assessing a civil penalty, depending upon the statute in question, may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, any history of prior violations, and ability to pay; and such other matters as justice may require.

(b) NOAA may, in consideration of a respondent's ability to pay, increase or decrease a civil penalty from an amount that would otherwise be warranted by the other relevant factors. A civil penalty may be increased if a respondent's ability to pay is such that a higher civil penalty is necessary to deter future violations, or for commercial violators, to make a civil penalty more than a cost of doing business. A civil penalty may be decreased if the respondent establishes that he or she is unable to pay an otherwise appropriate civil penalty amount.

(c) Except as provided in paragraph (g) of this section, if a respondent asserts that a civil penalty should be reduced because of an inability to pay, the respondent has the burden of proving such inability by providing verifiable, complete, and accurate financial information to NOAA. NOAA will not consider a respondent's inability to pay unless the respondent, upon request, submits such financial information as Agency counsel determines is adequate to evaluate the respondent's financial condition. Depending on the circumstances of the case, Agency counsel may require the respondent to complete a financial information request form, answer written interrogatories, or submit independent verification of his or her financial information. If the respondent does not submit the requested financial information, he or she will be presumed to have the ability to pay the civil penalty.

(d) Financial information relevant to a respondent's ability to pay includes but is not limited to, the value of respondent's cash and liquid assets; ability to borrow; net worth; liabilities; income tax returns; past, present, and future income; prior and anticipated

profits; expected cash flow; and the respondent's ability to pay in installments over time. A respondent will be considered able to pay a civil penalty even if he or she must take such actions as pay in installments over time, borrow money, liquidate assets, or reorganize his or her business. NOAA's consideration of a respondent's ability to pay does not preclude an assessment of a civil penalty in an amount that would cause or contribute to the bankruptcy or other discontinuation of the respondent's business.

(e) Financial information regarding respondent's ability to pay should be submitted to Agency counsel as soon as possible after the receipt of the NOVA. If a respondent has requested a hearing on the violation alleged in the NOVA and wants the Initial Decision of the Judge to consider his or her inability to pay, verifiable, complete, and accurate financial information must be submitted to Agency counsel at least 30 days in advance of the hearing, except where the applicable statute expressly provides for a different time period. No information regarding the respondent's ability to pay submitted by the respondent less than 30 days in advance of the hearing will be admitted at the hearing or considered in the Initial Decision of the Judge, unless the Judge rules otherwise. If the Judge decides to admit any information related to the respondent's ability to pay submitted less than 30 days in advance of the hearing, Agency counsel will have 30 days to respond to the submission from the date of admission. In deciding whether to submit such information, the respondent should keep in mind that the Judge may assess a civil penalty either greater or smaller than that assessed in the NOVA.

(f) Issues regarding ability to pay will not be considered in an administrative review of an Initial Decision if the financial information was not previously presented by the respondent to the Judge prior to or at the hearing.

(g) Whenever a statute requires NOAA to take into consideration a respondent's ability to pay when assessing a civil penalty, NOAA will take into consideration information available to it concerning a respondent's ability to pay. In all cases, the NOVA will advise, in accordance with § 904.102, that the respondent may seek to have the civil penalty amount modified by Agency counsel on the basis that he or she does not have the ability to pay the civil penalty assessed. A request to have the civil penalty amount modified on this basis must be made in accordance with § 904.102 and should be accompanied by supporting financial information. Agency counsel may request that the respondent submit such additional verifiable, complete and accurate financial information as Agency counsel determines is necessary to evaluate the respondent's financial condition (such as by responding to a financial information request form or written interrogatories, or by authorizing independent verification of respondent's financial condition). A respondent's failure to provide the requested information may serve as the basis for inferring that such information would not have supported the respondent's assertion of inability to pay the civil penalty assessed in the NOVA.

(h) Whenever a statute requires NOAA to take into consideration a respondent's ability to pay when assessing a civil penalty and the respondent has requested a hearing on the violation alleged in the NOVA, the Agency must submit information on the respondent's financial condition so that the Judge may consider that information, along with any other factors required to be considered, in the Judge's assessment of a civil penalty. Agency counsel may obtain such financial information through discovery procedures under § 904.240, or otherwise. A respondent's refusal or failure to respond to such discovery requests may serve as the basis for inferring that such information would have been adverse to any claim by respondent of inability to pay the assessed civil penalty, or result in respondent being barred from asserting financial hardship.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38937, June 30, 2022]

Subpart C—Hearing and Appeal Procedures

GENERAL

§ 904.200 Scope and applicability.

(a) This subpart sets forth the procedures governing the conduct of hearings and the issuance of initial and final administrative decisions of NOAA involving alleged violations of the laws cited in § 904.1(c) and any other laws or authorities administered by NOAA and regulations implementing these laws, including civil penalty assessments and permit sanctions and denials. By separate regulation, these rules may be applied to other proceedings.

(b) The Judge is delegated authority to make the initial or final administrative decision of the Agency in proceedings subject to the provisions of this subpart, and to take actions to promote the efficient and fair conduct of hearings as set out in this subpart. The Judge has no authority to rule on constitutional issues or challenges to the validity of regulations promulgated by the Agency or statutes administered by NOAA.

(c) This subpart is not an independent basis for claiming the right to a hearing but, instead, prescribes procedures for the conduct of hearings, the right to which is provided by other authority.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38937, June 30, 2022]

§ 904.201 Hearing requests and case docketing.

(a) If the respondent wishes a hearing on a NOVA, NOPS or NIDP, the request must be dated and in writing, and must be served in conformance with § 904.3 on the Agency counsel specified in the notice. The respondent must either attach a copy of the NOVA, NOPS or NIDP or refer to the relevant NOAA case number. Agency counsel will promptly forward the request for hearing to the Office of Administrative Law Judges.

(b) Any party requesting a hearing under § 904.102(a)(3) must provide current contact information, including a working telephone number and email address (if one is available). The Agency and the Office of Administrative Law Judges must be promptly notified of any changes to this information.

(c) If a written application is made to NOAA after the expiration of the time period established in this part for the required filing of hearing requests, Agency counsel will promptly forward the request for hearing along with documentation of service and any other relevant materials to the Office of Administrative Law Judges for a determination on whether such request shall be considered timely filed. Determinations by the Judge regarding untimely hearing requests under this section shall be in writing.

(d) Upon its receipt for filing in the Office of Administrative Law Judges, each request for hearing will be promptly assigned a docket number and thereafter the proceeding will be referred to by such number. Written notice of the assignment of hearing to a Judge will promptly be given to the parties.

[87 FR 38937, June 30, 2022]

§ 904.202 Filing of documents.

(a) Pleadings, papers, and other documents in the proceeding must be filed directly with the Office of Administrative Law Judges, be served on all other parties, and conform with all applicable requirements of § 904.3.

(b) Unless otherwise ordered by the Judge, discovery requests and answers will be served on the opposing party and need not be filed with the Judge.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38938, June 30, 2022]

§ 904.203 [Reserved]

§ 904.204 Duties and powers of Judge.

The Judge has all powers and responsibilities necessary to preside over the parties and the hearing, to hold prehearing conferences, to conduct the hearing, and to render decisions in accordance with these regulations and 5 U.S.C. 554 through 557, including, but not limited to, the authority and duty to do the following:

(a) Rule on timeliness of hearing requests pursuant to § 904.201(c);

(b) Rule on a request to participate as a party in the hearing by allowing, denying, or limiting such participation

(such ruling will consider views of the parties and be based on whether the requester could be directly and adversely affected by the determination and whether the requester can be expected to contribute materially to the disposition of the proceedings);

(c) Schedule the time, place, and manner of conducting the pre-hearing conference or hearing, continue the hearing from day to day, adjourn the hearing to a later date or a different place, and reopen the hearing at any time before issuance of the decision, all in the Judge's discretion, having due regard for the convenience and necessity of the parties and witnesses;

(d) Schedule and regulate the course of the hearing and the conduct of the participants and the media, including the power to rule on motions to close the hearing in the interests of justice; seal the record from public scrutiny to protect privileged information, trade secrets, and confidential commercial or financial information; and strike testimony of a witness who refuses to answer a question ruled to be proper;

(e) Administer oaths and affirmations to witnesses;

(f) Rule on contested discovery requests, establish discovery schedules, and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken and issue protective orders under § 904.251(h);

(g) Rule on motions, procedural requests, and similar matters;

(h) Receive, exclude, limit, and otherwise rule on offers of proof and evidence;

(i) Examine and cross-examine witnesses and introduce into the record on the Judge's own initiative documentary or other evidence;

(j) Rule on requests for appearance of witnesses or production of documents and take appropriate action upon failure of a party to effect the appearance or production of a witness or document ruled relevant and necessary to the proceeding; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents;

(k) Require a party or witness at any time during the proceeding to state his or her position concerning any issue or his or her theory in support of such position;

(l) Take official notice of any matter not appearing in evidence that is among traditional matters of judicial notice; or of a non-privileged document required by law or regulation to be filed with or published by a duly constituted government body; or of any reasonably available public document; provided that the parties will be advised of the matter noticed and given reasonable opportunity to show the contrary;

(m) Assess a civil penalty or impose a permit sanction, condition, revocation, or denial of permit application, taking into account all of the factors required by applicable law;

(n) Prepare and submit a decision or other appropriate disposition document and certify the record;

(o) Award attorney fees and expenses as provided by applicable statute or regulation;

(p) Grant preliminary or interim relief; or

(q) Impose, upon the motion of any party, or *sua sponte*, appropriate sanctions.

(1) Sanctions may be imposed when any party, or any person representing a party, in an administrative proceeding under this part has failed to comply with this part, or any order issued under this part, and such failure to comply:

(i) Materially injures or prejudices another party by causing additional expenses; prejudicial delay; or other injury or prejudice;

(ii) Is a clear and unexcused violation of this part, or any order issued under this part; or

(iii) Unduly delays the administrative proceeding.

(2) Sanctions that may be imposed include, but are not limited to, one or more of the following:

(i) Issuing an order against the party;

(ii) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(iii) Expelling the party from the administrative proceedings;

(iv) Precluding the party from contesting specific issues or findings;

(v) Precluding the party from making a late filing or conditioning a late filing on any terms that are just;

(vi) Assessing reasonable expenses, incurred by any other party as a result of the improper action or failure to act; and

(vii) Taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation, deemed appropriate by the Judge.

(3) No sanction authorized by this section, other than refusal to accept late filings, shall be imposed without prior notice to all parties and an opportunity for any party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form as the Judge directs and may be limited to an opportunity for a party or a party's representative to respond orally immediately after the act or inaction is noted by the Judge.

(4) The imposition of sanctions is subject to interlocutory review pursuant to § 904.254 in the same manner as any other ruling.

(5) Nothing in this section shall be read as precluding the Judge from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

[71 FR 12448, Mar. 10, 2006, as amended at 75 FR 35632, June 23, 2010; 87 FR 38938, June 30, 2022]

§ 904.205 Disqualification of Judge.

(a) The Judge may withdraw voluntarily from an administrative proceeding when the Judge deems himself/herself disqualified.

(b) A party may in good faith request the Judge to withdraw on the grounds of personal bias or other disqualification. The party seeking the disqualification must file with the Judge a timely affidavit or statement setting forth in detail the facts alleged to constitute the grounds for disqualification, and the Judge will rule on the matter. If the Judge rules against disqualification, the Judge will place all matters relating to such claims of disqualification in the record.

§ 904.206 Pleadings, motions, and service.

(a) The original of all pleadings and documents must be filed with the Judge and a copy served on the Office of Administrative Law Judges and each party. All pleadings or documents when submitted for filing must show that service has been made upon all parties. Such service must be made in accordance with § 904.3(b).

(b) Pleadings and documents to be filed may be reproduced by printing or any other process, provided the copies are clear and legible; must be dated, signed; and must show the docket description and title of the proceeding, and the title, if any, address, and telephone number of the signatory. If typewritten, the impression may be on only one side of the paper and must be double spaced, if possible, except that quotations may be single spaced and indented.

(c) Motions must normally be made in writing and must state clearly and concisely the purpose of and relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested.

(d) Unless otherwise provided, the answer to any written motion, pleading, or petition must be served within 20 days after service of the motion. If a motion states that opposing counsel has no objection, it may be acted upon as soon as practicable, without awaiting the expiration of the 20-day period. Answers must be in writing, unless made in response to an oral motion made at a hearing; must fully and completely advise the parties and the Judge concerning the nature of the opposition; must admit or deny specifically and in detail each material allegation of the pleading answered; and must state clearly and concisely the facts and matters of law relied upon. Any new matter raised in an answer will be deemed controverted.

(e) A response to an answer will be called a reply. A short reply restricted to new matters raised in the answer may be served within 15 days after service of an answer. The Judge has

discretion to dispense with the reply. No further responses are permitted.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38938, June 30, 2022]

§ 904.207 Amendment of pleading or record.

(a) A party may amend its pleading as a matter of course at least 20 days prior to a hearing. Within 20 days prior to a hearing a party may amend its pleading only by leave of the Judge or by written consent of the adverse party; leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period is longer, unless the Judge otherwise orders.

(b) The Judge, upon his or her own initiative or upon application by a party, may order a party to make a more definite statement of any pleading.

(c) Harmless errors in pleadings or elsewhere in the record may be corrected (by deletion or substitution of words or figures), and broad discretion will be exercised by the Judge in permitting such corrections.

§ 904.208 Extensions of time.

If appropriate and justified, the Judge may grant any request for an extension of time. Requests for extensions of time must, except in extraordinary circumstances, be made in writing.

§ 904.209 Expedited administrative proceedings.

In the interests of justice and administrative efficiency, the Judge, on his or her own initiative or upon the application of any party, may expedite the administrative proceeding. A motion by a party to expedite the administrative proceeding may, at the discretion of the Judge, be made orally or in writing with concurrent actual notice to all parties. Upon granting a motion to expedite the scheduling of an administrative proceeding, the Judge may expedite pleading schedules, prehearing conferences and the hearing, as appropriate. If a motion for an expedited administrative proceeding is granted, a hearing on the merits may not be scheduled with less than 5 business days' notice, unless all parties consent to an earlier hearing.

[87 FR 38938, June 30, 2022]

§ 904.210 Summary decision.

The Judge may render a summary decision disposing of all or part of the administrative proceeding if:

(a) Jointly requested by every party to the administrative proceeding; and

(b) There is no genuine issue as to any material fact and a party is entitled to summary decision as a matter of law.

§ 904.211 Failure to appear.

(a) If, after proper service of notice, any party appears at the hearing and an opposing party fails to appear, the Judge is authorized to:

(1) Dismiss the case with prejudice, where the Agency is a non-appearing party; or

(2) Where the respondents have failed to appear, find the facts as alleged in the NOVA, NOPS and/or NIDP and enter a default judgment against the respondents.

(b) Following an order of default judgment, a non-appearing party may file a petition for reconsideration, in accordance with §904.272. Only petitions citing reasons for non-appearance, as opposed to arguing the merits of the case, will be considered.

(c) The Judge will place in the record all the facts concerning the issuance and service of the notice of time and place of hearing.

(d) The Judge may deem a failure of a party to appear after proper notice a waiver of any right to a hearing and consent to the making of a decision on the record.

(e) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Judge's decision.

§ 904.212 Failure to prosecute or defend.

(a) Whenever the record discloses the failure of any party to file documents, respond to orders or notices from the Judge, or otherwise indicates an intention on the part of any party not to

participate further in the administrative proceeding, the Judge may issue:

(1) An order requiring any party to show why the matter that is the subject of the failure to respond should not be disposed of adversely to that party's interest;

(2) An order requiring any party to certify intent to appear at any scheduled hearing; or

(3) Any order, except dismissal, as is necessary for the just and expeditious resolution of the case.

(b) [Reserved]

§ 904.213 Settlements.

If settlement is reached before the Judge has certified the record, the Judge shall remove the case from the docket upon notification by the Agency.

§ 904.214 Stipulations.

The parties may, by stipulation, agree upon any matters involved in the administrative proceeding and include such stipulations in the record with the consent of the Judge. Written stipulations must be signed and served on all parties.

[87 FR 38938, June 30, 2022]

§ 904.215 Consolidation.

The Chief Administrative Law Judge may order that two or more administrative proceedings that involve substantially the same parties or the same issues be consolidated and/or heard together, either upon request of a party or *sua sponte*.

§ 904.216 Prehearing conferences.

(a) Prior to any hearing or at any other time deemed appropriate, the Judge may, upon his or her own initiative, or upon the application of any party, direct the parties to appear for a conference or arrange a telephone conference. The Judge shall provide at least 24 hours' notice of the conference to the parties, and shall record such conference by audio recording or court reporter, to consider:

(1) Simplification or clarification of the issues or settlement of the case by consent;

(2) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate the discovery process;

(4) Limitation of the number of expert witnesses or other avoidance of cumulative evidence;

(5) The procedure, course, and conduct of the administrative proceeding;

(6) The distribution to the parties and the Judge prior to the hearing of written testimony and exhibits in order to expedite the hearing; or

(7) Such other matters as may aid in the disposition of the administrative proceeding, including the status of settlement discussions.

(b) The Judge in his or her discretion may issue an order showing the matters disposed of in such conference, and shall provide a transcript of the conference upon the request of a party.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38938, June 30, 2022]

DISCOVERY

§ 904.240 Discovery generally.

(a) *Initial Disclosures*. Prior to hearing, the Judge shall require the parties to submit Initial Disclosures and set a deadline for their submission. Except for information regarding a respondent's ability to pay an assessed civil penalty, these Initial Disclosures will normally obviate the need for further discovery.

(1) The Initial Disclosures shall include the following information: A factual summary of the case; a summary of all factual and legal issues in dispute; a list of all defenses that will be asserted, together with a summary of all factual and legal bases supporting each defense; a list of all potential witnesses, together with a summary of their anticipated testimony; and a list of all potential exhibits.

(2) The Initial Disclosures must be signed by the parties or their attorneys and must be served on all parties in conformance with § 904.3, along with a copy of each potential exhibit listed therein.

(3) A party has the affirmative obligation to supplement their Initial Disclosures as available information or

documentation relevant to the stated charges or defenses becomes known to the party.

(b) *Additional discovery.* Upon written motion by a party, the Judge may allow additional discovery only upon a showing of relevance, need, and reasonable scope of the evidence sought, by one or more of the following methods: Deposition upon oral examination or written questions, written interrogatories, production of documents or things for inspection and other purposes, and requests for admission. With respect to information regarding a respondent's ability to pay an assessed civil penalty, the Agency may serve any discovery request (*i.e.*, deposition, interrogatories, admissions, production of documents) directly upon the respondent in conformance with §904.3 of this part without first seeking an order from the Judge.

(c) *Time limits.* Motions for depositions, interrogatories, admissions, or production of documents or things may not be filed within 20 days of the hearing except on order of the Judge for good cause shown. Oppositions to a discovery motion must be filed within 10 days of service unless otherwise provided in these rules or by the Judge.

(d) *Oppositions.* Oppositions to any discovery motion or portion thereof must state with particularity the grounds relied upon. Failure to object in a timely fashion constitutes waiver of the objection.

(e) *Scope of discovery.* The Judge may limit the scope, subject matter, method, time, or place of discovery. Unless otherwise limited by order of the Judge, the scope of discovery is as follows:

(1) *In general.* As allowed under paragraph (b) of this section, parties may obtain discovery of any matter, not privileged, that is relevant to the allegations of the charging document, to the proposed relief, or to the defenses of any respondent, or that appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Hearing preparation: Materials.* A party may not obtain discovery of materials prepared in anticipation of litigation except upon a showing that the party seeking discovery has a substantial need for the materials in preparation of his or her case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party are not discoverable under this section.

(3) *Hearing preparation: Experts.* A party may discover the substance of the facts and opinions to which an expert witness is expected to testify and a summary of the grounds for each opinion. A party may also discover facts known or opinions held by an expert consulted by another party in anticipation of litigation but not expected to be called as a witness upon a showing of exceptional circumstances making it impracticable for the party seeking discovery to obtain such facts or opinions by other means.

(f) *Failure to comply.* If a party fails to comply with any provision of this section, including with respect to their Initial Disclosures, a subpoena, or an order concerning discovery, the Judge may, in the interest of justice:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that the matter or matters covered by the order or subpoena are established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon, in support of any claim or defense, testimony by such party, officer, or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown; or

(5) Strike part or all of a pleading (except a request for hearing), a motion or other submission by the party, concerning the matter or matters covered by the order or subpoena.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38938, June 30, 2022]

§ 904.241 Depositions.

(a) *Notice.* If a motion for deposition is granted, and unless otherwise ordered by the Judge, the party taking the deposition of any person must

serve on that person and on any other party written notice at least 15 days before the deposition would be taken (or 25 days if the deposition is to be taken outside the United States). The notice must state the name and address of each person to be examined, the time and place where the examination would be held, the name, mailing address, telephone number, and email address (if one is available) of the person before whom the deposition would be taken, and the subject matter about which each person would be examined.

(b) *Taking the deposition.* Depositions may be taken before any officer authorized to administer oaths by the law of the United States or of the place where the examination is to be held, or before a person appointed by the Judge. Each deponent will be sworn, and any party has the right to cross-examine. Objections are not waived by failure to make them during the deposition unless the ground of the objection is one that might have been removed if presented at that time. The deposition will be recorded, transcribed, signed by the deponent, unless waived, and certified by the officer before whom the deposition was taken. All transcription costs associated with the testimony of a deponent will be borne by the party seeking the deposition. Each party will bear its own expense for any copies of the transcript. See also § 904.252(a).

(c) *Alternative deposition methods.* By order of the Judge, the parties may use other methods of deposing parties or witnesses, such as telephonic depositions, depositions through videoconference, or depositions upon written questions. Objections to the form of written questions are waived unless made within 5 days of service of the questions.

(d) *Use of depositions at hearing.* (1) At hearing, part or all of any deposition, so far as admissible under this Part as though the witness were then testifying, may be used against any party who was present or represented at the taking of the deposition or had reasonable notice.

(2) The deposition of a witness may be used by any party for any purpose if the Judge finds:

(i) That the witness is unable to attend due to death, age, health, imprisonment, disappearance or distance from the hearing site; or

(ii) That exceptional circumstances make it desirable, in the interest of justice, to allow the deposition to be used.

(3) If only part of a deposition is offered in evidence by a party, any party may introduce any other part.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38938, June 30, 2022]

§ 904.242 Interrogatories.

(a) *Service and use.* If ordered by the Judge, any party may serve upon any other party written interrogatories in conformance with § 904.3.

(b) *Answers and objections.* Answers and objections must be made in writing under oath, and reasons for the objections must be stated. Answers must be signed by the person making them and objections must be signed by the party or attorney making them. Unless otherwise ordered, answers and objections must be served on all parties within 20 days after service of the interrogatories in conformance with § 904.3.

(c) *Option to produce records.* Where the answer to an interrogatory may be ascertained from the records of the party upon whom the interrogatory is served, it is sufficient to specify such records and afford the party serving the interrogatories an opportunity to examine them.

(d) *Use of interrogatories at hearing.* Answers may be used at hearing in the same manner as depositions under § 904.241(d).

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38939, June 30, 2022]

§ 904.243 Admissions.

(a) *Request.* If ordered by the Judge, any party may serve on any other party a written request for admission of the truth of any relevant matter of fact set forth in the request in conformance with § 904.3, including the genuineness of any relevant document described in the request. Copies of documents must be served with the request. Each matter for which an admission is requested must be separately stated.

(b) *Response.* Each matter is admitted unless a written answer or objection is

served within 20 days of service of the request in conformance with § 904.3, or within such other time as the Judge may allow. The answering party must specifically admit or deny each matter, or state the reasons why he or she cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(c) *Effect of admission.* Any matter admitted is conclusively established unless the Judge on motion permits withdrawal or amendment of it for good cause shown.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38939, June 30, 2022]

§ 904.244 Production of documents and inspection.

(a) *Scope.* If ordered by the Judge, any party may serve on any other party a request to produce a copy of any document or specifically designated category of documents, or to inspect, copy, photograph, or test any such document or tangible thing in the possession, custody, or control of the party upon whom the request is served.

(b) *Procedure.* The request must set forth:

(1) The items to be produced or inspected by item or by category, described with reasonable particularity, and

(2) A reasonable time, place, and manner for inspection. The party upon whom the request is served must serve within 20 days a response or objections, which must address each item or category and include copies of the requested documents.

§ 904.245 Subpoenas.

(a) *In general.* Subpoenas for the attendance and testimony of witnesses and the production of documentary evidence for the purpose of discovery or hearing may be issued as authorized by the statute under which the proceeding is conducted.

(b) *Timing.* Applications for subpoenas must be submitted at least 15 days before the scheduled hearing or deposition.

(c) *Motions to quash.* Any person to whom a subpoena is directed or any party may move to quash or limit the subpoena within 10 days of its service or on or before the time specified for compliance, whichever is shorter. The Judge may quash or modify the subpoena.

(d) *Enforcement.* In case of disobedience to a subpoena, the requesting party may request the U.S. Department of Justice to invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

HEARINGS

§ 904.250 Notice of time and place of hearing.

(a) The Judge shall be responsible for scheduling the hearing. With due regard for the convenience of the parties, their representatives, or witnesses, the Judge shall fix the time, place and date for the hearing and shall notify all parties of the same. The Judge will promptly serve on the parties notice of the time and place of hearing. The hearing will not be held less than 20 days after service of the notice of hearing unless the hearing is expedited as provided under paragraph (d) of this section.

(b) A request for a change in the time, place, or date of the hearing may be granted by the Judge.

(c) Upon the consent of each party to the administrative proceeding, the Judge may order that one or more issues be heard on submissions or affidavits if it appears that such issues may be resolved by means of written materials and that efficient disposition of those issues can be made without an in-person hearing.

(d) At any time after commencement of an administrative proceeding, any

party may move to expedite the scheduling of the administrative proceeding as provided in § 904.209.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38939, June 30, 2022]

§ 904.251 Evidence.

(a) *In general.* (1) At the hearing, every party has the right to present oral or documentary evidence in support of its case or defense, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. This paragraph may not be interpreted to diminish the powers and duties of the Judge under § 904.204.

(2) All evidence that is relevant, material, reliable, and probative, and not unduly repetitious or cumulative, is admissible at the hearing. Formal rules of evidence do not necessarily apply to the administrative proceedings, and hearsay evidence is not inadmissible as such.

(3) In any case involving a charged violation of law in which the respondent has admitted an allegation, evidence may still be presented to establish matters of aggravation or mitigation.

(b) *Objections and offers of proof.* (1) A party shall state the grounds for objection to the admission or exclusion of evidence. Rulings on all objections shall appear in the record. Only objections made before the Judge may be raised on appeal.

(2) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record.

(c) *Testimony.* (1) Testimony may be received into evidence by the following means:

(i) Oral presentation; and

(ii) Subject to the discretion of the Judge, written affidavit, telephone, video or other electronic media.

(2) Regardless of form, all testimony shall be under oath or affirmation requiring the witness to declare that the witness will testify truthfully, and subject to cross examination.

(d) *Exhibits and documents.* (1) All exhibits shall be numbered and marked with a designation identifying the sponsor. To prove the content of an exhibit, the original writing, recording or photograph is required except that a duplicate or copy is admissible to the same extent as an original unless a genuine question is raised as to the authenticity of the original or, given the circumstances, it would be unfair to admit the duplicate in lieu of the original. The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if the original is lost or destroyed, not obtainable, in the possession of the opponent, or not closely related to a controlling issue. Each exhibit offered in evidence or marked for identification shall be filed and retained in the record of decision, unless the Judge permits the substitution of copies for the original document.

(2) In addition to the requirements set forth in § 904.240(a)(2), parties shall exchange all remaining exhibits that will be offered at hearing prior to the beginning of the hearing, except for good cause or as otherwise directed by the Judge. Exhibits that are not exchanged as required may be denied admission into evidence. This requirement does not apply to demonstrative evidence.

(e) *Physical evidence.* (1) Photographs or videos or other electronic media may be substituted for physical evidence at the discretion of the Judge.

(2) Except upon the Judge's order, or upon request by a party, physical evidence will be retained after the hearing by the Agency.

(f) *Stipulations.* The parties may, by written stipulation at any stage of the administrative proceeding or orally at the hearing, agree upon any matters. Stipulations may be received in evidence before or during the hearing and, when received in evidence, shall be binding on the parties to the stipulation.

(g) *Official notice.* The Judge may take official notice of such matters as might be judicially noticed by the courts or of other facts within the specialized knowledge of the agency as an expert body. Where a decision or part thereof rests on official notice of a material fact not appearing in the evidence in the record, the fact of official

notice shall be so stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

(h) *Confidential and sensitive information.* (1) The Judge may limit introduction of evidence or issue protective orders that are required to prevent undue disclosure of classified, confidential, or sensitive matters, which include, but are not limited to, matters of a national security, business, personal, or proprietary nature. Where the Judge determines that information in documents containing classified, confidential, or sensitive matters should be made available to another party, the Judge may direct the offering party to prepare an unclassified or non-sensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

(2) If the Judge determines that the procedure described in paragraph (h)(1) of this section is inadequate and that classified or otherwise sensitive matters must form part of the record in order to avoid prejudice to a party, the Judge may advise the parties and provide opportunity for arrangements to permit a party or representative to have access to such matters.

(i) *Foreign law.* A party who intends to raise an issue concerning the law of a foreign country must give reasonable notice. The Judge, in determining foreign law, may consider any relevant material or source, whether or not submitted by a party.

(j) *Foreign language exhibits.* Exhibits in a foreign language must be translated into English before such exhibits are offered into evidence. Copies of both the untranslated and translated versions of the proposed exhibits, along with the name and qualifications of the translator, must be served on the opposing party at least 10 days prior to the hearing unless the parties otherwise agree.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38939, June 30, 2022]

§ 904.252 Witnesses.

(a) *Fees.* Witnesses, other than employees of a Federal agency, summoned in an administrative proceeding, including discovery, are eligible to receive the same fees and mileage as witnesses in the courts of the United States.

(b) *Witness counsel.* Any witness not a party may have personal counsel to advise him or her as to his or her rights, but such counsel may not otherwise participate in the hearing.

(c) *Witness exclusion.* Witnesses who are not parties may be excluded from the hearing room prior to the taking of their testimony. An authorized officer is considered a party for the purposes of this subsection.

(d) *Oath or affirmation.* Witnesses shall testify under oath or affirmation requiring the witness to declare that the witness will testify truthfully.

(e) *Failure or refusal to testify.* If a witness fails or refuses to testify, the failure or refusal to answer any question found by the Judge to be proper may be grounds for striking all or part of the testimony given by the witness, or any other action deemed appropriate by the Judge.

(f) *Testimony in a foreign language.* If a witness is expected to testify in a language other than the English language, the party sponsoring the witness must indicate that in its Initial Disclosures so that an interpreter can be arranged for the hearing. When available, the interpreter should be court certified under 28 U.S.C. 1827.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38939, June 30, 2022]

§ 904.253 Closing of record.

At the conclusion of the hearing, the evidentiary record shall be closed unless the Judge directs otherwise. Once the record is closed, no additional evidence shall be accepted except upon a showing that the evidence is material and that there was good cause for failure to produce it in a timely fashion. The Judge shall reflect in the record, however, any approved correction to the transcript.

§ 904.254 Interlocutory review.

(a) Application for interlocutory review shall be made to the Judge. The application shall not be certified to the Administrator except when the Judge determines that:

(1) The ruling involves a dispositive question of law or policy about which

there is substantial ground for difference of opinion; or

(2) An immediate ruling will materially advance the completion of the proceeding; or

(3) The denial of an immediate ruling will cause irreparable harm to a party or the public.

(b) Any application for interlocutory review shall:

(1) Be filed with the Judge within 30 days after the Judge's ruling;

(2) Designate the ruling or part thereof from which appeal is being taken;

(3) Set forth the ground on which the appeal lies; and

(4) Present the points of fact and law relied upon in support of the position taken.

(c) Any party that opposes the application may file a response within 20 days after service of the application.

(d) The certification to the Administrator by the Judge shall stay proceedings before the Judge until the matter under interlocutory review is decided.

§ 904.255 *Ex parte* communications.

(a) Except to the extent required for disposition of *ex parte* matters as authorized by law, the Judge may not consult a person or party on any matter relevant to the merits of the administrative proceeding, unless there has been notice and opportunity for all parties to participate.

(b) Except to the extent required for the disposition of *ex parte* matters as authorized by law:

(1) No interested person outside the Agency shall make or knowingly cause to be made to the Judge, the Administrator, or any Agency employee who is or may reasonably be expected to be involved in the decisional process of the administrative proceeding an *ex parte* communication relevant to the merits of the adjudication; and

(2) Neither the Administrator, the Judge, nor any Agency employee who is or may reasonably be expected to be involved in the decisional process of the administrative proceeding, shall make or knowingly cause to be made to any interested person outside the agency an *ex parte* communication relevant to the merits of the administrative proceeding.

(c) The Administrator, the Judge, or any Agency employee who is or may reasonably be expected to be involved in the decisional process who receives, makes, or knowingly causes to be made a communication prohibited by this rule shall place in the record of decision:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (c)(1) and (c)(2) of this section.

(d)(1) Paragraphs (a), (b) and (c) of this section do not apply to communications concerning national defense or foreign policy matters. Such *ex parte* communications to or from an Agency employee on national defense or foreign policy matters, or from employees of the U.S. Government involving intergovernmental negotiations, are allowed if the communicator's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.

(2) *Ex parte* communications subject to this paragraph will be made a part of the record to the extent that they do not include information classified under an Executive order. Classified information will be included in a classified portion of the record that will be available for review only in accordance with applicable law.

(e) Upon receipt of a communication made, or knowingly caused to be made, by a party in violation of this section the Judge may, to the extent consistent with the interests of justice, national security, the policy of underlying statutes, require the party to show cause why its claim or interest in the adjudication should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such violation.

(f) The prohibitions of this rule shall apply beginning after issuance of a NOVA, NOPS, NIDP or any other notice and until a final administrative decision is rendered, but in no event shall they begin to apply later than the

time at which an administrative proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of her/his acquisition of such knowledge.

POST-HEARING

§ 904.260 Recordation of hearing.

(a) All hearings shall be recorded.

(b) The official transcript of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, will be filed with the Office of Administrative Law Judges. Transcripts of testimony will be available in any hearing and will be supplied to the parties at the cost of the Agency.

(c) The Judge may determine whether ''ordinary copy'', ''daily copy'', or other copy (as those terms are defined by contract) will be necessary and required for the proper conduct of the administrative proceeding.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38939, June 30, 2022]

§ 904.261 Post-hearing briefs.

(a) The parties may file post-hearing briefs that include proposed findings of fact and conclusions of law within 30 days from service of the hearing transcript. Reply briefs may be submitted within 15 days after service of the proposed findings and conclusions to which they respond.

(b) The Judge, in his or her discretion, may establish a different date for filing either initial briefs or reply briefs with the court.

(c) In cases involving few parties, limited issues, and short hearings, the Judge may require or a party may request that any proposed findings and conclusions and reasons in support be presented orally at the close of a hearing. In granting such cases, the Judge will advise the parties in advance of hearing.

DECISION

§ 904.270 Record of decision.

(a) The exclusive record of decision consists of the official transcript of testimony and administrative proceedings; exhibits admitted into evidence; briefs, pleadings, and other documents filed in the administrative proceeding; and descriptions or copies of matters, facts, or documents officially noticed in the administrative proceeding. Any other exhibits and records of any *ex parte* communications will accompany the record of decision.

(b) The Judge will arrange for appropriate storage of the records of any administrative proceeding, which place of storage need not necessarily be located physically within the Office of Administrative Law Judges.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38939, June 30, 2022]

§ 904.271 Initial decision.

(a) After expiration of the period provided in § 904.261 for the filing of reply briefs (unless the parties have waived briefs or presented proposed findings orally at the hearing), the Judge will render an Initial Decision upon the record in the case, setting forth:

(1) Findings and conclusions, and the reasons or bases therefor, on all material issues of fact, law, or discretion presented on the record;

(2) An order as to the final disposition of the case, including any appropriate ruling, order, sanction, relief, or denial thereof;

(3) The date upon which the decision will become effective; and

(4) A statement of further right to appeal.

(b) If the parties have presented oral proposed findings at the hearing or have waived presentation of proposed findings, the Judge may at the termination of the hearing announce the decision, subject to later issuance of a written Initial Decision under paragraph (a) of this section. In such cases, the Judge may direct the prevailing party to prepare proposed findings, conclusions, and an order.

(c) The Judge will serve the Initial Decision on each of the parties, the Chief of the Enforcement Section of the NOAA Office of General Counsel, and the Administrator. Upon request, the Judge will promptly certify to the Administrator the record, including the original copy of the Initial Decision, as complete and accurate.

(d) An Initial Decision becomes effective as the final administrative decision of NOAA 60 days after service, unless:

(1) Otherwise provided by statute or regulations;

(2) The Judge grants a petition for reconsideration under § 904.272; or

(3) A petition for discretionary review is filed or the Administrator issues an order to review upon his/her own initiative under § 904.273.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38939, June 30, 2022]

§ 904.272 Petition for reconsideration.

Unless an order or Initial Decision of the Judge specifically provides otherwise, any party may file a petition for reconsideration of an order or Initial Decision issued by the Judge. Such petitions must state the matter claimed to have been erroneously decided, and the alleged errors and relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of such order or Initial Decision. The filing of a petition for reconsideration shall operate as a stay of an order or Initial Decision or its effectiveness date unless specifically so ordered by the Judge. Within 15 days after the petition is filed, any party to the administrative proceeding may file an answer in support or in opposition.

[87 FR 38940, June 30, 2022]

§ 904.273 Administrative review of decision.

(a) Subject to the requirements of this section, any party who wishes to seek review of an Initial Decision of a Judge must Petition for Review of the Initial Decision within 30 days after the date the decision is served. The petition must be served on the Administrator in conformance with § 904.3(b) at the following address: Administrator, National Oceanic and Atmospheric Administration, Department of Commerce, Room 5128, 14th Street and Constitution Avenue NW, Washington, DC 20230. Copies of the Petition for Review, and all other documents and materials required in paragraph (d) of this section, must be served in conformance with § 904.3(b) on all parties and to either *administrative.appeals@noaa.gov* or the following address: Chief, Oceans and Coasts Section, NOAA Office of General Counsel, 1305 East-West Highway, SSMC 4, Suite 6111, Silver Spring, MD 20910.

(b) The Administrator may elect to issue an order to review the Initial Decision without petition and may affirm, reverse, modify or remand, in whole or in part, the Judge's Initial Decision. Any such order must be issued within 60 days after the date the Initial Decision is served.

(c) Review by the Administrator of an Initial Decision is discretionary and is not a matter of right. If a party files a timely petition for discretionary review, or review is timely initiated by the Administrator, the effectiveness of the Initial Decision is stayed until further order of the Administrator or until the Initial Decision becomes final pursuant to paragraph (h) of this section. In determining whether or not to grant discretionary review, the Administrator will consider:

(1) Whether the Initial Decision contains significant factual or legal errors that warrant further review by the Administrator; and

(2) Whether fairness or other policy considerations warrant further consideration by the Administrator. Types of cases that fall within these criteria include, but are not limited to, those in which;

(i) The Initial Decision conflicts with one or more other NOAA administrative decisions or federal court decisions on an important issue of federal law;

(ii) The Judge decided an important federal question in a way that conflicts with prior rulings of the Administrator;

(iii) The Judge decided a question of federal law that is so important that the Administrator should pass upon it even absent a conflict; or

(iv) The Judge so far departed from the accepted and usual course of administrative proceedings as to call for an exercise of the Administrator's supervisory power.

(d) A Petition for Review must comply with the following requirements regarding format and content:

(1) The petition must include a concise statement of the case, that contains a statement of facts relevant to the issues submitted for review, and a summary of the argument that contains a succinct, clear and accurate statement of the arguments made in the body of the petition;

(2) The petition must set forth, in detail, specific objections to the Initial Decision, the bases for review, and the relief requested;

(3) Each issue raised in the petition must be separately numbered, concisely stated, and supported by detailed citations to specific pages in the record, and to statutes, regulations, and principal authorities. Petitions may not refer to or incorporate by reference entire documents or transcripts;

(4) A copy of the Judge's Initial Decision must be attached to the petition;

(5) Copies of all cited portions of the record must be attached to the petition;

(6) A petition, exclusive of attachments and authorities, must not exceed 20 pages in length and must be in the form articulated in §904.206(b); and

(7) Issues of fact or law not argued before the Judge may not be raised in the petition unless such issues were raised for the first time in the Judge's Initial Decision, or could not reasonably have been foreseen and raised by the parties during the hearing. The Administrator will not consider new or additional evidence that is not a part of the record before the Judge.

(e) The Administrator may deny a Petition for Review that is untimely or fails to comply with the format and content requirements in paragraph (d) of this section without further review.

(f) No oral argument on Petitions for Review will be allowed.

(g) Within 30 days after service of a petition for discretionary review, any party may file and serve an answer in support or in opposition. An answer must comport with the format and content requirements in paragraphs (d)(5) through (d)(7) of this section and set forth detailed responses to the specific objections, bases for review and relief requested in the petition. No further replies are allowed, unless requested by the Administrator.

(h) If the Administrator has taken no action in response to the petition within 120 days after the petition is served, said petition shall be deemed denied and the Judge's Initial Decision shall become the final agency decision with an effective date 150 days after the petition is served.

(i) If the Administrator issues an order denying discretionary review, the order will be served on all parties in conformance with §904.3, and will specify the date upon which the Judge's Initial Decision will become effective as the final agency decision. The Administrator need not give reasons for denying review.

(j) If the Administrator grants discretionary review or elects to review the Initial Decision without petition, the Administrator will issue an order to that effect. Such order may identify issues to be briefed and a briefing schedule. Such issues may include one or more of the issues raised in the Petition for Review and any other matters the Administrator wishes to review. Only those issues identified in the order may be argued in any briefs permitted under the order. The Administrator may choose to not order any additional briefing, and may instead make a final determination based on any Petitions for Review, any responses and the existing record.

(k) If the Administrator grants or elects to take discretionary review, and after expiration of the period for filing any additional briefs under paragraph (j) of this section, the Administrator will render a written decision on the issues under review. The Administrator will serve the decision on each of the parties in conformance with §904.3. The Administrator's decision becomes the final administrative decision on the date it is served, unless otherwise provided in the decision, and is a final agency action for purposes of judicial review; except that an Administrator's decision to remand the Initial Decision to the Judge is not final agency action.

(l) An Initial Decision shall not be subject to judicial review unless:

(1) The party seeking judicial review has exhausted its opportunity for administrative review by filing a Petition

for Review with the Administrator in compliance with this section, and

(2) The Administrator has issued a final ruling on the petition that constitutes final agency action under paragraph (k) of this section or the Judge's Initial Decision has become the final agency decision under paragraph (h) or (i) of this section.

(m) For purposes of any subsequent judicial review of the agency decision, any issues that are not identified in any Petition for Review, in any answer in support or opposition, by the Administrator, or in any modifications to the Initial Decision are waived.

(n) If an action is filed for judicial review of a final agency decision, and the decision is vacated or remanded by a court, the Administrator shall issue an order addressing further administrative proceedings in the matter. Such order may include a remand to the Chief Administrative Law Judge for further proceedings consistent with the judicial decision, or further briefing before the Administrator on any issues the Administrator deems appropriate.

[87 FR 38940, June 30, 2022]

Subpart D—Permit Sanctions and Denials

GENERAL

§ 904.300 Scope and applicability.

(a) This subpart sets forth procedures governing the suspension, revocation, modification, and denial of permits. The bases for sanctioning a permit are set forth in § 904.301.

(1) *Revocation.* A permit may be cancelled, with or without prejudice to issuance of the permit in the future. Additional requirements for issuance of any future permit may be imposed.

(2) *Suspension.* A permit may be suspended either for a specified period of time or until stated requirements are met, or both. If contingent on stated requirements being met, the suspension is with prejudice to issuance of any permit until the requirements are met.

(3) *Modification.* A permit may be modified, as by imposing additional conditions and restrictions. If the permit was issued for a foreign fishing vessel under section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act, additional conditions and restrictions may be imposed on the application of the foreign nation involved and on any permits issued under such application.

(4) *Denial.* Issuance of a permit in the future may be denied through imposition of a permit denial.

(b) This subpart does not apply to the Land Remote Sensing Policy Act of 1992, as amended (51 U.S.C. 60101 *et seq.*), or to the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*). Regulations governing denials of licenses issued under the Land Remote Sensing Policy Act of 1992, as amended (51 U.S.C. 60101 *et seq.*), appear at 15 CFR part 960. Regulations governing sanctions and denials of permits issued under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*) appear at 15 CFR part 970.

[87 FR 38941, June 30, 2022]

§ 904.301 Bases for permit sanctions or denials.

(a) Unless otherwise specified in a settlement agreement, or otherwise provided by statutes or in this subpart, NOAA may sanction any permit issued under the statutes cited in § 904.1(c). The bases for an action to sanction or deny a permit include the following:

(1) Violation of any statute administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder/applicant or with the use of a permitted vessel;

(2) The failure to pay a civil penalty imposed under any marine resource law administered by NOAA;

(3) The failure to pay a criminal fine imposed or to satisfy any other liability incurred in a judicial proceeding under any of the statutes administered by NOAA; or

(4) The failure to pay any amount in settlement of a civil forfeiture imposed on a vessel or other property.

(b) A sanction may be applied to a permit involved in the underlying violation, as well as to any permit held or sought by the permit holder/applicant, including permits for other vessels. (See, e.g., 16 U.S.C. 1858(g)(1)(i)).

(c) A permit sanction may not be extinguished by sale or transfer. A vessel's permit sanction is not extinguished by sale or transfer of the vessel, nor by dissolution or reincorporation of a vessel owner corporation, and shall remain with the vessel until lifted by NOAA.

[87 FR 38941, June 30, 2022]

§ 904.302 Notice of permit sanction (NOPS).

(a) Service of a NOPS against a permit issued to a foreign fishing vessel will be made on the agent authorized to receive and respond to any legal process for vessels of that country.

(b) The NOPS will set forth the permit sanction to be imposed, the bases for the permit sanction, and any opportunity for a hearing. It will state the effective date of the permit sanction, which will ordinarily not be earlier than 30 days after the date of receipt of the NOPS (see § 904.322).

(c) Upon demand by an authorized enforcement officer, a permit holder must surrender a permit against which a permit sanction has taken effect. The effectiveness of the permit sanction, however, does not depend on surrender of the permit.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38941, June 30, 2022]

§ 904.303 Notice of intent to deny permit (NIDP).

(a) [Reserved]

(b) The NIDP will set forth the basis for its issuance and any opportunity for a hearing.

(c) NOAA will not refund any fee(s) submitted with a permit application if a NIDP is issued.

(d) A NIDP may be issued in conjunction with or independent of a NOPS.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38941, June 30, 2022]

§ 904.304 Opportunity for hearing.

(a) Except as provided in paragraph (b) of this section, the recipient of a NOPS or NIDP will be provided an opportunity for a hearing, as governed by § 904.201.

(b) There will be no opportunity for a hearing to contest a NOPS or NIDP if the permit holder/applicant had a previous opportunity to participate as a party in an administrative or judicial proceeding with respect to the violation that forms the basis for the NOPS or NIDP, whether or not the permit holder/applicant did participate, and whether or not such a proceeding was held.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38941, June 30, 2022]

§ 904.305 Final administrative decision.

(a) If no request for hearing is timely filed as provided in § 904.201(a), the NOPS or NIDP becomes effective as the final administrative decision and order of NOAA 30 days after service of the NOPS or NIDP or on the last day of any delay period granted.

(b) If a request for hearing is timely filed in accordance with § 904.201(a), the date of the final administrative decision is as provided in subpart C of this part.

Permit Sanctions for Noncompliance

§ 904.310 [Reserved]

§ 904.311 Effect of payment on permit sanction.

Where a permit has been sanctioned on one of the bases set forth in § 904.301(a)(2) through (4) and the permit holder/applicant pays the criminal fine, civil penalty, or amount in settlement of a civil forfeiture in full or agrees to terms satisfactory to NOAA for payment:

(a) The suspension will not take effect;

(b) Any permit suspended under § 904.301(a)(2) through (4) will be reinstated by order of NOAA; or

(c) Any application by the permit holder may be granted if the permit holder is otherwise qualified to receive the permit.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38942, June 30, 2022]

PERMIT SANCTION FOR VIOLATIONS

§ 904.320 [Reserved]

§ 904.321 Reinstatement of permit.

(a) A permit suspended for a specified period of time will be reinstated automatically at the end of the period.

(b) A permit suspended until stated requirements are met will be reinstated only by order of NOAA.

§ 904.322 Interim action.

(a) To protect marine resources during the pendency of an action under this subpart, in cases of willfulness, or as otherwise required in the interest of public health, welfare, or safety, a Judge may order immediate suspension, modification, or withholding of a permit until a decision is made on the action proposed in a NOPS or NIDP.

(b) The Judge will order interim action under paragraph (a) of this section, only after finding that there exists probable cause to believe that the violation charged in the NOPS or NIDP was committed. The Judge's finding of probable cause, which will be summarized in the order, may be made:

(1) After review of the factual basis of the alleged violation, following an opportunity for the parties to submit their views (orally or in writing, in the Judge's discretion); or

(2) By adoption of an equivalent finding of probable cause or an admission in any administrative or judicial proceeding to which the recipient of the NOPS or NIDP was a party, including, but not limited to, a hearing to arrest or set bond for a vessel in a civil forfeiture action or an arraignment or other hearing in a criminal action. Adoption of a finding or admission under this paragraph may be made only after the Judge reviews pertinent portions of the transcript or other records, documents, or pleadings from the other proceeding.

(c) An order for interim action under paragraph (a) of this section is unappealable and will remain in effect until a decision is made on the NOPS or NIDP. Where such interim action has been taken, the Judge will expedite any hearing requested under § 904.304.

Subpart E—Written Warnings

§ 904.400 Purpose and scope.

This subpart sets forth the policy and procedures governing the issuance and use of written warnings by persons authorized to enforce the statutes administered by NOAA, and the review of such warnings. A written warning may be issued in lieu of assessing a civil penalty or initiating criminal prosecution for violation of any of the laws cited in § 904.1(c).

§ 904.401 Written warning as a prior violation.

A written warning may be used as a basis for dealing more severely with a subsequent violation, including, but not limited to, a violation of the same statute or a violation involving an activity that is related to the prior violation.

§ 904.402 Procedures.

(a) Any person authorized to enforce the laws listed in § 904.1(c) or Agency counsel may serve a written warning on a respondent.

(b) The written warning will:

(1) State that it is a ''written warning'';

(2) State the factual and statutory or regulatory basis for its issuance;

(3) Advise the respondent of its effect in the event of a future violation; and

(4) Inform the respondent of the right of review and appeal under § 904.403.

(c) NOAA will maintain a record of written warnings that are issued.

(d) If, within 120 days of the date of the written warning, further investigation indicates that the violation is more serious than realized at the time the written warning was issued, or that the respondent previously committed a similar violation for which a written warning was issued or other enforcement action was taken, NOAA may withdraw the warning and commence other administrative or judicial proceedings.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38942, June 30, 2022]

§ 904.403 Review and appeal of a written warning.

(a) [Reserved]

(b) The recipient of a written warning may appeal to the NOAA Deputy General Counsel. The appeal must be served in conformance with § 904.3 and submitted to *administrative.appeals@noaa.gov* or the NOAA Office of the General Counsel, Herbert Hoover Office Building, 14th & Constitution Avenue NW, Washington, DC 20230, within 60 days of receipt of the written warning.

(1) An appeal from a written warning must be in writing and must present the facts and circumstances that explain or deny the violation described in the written warning.

(2) [Reserved]

(c) The NOAA Deputy General Counsel may, in his or her discretion, affirm, vacate, or modify the written warning and will notify the respondent of the determination. The NOAA Deputy General Counsel's determination constitutes the final agency action.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38942, June 30, 2022]

Subpart F—Seizure and Forfeiture Procedures

§ 904.500 Purpose and scope.

(a) This subpart sets forth procedures governing the release, abandonment, forfeiture, remission of forfeiture, or return of property seized under any of the laws cited in § 904.1(c).

(b) Except as provided in this subpart, these regulations apply to all seized property subject to forfeiture under any of the laws cited in § 904.1(c). This subpart is in addition to, and not in contradiction of, any special rules regarding seizure, holding or disposition of property seized under these statutes.

[87 FR 38942, June 30, 2022]

§ 904.501 Notice of seizure.

Within 60 days from the date of the seizure, NOAA will serve a Notice of Seizure on the owner or consignee, if known or easily ascertainable, or other party that the facts of record indicate has an interest in the seized property. In cases where the property is seized by a state or local law enforcement agency; a Notice of Seizure will be served in the above manner within 90 days from the date of the seizure. The Notice will describe the seized property and state the time, place and reason for the seizure, including the provisions of law alleged to have been violated. The Notice will inform each interested party of his or her right to file a claim to the seized property, and state a date by which a claim must be filed, which may not be less than 35 days after service of the Notice. The Notice may be combined with a Notice of the sale of perishable fish issued under § 904.505. If a claim is filed, the case will be referred promptly to the U.S. Department of Justice for institution of judicial proceedings.

[87 FR 38942, June 30, 2022]

§ 904.502 Bonded release of seized property.

(a) As authorized by applicable statute, at any time after seizure of any property, NOAA may, in its sole discretion, release any seized property upon deposit with NOAA of the full value of the property or such lesser amount as NOAA deems sufficient to protect the interests served by the applicable statute. In addition, NOAA may, in its sole discretion, accept a bond or other security in place of fish, wildlife, or other property seized. The bond will contain such conditions as NOAA deems appropriate.

(b) Property may be released under this section only if possession thereof will not violate or frustrate the purpose or policy of any applicable law or regulation. Property that will not be released includes, but is not limited to:

(1) Property in which NOAA is not satisfied that the requester has a substantial interest;

(2) Property whose entry into the commerce of the United States is prohibited;

(3) Live animals, except in the interest of the animals' welfare; or

(4) Property whose release appears to NOAA not to be in the best interest of the United States or serve the purposes of the applicable statute.

(c) If NOAA grants the request, the amount paid by the requester will be deposited in a NOAA suspense account. The amount so deposited will for all purposes be considered to represent the property seized and subject to forfeiture, and payment of the amount by

requester constitutes a waiver by requester of any claim rising from the seizure and custody of the property. NOAA will maintain the money so deposited pending further order of NOAA, order of a court, or disposition by applicable administrative proceedings.

(d) A request for release need not be in any particular form, but must set forth the following:

(1) A description of the property seized;

(2) The date and place of the seizure;

(3) The requester's interest in the property, supported as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;

(4) The facts and circumstances relied upon by the requester to justify the remission or mitigation;

(5) An offer of payment to protect the United States' interest that requester makes in return for release;

(6) The signature of the requester, his or her attorney, or other authorized agent; and

(7) A request to defer administrative or judicial forfeiture proceedings until completion of all other related judicial or administrative proceedings (including any associated civil penalty or permit sanction proceedings).

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38942, June 30, 2022]

§ 904.503 Appraisement.

NOAA may appraise seized property to determine its domestic value. Domestic value means the price at which such or similar property is offered for sale at the time and place of appraisement in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, the value in the principal market nearest the place of appraisement may be used. If the seized property may not lawfully be sold in the United States, its domestic value may be determined by other reasonable means.

[87 FR 38942, June 30, 2022]

§ 904.504 Administrative forfeiture proceedings.

(a) *When authorized.* This section applies to property with a value of $500,000 or less, and that is subject to administrative forfeiture under the applicable statute. This section does not apply to conveyances seized in connection with criminal proceedings.

(b) *Procedure.* (1) Within 60 days from the date of the seizure, or within 90 days of the date of the seizure where the property is seized by a state or local law enforcement agency, NOAA will publish a Notice of Proposed Forfeiture once a week for at least three successive weeks in a newspaper of general circulation in the Federal judicial district in which the property was seized or post a notice on an official government forfeiture website for at least 30 consecutive days. However, if the value of the seized property does not exceed $1,000, the Notice may be published by posting for at least three successive weeks in a conspicuous place accessible to the public at the National Marine Fisheries Service Enforcement Office, U.S. District Court, or the U.S. Customs House nearest the place of seizure, with the date of posting indicated on the Notice. In addition, a reasonable effort will be made to serve the Notice on each person whose identity, address and interest in the property are known or easily ascertainable.

(2) The Notice of Proposed Forfeiture will:

(i) Describe the seized property, including any applicable registration or serial numbers;

(ii) State the time, place and reason for the seizure, including the provisions of law allegedly violated; and

(iii) Describe the rights of an interested person to file a claim to the property (including the right to petition to remit or mitigate the forfeiture).

(3)(i) Any person claiming the seized property may file a claim with NOAA, at the address indicated in the Notice, within 30 days of the date the final Notice was published or posted. The claim must state the claimant's interest in the property.

(ii) Filing a claim does not entitle the claimant to possession of the property. However, it does stop administrative forfeiture proceedings.

(iii) If the claim is timely filed in accordance with this section, NOAA will refer the matter to the U.S. Department of Justice to institute forfeiture

proceedings in the appropriate U.S. District Court.

(4) If a claim is not filed within 30 days of the date the final Notice is published or posted in accordance with this section, NOAA will declare the property forfeited. The Declaration of Forfeiture will be in writing and will be served as provided in §904.3, on each person whose identity and address and prior interest in the seized property are known or easily ascertainable. The Declaration will describe the property and state the time, place, and reason for its seizure, including the provisions of law violated. The Declaration will identify the Notice of Proposed Forfeiture, describing the dates and manner of publication of the Notice and any efforts made to serve the Notice as provided in §904.3. The Declaration will state that in response to the Notice a proper claim was not timely received by the proper office from any claimant, and that therefore all potential claimants are deemed to admit the truth of the allegations of the Notice. The Declaration shall conclude with an order of condemnation and forfeiture of the property to the United States for disposition according to law. All forfeited property will be subject to disposition as authorized by law and regulations of NOAA.

(5) If the appraised value of the property is more than $500,000, or a timely and satisfactory claim for property appraised at $500,000 or less is submitted to NOAA, the matter will be referred to the U.S. Department of Justice to institute *in rem* proceedings in the appropriate U.S. District Court.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38942, June 30, 2022]

§904.505 Summary sale.

(a) In view of the perishable nature of fish, any person authorized to enforce a statute administered by NOAA may, as authorized by law, sell or cause to be sold, and any person may purchase, for not less than its domestic fair market value, fish seized under such statute.

(b) Any person purchasing fish subject to this section must deliver the proceeds of the sale to a person authorized to enforce a statute administered by NOAA immediately upon request of such authorized person. Anyone who does not so deliver the proceeds may be subject to penalties under the applicable statute or statutes.

(c) NOAA will serve the Notice of the Summary Sale on the owner or consignee, if known or easily ascertainable, or to any other party that the facts of record indicate has an interest in the seized fish, unless the owner or consignee or other interested party has otherwise been personally notified. Notice will be sent either prior to the sale, or as soon thereafter as practicable.

(d) The proceeds of the sale, after deducting any reasonable costs of the sale, will be subject to any administrative or judicial proceedings in the same manner as the seized fish would have been, including an action in rem for the forfeiture of the proceeds. Pending disposition of such proceedings, the proceeds will, as appropriate, either be deposited in a NOAA suspense account or submitted to the appropriate court.

(e) Seizure and sale of fish is without prejudice to any other remedy or sanction authorized by law.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38942, June 30, 2022]

§904.506 Remission of forfeiture and restoration of proceeds of sale.

(a) *Application of this section.* (1) This section establishes procedures for filing with NOAA a petition for the return of any property which has been or may be administratively forfeited under the provisions of any statute administered by NOAA that authorizes the remission or mitigation of forfeitures.

(2) Although NOAA may properly consider a petition for remission or mitigation of forfeiture and restoration of proceeds of sale along with other consequences of a violation, the remission or mitigation of a forfeiture and restoration of proceeds is not dispositive of any criminal charge filed, civil penalty assessed, or permit sanction proposed, unless NOAA expressly so states. Remission or mitigation of forfeiture and restoration of proceeds is in the nature of executive clemency and is granted in the sole discretion of NOAA only when consistent with the purposes of the particular statute involved and this section.

(3) If no petition is timely filed, or if the petition is denied, prior to depositing the proceeds NOAA may use the proceeds of sale to reimburse the U.S. Government for any costs that by law may be paid from such sums.

(4) If NOAA remits the forfeiture and the forfeited property has not been sold, then restoration may be conditioned upon payment of any applicable costs as defined in this subpart.

(b) *Petition for relief from forfeiture.* (1) Any person claiming an interest in any property which has been or may be administratively forfeited under the provisions of § 904.504 may, at any time after seizure of the property, but no later than 90 days after the date of forfeiture, petition for a remission or mitigation of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by the petitioner by serving the petition in conformance with § 904.3 on *administrative.appeals@noaa.gov* or the Chief of the Enforcement Section of the NOAA Office of General Counsel, 1315 East-West Highway, SSMC 3, Suite 15828, Silver Spring, MD 20910.

(2) The petition need not be in any particular form, but must set forth the following:

(i) A description of the property seized;

(ii) The date and place of the seizure;

(iii) The petitioner's interest in the property, supported as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;

(iv) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation of forfeiture and restoration of proceeds. If the claim is made after the property is forfeited, the petitioner must provide satisfactory proof that the petitioner did not know of the seizure prior to the declaration or condemnation of forfeiture, was in such circumstances as prevented him or her from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to violate the applicable statute on the part of the petitioner; and

(v) The signature of the petitioner, his or her attorney, or other authorized agent.

(3) NOAA will not consider a petition for remission or mitigation of forfeiture and restoration of proceeds while a forfeiture proceeding is pending in Federal court. Once such a case is referred to the U.S. Department of Justice for institution of judicial proceedings, and until the proceedings are completed, any petition received by NOAA will be forwarded to the U.S. Department of Justice for consideration.

(4) A false statement in a petition will subject petitioner to prosecution under 18 U.S.C. 1001.

(c) *Investigation.* NOAA will investigate the facts and circumstances shown by the petition and seizure, and may in this respect appoint an investigator to examine the facts and prepare a report of investigation.

(d) *Determination of petition.* (1) After investigation under paragraph (c) of this section, NOAA will make a determination on the matter and notify the petitioner. NOAA may remit or mitigate the forfeiture, on such terms and conditions as are deemed reasonable and just under the applicable statute and the circumstances.

(2) Unless NOAA determines no valid purpose would be served, NOAA will condition a determination to remit or mitigate a forfeiture upon the petitioner's submission of an agreement, in a form satisfactory to NOAA, to hold the United States and its officers or agents harmless from any and all claims based on loss of or damage to the seized property or that might result from grant of remission or mitigation and restoration of proceeds. If the petitioner is not the beneficial owner of the property, or if there are others with a proprietary interest in the property, NOAA may require the petitioner to submit such an agreement executed by the beneficial owner or other interested party. NOAA may also require that the property be promptly exported from the United States.

(e) *Compliance with the determination.* A determination by NOAA to remit or mitigate the forfeiture and restore the proceeds upon stated conditions, as upon payment of a specified amount, will be effective for 60 days after the date of the determination. If the petitioner does not comply with the conditions within that period in a manner

prescribed by the determination, or make arrangements satisfactory to NOAA for later compliance, the remission or mitigation and restoration of proceeds will be void, and judicial or administrative forfeiture proceedings will be instituted or resumed.

(f) *Appropriated property.* If forfeited property that is the subject of a claim for restoration of proceeds has been appropriated for official use, retention by the U.S. Government will be regarded as a sale for the purposes of this section.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38943, June 30, 2022]

§ 904.507 Recovery of certain storage costs.

If any fish, wildlife, or evidentiary property is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531 through 1543, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling or storage of such property. If any fish or wildlife is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371 through 3378, or any property is seized in connection with a violation of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 through 1882, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, NOAA will send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill will contain an itemized statement of the applicable costs, and instructions on the time and manner of payment. Payment must be made in accordance with the bill. If the recipient of the bill objects to the reasonableness of the costs assessed he or she may, within 30 days of receipt, file written objections with NOAA at the address stated in the bill. NOAA will promptly review the written objections and within 30 days mail the final determination to the party who filed them. NOAA's determination will constitute final agency action on the matter.

§ 904.508 Voluntary forfeiture by abandonment.

(a) The owner of seized property may voluntarily forfeit all right, title, and interest in the property by abandoning it to NOAA. Voluntary forfeiture by abandonment under this section may be accomplished by various means, including, but not limited to: expressly waiving any claim to the property by voluntarily relinquishing any right, title, and interest by written agreement or otherwise; or refusing or otherwise avoiding delivery of returned property; or failing to respond within 90 days of service of any certified or registered notice regarding a return of seized property issued under § 904.510(b).

(b) Property will be declared finally forfeited by abandonment, without recourse, upon a finding of abandonment by NOAA.

§ 904.509 Disposal of forfeited property.

(a) *Delivery to Administrator.* Upon forfeiture of any fish, wildlife, parts or products thereof, or other property to the United States, including the abandonment or waiver of any claim to any such property, it will be delivered to NOAA for storage or disposal according to the provisions of this section.

(b) *Disposal.* Disposal may be accomplished by one of the following means unless the property is the subject of a petition for remission or mitigation of forfeiture or disposed of by court order:

(1) Return to the wild;

(2) Use by NOAA or transfer to another government agency for official use;

(3) Donation or loan;

(4) Sale; or

(5) Destruction.

(c) *Purposes of disposal.* Disposal procedures may be used to alleviate overcrowding of evidence storage facilities; to avoid the accumulation of seized property where disposal is not otherwise accomplished by court order; to address the needs of governmental agencies and other institutions and organizations for such property for scientific, educational, and public display purposes; and for other valid reasons.

In no case will property be used for personal purposes, either by loan recipients or government personnel.

(d) *Disposal of evidence.* Property that is evidence may be disposed of only after authorization by the NOAA Office of General Counsel. Disposal approval usually will not be given until the case involving the evidence is closed, except that perishable property may be authorized for disposal sooner.

(e) *Loans*—(1) *To institutions.* Property approved for disposal may be loaned to institutions or organizations requesting such property for scientific, educational, or public display purposes. Property will be loaned only after execution of a loan agreement which provides, among other things, that the loaned property will be used only for noncommercial scientific, educational, or public display purposes, and that it will remain the property of the U.S. Government, which may demand its return at any time. Parties requesting the loan of property must demonstrate the ability to provide adequate care and security for the property. Loans may be made to responsible agencies of foreign governments in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(2) *To individuals.* Property generally will not be loaned to individuals not affiliated with an institution or organization unless it is clear that the property will be used in a noncommercial manner, and for scientific, educational, or public display purposes which are in the public interest.

(3) *Selection of loan recipients.* Recipients of property will be chosen so as to assure a wide distribution of the property throughout the scientific, educational, public display and museum communities. Other branches of NMFS, NOAA, the Department of Commerce, and other governmental agencies will have the right of first refusal of any property offered for disposal. The Administrator may solicit applications, by publication of a notice in the FEDERAL REGISTER, from qualified persons, institutions, and organizations who are interested in obtaining the property being offered. Such notice will contain a statement as to the availability of specific property for which transferees are being sought, and instructions on how and where to make application. Applications will be granted in the following order: other offices of NMFS, NOAA, and the Department of Commerce; U.S. Fish and Wildlife Service; other Federal agencies; other governmental agencies; scientific, educational, or other public or private institutions; and private individuals.

(4) *Loan agreement.* Property will be transferred under a loan agreement executed by the Administrator and the borrower. Any attempt on the part of the borrower to retransfer property, even to another institution for related purposes, will violate and invalidate the loan agreement, and entitle the United States to immediate repossession of the property, unless the prior approval of the Administrator has been obtained under § 904.510(d)(5). Violation of the loan agreement may also subject the violator to the civil penalties provided by the laws governing possession and transfer of the property.

(5) *Temporary reloans; documents to accompany property.* Temporary reloans by the borrower to another qualified borrower (as for temporary exhibition) may be made if the Administrator is advised in advance by the borrowers. Temporary loans for more than thirty days must be approved in advance in writing by the Administrator. A copy of the original loan agreement, and a copy of the written approval for reloan, if any, must accompany the property whenever it is temporarily reloaned or is shipped or transported across state or international boundaries.

(f) *Sale.* (1) Any fish, wildlife, parts or products thereof, and other property which has been voluntarily forfeited by abandonment to NOAA may be sold or offered for sale, with the exception of any species or property which is otherwise prohibited from being sold at the time it is to be sold or offered for sale.

(2) Property will be sold in accordance with current Federal Property Management Regulations (41 CFR chapter 101) or U.S. Customs laws and regulations, except that NOAA may:

(i) Sell at fair market value perishable fish pursuant to the summary sales provisions of 15 CFR 904.505; and

(ii) Sell, destroy, or otherwise dispose of property for which it is determined

the expense of keeping it is disproportionate to the value thereof.

(3) The proceeds of sale may be used to reimburse NOAA for any costs which by law NOAA is authorized to recover or to pay any rewards which by law may be paid from sums that NOAA receives.

(g) *Destruction.* (1) Property not otherwise disposed of may be destroyed.

(2) Destruction will be accomplished in accordance with the requirements of 41 CFR parts 101–1 through 101–49.

(3) When destroyed, the fact, manner, and date of destruction and the type and quantity destroyed must be certified by the official actually destroying the property.

(4) No duly authorized officer of NOAA shall be liable for the destruction or other disposition of property made pursuant to this section.

(h) *Recordkeeping.* A disposal form will be completed each time property is disposed of pursuant to the policy and procedure established herein, and will be retained in the case file for the property. These forms will be available to the public.

[71 FR 12448, Mar. 10, 2006, as amended at 87 FR 38943, June 30, 2022]

§ 904.510 Return of seized property.

(a) *Return.* In cases where NOAA, in its sole discretion, determines that forfeiture of seized property would not be in the best interest of the U.S. Government, NOAA will make a reasonable attempt to determine the party that the facts of record indicate has a predominant ownership interest in the seized property and, provided such a determination can be made, will arrange for return of the seized property to that party by appropriate means.

(b) *Notice.* NOAA will serve a Notice of the Return of property as provided by § 904.3, to the owner, consignee, or other party the facts of record indicate has an interest in the seized property. The Notice will describe the seized property, state the time, place, and reason for the seizure and return, and will identify the owner or consignee, and if appropriate, the bailee of the seized property. The Notice of the return also will state that the party to whom the property is being returned is responsible for any distribution of the property to any party who holds a valid claim, right, title or interest in receiving the property, in whole or in part. The Notice also will provide that on presentation of the Notice and proper identification, and the signing of a receipt provided by NOAA, the seized property is authorized to be released.

PART 905—USE IN ENFORCEMENT PROCEEDINGS OF INFORMATION COLLECTED BY VOLUNTARY FISHERY DATA COLLECTORS

Sec.
905.1 Scope.
905.2 Definitions.
905.3 Access to information.
905.4 Use of information.
905.5 Exceptions.

AUTHORITY: 16 U.S.C. 1853(f).

SOURCE: 60 FR 39251, Aug. 2, 1995, unless otherwise noted.

§ 905.1 Scope.

This part applies to the use, in enforcement proceedings conducted pursuant to the Magnuson Act, the MMPA, and the ESA, of information collected by voluntary fishery data collectors.

§ 905.2 Definitions.

When used in this part:

Consenting owner means the owner, operator, or crewmember of a vessel carrying a voluntary fishery data collector.

Enforcement proceeding means any judicial or administrative trial or hearing, initiated for the purpose of imposing any civil or criminal penalty authorized under the Magnuson Act, MMPA, or ESA, including but not limited to, any proceeding initiated to: Impose a monetary penalty; modify, sanction, suspend or revoke a lease, license or permit; secure forfeiture of seized property; or incarcerate an individual.

ESA means the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations.

Information means all observations, data, statistics, photographs, film, or recordings collected by a voluntary fishery data collector for conservation and management purposes, as defined by the Magnuson Act, MMPA, or ESA,

while onboard the vessel of a consenting owner.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801 *et seq.*, and implementing regulations.

MMPA means the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 *et seq.*, and implementing regulations.

Secretary means the Secretary of Commerce, the Secretary of the Interior, their chosen designees, or any other Federal agency authorized to enforce the provisions of the Magnuson Act, MMPA, or ESA.

Vessel means any vessel as defined at 16 U.S.C. 1802(31).

Voluntary fishery data collector means:

(1) Any person, including an observer or a sea sampler;

(2) Placed aboard a vessel by the Secretary;

(3) For the purpose of collecting information; and

(4) Whose presence aboard that vessel is not required by the Secretary pursuant to provisions of the Magnuson Act, MMPA, or ESA, or their implementing regulations.

§ 905.3 Access to information.

Information collected by a voluntary fishery data collector:

(a) Is subject to disclosure to both the Secretary and the public, to the extent required or authorized by law; and

(b) Is subject to discovery by any party to an enforcement proceeding, to the extent required or authorized by law.

§ 905.4 Use of information.

(a) Except as provided for in paragraph (b) of this section, information collected by a voluntary fishery data collector may not be introduced by the Secretary as evidence against any consenting owner that is a party to an enforcement proceeding.

(b) Provided that all applicable evidentiary requirements are satisfied:

(1) Information collected by a voluntary fishery data collector may be introduced in an enforcement proceeding by any party except the Secretary;

(2) If information is introduced pursuant to paragraph (b)(1) of this section, all information collected by a voluntary fishery data collector may be introduced by any other party, including the Secretary.

(c) Independent evidence derived from information collected by a voluntary fishery data collector may be introduced by any party, including the Secretary, in an enforcement proceeding.

§ 905.5 Exceptions.

The provisions of this part shall not apply in any enforcement proceeding against a consenting owner that alleges the actual or attempted:

(a) Assault, intimidation, or harassment (including sexual harassment) of any person; or

(b) Impairment or interference with the duties of a voluntary fishery data collector.

PART 906—NATIONAL APPEALS OFFICE RULES OF PROCEDURE

Sec.

906.1 Purpose and scope.
906.2 Definitions.
906.3 Requesting an appeal and agency record.
906.4 General filing requirements.
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906.13 Failure to appear.
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906.15 Decisions.
906.16 Reconsideration.
906.17 Review by the Regional Administrator.
906.18 Final decision of the Department.

AUTHORITY: 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 1374, 1375 and 1416; 16 U.S.C. 1540; 16 U.S.C. 773f; 16 U.S.C. 973f; 16 U.S.C. 1174; 16 U.S.C. 2437; 16 U.S.C. 4013; 16 U.S.C. 5507; 16 U.S.C. 7009; 16 U.S.C. 3637; 16 U.S.C. 5103 and 5106; 16 U.S.C. 5154 and 5158; 16 U.S.C. 6905, and; 16 U.S.C. 5010.

SOURCE: 79 FR 7060, Feb. 6, 2014, unless otherwise noted.

§ 906.1 Purpose and scope.

(a) This part sets forth the procedures governing administrative adjudications before the National Appeals Office (NAO).

(b) NAO will adjudicate appeals of initial administrative determinations in limited access privilege programs developed under section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and approved after the effective date of these regulations. Those appeals are informal proceedings.

(c) The procedures in this part may be incorporated by reference in regulations other than those promulgated pursuant to section 303A of the MSA.

(d) The Secretary of Commerce may request that NAO adjudicate appeals in any matter in controversy that requires findings of fact and conclusions of law, and other quasi-judicial matters that the Secretary deems appropriate, consistent with existing regulations. The Secretary will provide notice to potential appellants and to any affected party in these other matters through regulations or actual notice.

(e) The procedures in this part may not be used to seek review of the validity of statutes or regulations.

§ 906.2 Definitions.

As used in this part:

Agency record means all material and information, including electronic, the office that issued the initial administrative determination relied on or considered in reaching its initial administrative determination, or which otherwise is related to the initial administrative determination.

Appeal means an appellant's petition to appeal an initial administrative determination and all administrative processes of the National Appeals Office related thereto.

Appellant means a person who is the named recipient of an initial administrative determination and appeals it to the National Appeals Office.

Appellate officer means an individual designated by the Chief of the National Appeals Office to adjudicate the appeal. The term may include the Chief of the National Appeals Office.

Day means calendar day unless otherwise specified by the Chief of the National Appeals Office. When computing any time period specified under these rules, count every day, including intermediate Saturdays, Sundays, and legal holidays. If the date that ordinarily would be the last day for filing with NAO falls on a Saturday, Sunday, or Federal holiday, or a day NAO is closed, the filing period will include the first NAO workday after that date.

Department or *DOC* means the Department of Commerce.

Initial Administrative Determination or *IAD* means a determination made by an official of the National Marine Fisheries Service that directly and adversely affects a person's ability to hold, acquire, use, or be issued a limited access privilege. The term also includes determinations issued pursuant to other federal law, for which review has been assigned to the National Appeals Office by the Secretary.

NAO means the National Appeals Office, an adjudicatory body within the Office of Management and Budget, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce. The term generally means all NAO personnel, including appellate officers.

NAO case record means the agency record and all additional documents and other materials related to an appeal and maintained by NAO in a case file.

NMFS means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

National Oceanic and Atmospheric Administration or *NOAA* means the National Oceanic and Atmospheric Administration, Department of Commerce.

Party means a person who files a petition for appeal with NAO and an office that issued the IAD if that office participates in the NAO appeal.

Regional Administrator means the administrator of one of five regions of NMFS: Northeast, Southeast, West Coast, Alaska, or Pacific Islands. The term also includes an official with similar authority within the DOC, such as the Director of NMFS Office of Sustainable Fisheries.

Representative means an individual properly authorized by an appellant in writing to act for the appellant in conjunction with an appeal pending in NAO. The representative does not need to be a licensed attorney.

§ 906.3 Requesting an appeal and agency record.

(a) *Who may file.* Any person who is the named recipient of an initial administrative determination.

(b) *Petition to appeal.* (1) To request an appeal, a person shall submit a written petition of appeal to NAO.

(2) The petition shall include a copy of the initial administrative determination the person wishes to appeal.

(3) In the petition, the person shall state how the initial administrative determination directly and adversely affects him or her, why he or she believes the initial administrative determination is inconsistent with the law and regulations governing the initial administrative determination, and whether he or she requests a hearing or prefers that an appellate officer make a decision based on the NAO case record and without a hearing.

(i) Arguments not raised by the person in his or her petition to appeal will be deemed waived unless NAO permits amendments to the petition based on good cause for not raising the arguments in the original petition.

(ii) The petition may include additional documentation in support of the appeal.

(4) If a person requests a hearing, the written request must include a concise statement raising genuine and substantial issues of a material fact or law that cannot be resolved based on the documentary evidence.

(5) In the petition, a person shall state whether the person has a representative, and if so, the name, address, and telephone number for the representative.

(c) *Address of record.* In the petition, the person shall identify the address of record. Documents directed to the appellant will be mailed to the address of record, unless the appellant provides NAO and other parties with any changes to his or her address in writing.

(1) The address of record may include a representative's address.

(2) NAO bears no responsibility if the appellant or his or her representative does not receive documents because appellant or his or her representative changed his or her address and did not notify NAO.

(3) NAO bears no responsibility if the appellant or his or her representative fails to retrieve documents upon notification from the United States Postal Service or commercial carrier.

(4) NAO will presume that documents addressed to an address of record and properly mailed or given to a commercial carrier for delivery are received.

(d) *Place of filing.* The petition must be transmitted via facsimile. The facsimile number is: 301–713–2384. If the person filing the petition does not have access to a fax machine, he or she may file the petition by mail or commercial carrier addressed to Chief, National Appeals Office, 1315 East-West Hwy., Silver Spring, MD 20910.

(e) *Time limitations.* (1) A petition must be filed within 45 days after the date the initial administrative determination is issued unless a shorter or longer filing timeframe is explicitly specified in the regulations governing the initial administrative determination.

(2) A person may not request an extension of time to file a petition to appeal.

(f) *Agency record.* (1) Within 20 days of receipt of the copy of the petition to appeal, the office that issued the initial administrative determination that is the subject of the appeal shall transmit the agency record to NAO.

(2) The office that issued the initial administrative determination shall organize the documents of the agency record in chronological order. Pages attached to a primary submission shall remain with the primary submission.

(g) *Agency participation in appeal.* Within 20 days of receipt of the copy of the petition to appeal, the office that issued the initial administrative determination that is the subject of the appeal may provide written notice to NAO that it will be a party to the appeal. An office issuing the initial administrative determination is not required to be a party.

§ 906.4 General filing requirements.

(a) *Date of filing.* Filing refers to providing documents to NAO.

(1) Except for the agency record required under § 906.3(f), all documents filed on behalf of an appellant or related to an appeal shall be submitted to NAO via facsimile. The facsimile number is: 301–713–2384. If the person filing does not have access to a fax machine, he or she may file by regular mail or commercial carrier addressed to Chief, National Appeals Office, 1315 East-West Hwy., Silver Spring, MD 20910.

(2) A document transmitted to NAO is considered filed upon receipt of the entire submission by 5 p.m. Eastern Time at NAO.

(b) *Copies.* At the time of filing a submission to NAO, the filing party shall serve a copy thereof on every other party, unless otherwise provided for in these rules.

(c) *Retention.* All submissions to NAO become part of a NAO case record.

(d) *Extension of time.* When a submission is required to be filed at NAO by a deadline, a party may request, in writing, an extension of time to file the submission, citing the specific reason(s) for the need for an extension. NAO may grant one extension of up to 30 days if an appellate officer determines the party has established good cause for an extension of time, taking into account whether the party timely requested the extension or the extent to which the party missed the deadline.

§ 906.5 Service.

(a) Service refers to providing documents to parties to an appeal.

(1) Service of documents may be made by first class mail (postage prepaid), facsimile, or commercial carrier, or by personal delivery to a party's address of record.

(2) Service of documents will be considered effective upon the date of postmark (or as otherwise shown for government-franked mail), facsimile transmission, delivery to a commercial carrier, or upon personal delivery.

(b) A party shall serve a copy of all documents to all other parties and shall file a copy of all documents with NAO the same business day.

(c) NAO may serve documents by electronic mail.

§ 906.6 Ex parte communications.

(a) *Ex parte communication* means any oral or written communication about the merits of a pending appeal between one party and the NAO with respect to which reasonable prior notice to all parties is not given. However, ex parte communication does not include inquiries regarding procedures, scheduling, and status.

(b) Ex parte communication is not permissible unless all parties have been given reasonable notice and an opportunity to participate in the communication.

(c) If NAO receives an ex parte communication, NAO shall document the communication and any responses thereto in the NAO case record. If the ex parte communication was in writing, NAO shall include a copy of the communication in the NAO case record. If the ex parte communication was oral, NAO shall prepare a memorandum stating the substance of the oral communication, and include the memorandum in the NAO case record. NAO will provide copies of any such materials included in the NAO case record under this paragraph to the parties.

(d) NAO may require a party to show cause why such party's claim or interest in the appeal should not be dismissed, denied, disregarded, or otherwise adversely affected because of an ex parte communication.

(e) NAO may suspend this section during an alternative dispute resolution process established by regulation or agency policy.

(f) Communication with NAO, including appellate officers, concerning procedures, scheduling, and status is permissible.

§ 906.7 Disqualification of appellate officer.

(a) An appellate officer shall disqualify himself or herself if the appellate officer has a perceived or actual conflict of interest, a perceived or actual prejudice or bias, for other ethical reasons, or based on principles found in the American Bar Association Model

Code of Judicial Conduct for Administrative Law Judges.

(b) Any party may request an appellate officer, at any time before the filing of the appellate officer's decision, to withdraw on the ground of personal bias or disqualification, by filing a written motion with the appellate officer setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) The appellate officer, orally or in writing, shall grant or deny the motion based on the American Bar Association Model Code of Judicial Conduct for Federal Administrative Law Judges and other applicable law or policy. If the motion is granted, the appellate officer will disqualify himself or herself and withdraw from the proceeding. If the motion is denied, the appellate officer will state the grounds for his or her ruling and proceed with his or her review.

§ 906.8 Scheduling and pre-hearing conferences.

(a) NAO may convene a scheduling and/or pre-hearing conference if, for example, an appellate officer in his or her discretion finds a conference will materially advance the proceeding.

(b) NAO shall notify the parties in writing 10 days prior to a conference unless the Chief of NAO orders a shorter period of time for providing notice of conducting a conference. A party may request one change in the scheduled pre-hearing date. In determining whether to grant the request, NAO will consider whether the requesting party has shown good cause for the change in date.

(c) In exercising his or her discretion whether to hold a scheduling and/or pre-hearing conference, an appellate officer may consider:

(1) Settlement, if authorized under applicable law;

(2) Clarifying the issues under review;

(3) Stipulations;

(4) Hearing(s) date, time, and location;

(5) Identifying witnesses for the hearing(s);

(6) Development of the NAO case record, and;

(7) Other matters that may aid in the disposition of the proceedings.

(d) *Recording.* NAO may record the conference.

(e) *Format.* At the discretion of the appellate officer, conferences may be conducted by telephone, in person, or by teleconference or similar electronic means.

(f) NAO may issue a written order showing the matters disposed of in the conference and may include in the order other matters related to the appeal.

§ 906.9 Exhibits.

(a) The parties shall mark all exhibits in consecutive order in whole Arabic numbers and with a designation identifying the party submitting the exhibit(s).

(b) Parties shall exchange all exhibits that will be offered at the hearing at least 10 days before the hearing.

(c) Parties shall provide all exhibit(s) to NAO at least 5 days before the hearing.

(d) NAO may modify the timeframe for exchanging or submitting exhibits if an appellate officer determines good cause exists.

(e) NAO may deny the admission into evidence of exhibits that are not marked and exchanged pursuant to this rule.

(f) Each exhibit offered in evidence or marked for identification shall be filed and retained in the NAO case record.

§ 906.10 Evidence.

(a) The Federal Rules of Evidence do not apply to NAO proceedings.

(b) An appellate officer will decide whether to admit evidence into the NAO case record.

(1) An appellate officer may exclude unduly repetitious, irrelevant, and immaterial evidence. An appellate officer may also exclude evidence to avoid undue prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence.

(2) An appellate officer may consider hearsay evidence.

(c) Copies of documents may be offered as evidence, provided they are of equal legibility and quality as the originals, and such copies shall have the same force and effect as if they were originals. If an appellate officer

so directs, a party shall submit original documents to the appellate officer.

(d) An appellate officer may take official notice of Federal or State public records and of any matter of which courts may take judicial notice.

(e) An appellate officer may request, and the program office that issued the initial administrative determination in the case before the appellate officer will provide, the interpretation(s) of the law made by the program office and applied to the facts in the case.

§ 906.11 Hearing.

(a) *Procedures.* (1) An appellate officer in his or her discretion may order a hearing taking into account the information provided by an appellant pursuant to § 906.3(b)(3) and whether an appellate officer considers that a hearing will materially advance his or her evaluation of the issues under appeal. In exercising his or her discretion, an appellate officer may consider whether oral testimony is required to resolve a material issue of fact, whether oral presentation is needed to probe a party's position on a material issue of law, and whether a hearing was held previously for the same appeal. If an appellate officer determines that a hearing is not necessary, then the appellate officer will base his or her decision on the NAO case record. In the absence of a hearing an appellate officer may, at his or her discretion, permit the parties to submit additional materials for consideration.

(2) If an appellate officer convenes a hearing, the hearing will be conducted in the manner determined by NAO most likely to obtain the facts relevant to the matter or matters at issue.

(3) NAO shall schedule the date, time and place for the hearing. NAO will notify the parties in writing of the hearing date, time and place at least 10 days prior to the hearing unless the Chief of NAO orders a shorter period for providing notice or conducting the hearing. A party can request one change in the scheduled hearing date. In determining whether to grant the request, NAO will consider whether the requesting party has shown good cause for the change in date.

(4) At the hearing, all testimony will be under oath or affirmation administered by an appellate officer. In the event a party or a witness refuses to be sworn or refuses to answer a question, an appellate officer may state for the record any inference drawn from such refusal.

(5) An appellate officer may question the parties and the witnesses.

(6) An appellate officer will allow time for parties to present argument, question witnesses and other parties, and introduce evidence consistent with § 906.10.

(7) Parties may not compel discovery or the testimony of any witness.

(b) *Recording.* An appellate officer will record the hearing unless the appellant consents to proceed without a recording.

(c) *Format.* At the discretion of NAO, hearings may be conducted by telephone, in person, or by teleconference or similar electronic means.

§ 906.12 Closing the evidentiary portion of the NAO case record.

(a) At the conclusion of the NAO proceedings, an appellate officer will establish the date upon which the evidentiary portion of the NAO case record will close. Once an appellate officer closes the evidentiary portion of the NAO case record, with or without a hearing, no further submissions or argument will be accepted into the NAO case record.

(b) NAO in its discretion may reopen the evidentiary portion of the NAO case record or request additional information from the parties at any time prior to final agency action.

§ 906.13 Failure to appear.

If any party fails to appear at a prehearing conference or hearing after proper notice, an appellate officer may:

(a) Dismiss the case, or;

(b) Deem the failure of a party to appear after proper notice a waiver of any right to a hearing and consent to the making of a decision based on the NAO case record.

§ 906.14 Burden of proof.

On issues of fact, the appellant bears the burden of proving he or she should prevail by a preponderance of the evidence. Preponderance of the evidence is the relevant evidence in the NAO case

record, considered as a whole, that shows that a contested fact is more likely to be true than not true. Appellant has the obligation to obtain and present evidence to support the claims in his or her petition.

§ 906.15 Decisions.

(a) After an appellate officer closes the evidentiary portion of the NAO case record, NAO will issue a written decision that is based on the NAO case record. In making a decision, NAO shall determine whether the appellant has shown by a preponderance of the evidence that the initial administrative determination is inconsistent with the law and regulations governing the initial administrative determination. In making a decision, NAO shall give deference to the reasonable interpretation(s) of applicable ambiguous laws and regulations made by the office issuing the initial administrative determination.

(b) NAO shall serve a copy of its decision upon the appellant and the Regional Administrator. NAO will not provide the case record to the Regional Administrator when issuing its decision.

§ 906.16 Reconsideration.

(a) Any party may file a motion for reconsideration of an NAO decision issued under § 906.15. The request must be filed with NAO within 10 days after service of NAO's decision. A party shall not file more than one motion for reconsideration of an NAO decision.

(b) The motion must be in writing and contain a detailed statement of an error of fact or law material to the decision. The process of reconsideration is not a forum for reiterating the appellant's objections to the initial administrative determination.

(c) Arguments not raised by a party in his or her motion for reconsideration of a decision will be deemed waived.

(d) In response to a motion for reconsideration, NAO will either:

(1) Reject the motion because it does not meet the criteria of paragraph (a) or (b) of this section; or

(2) Issue a revised decision and serve a copy of its revised decision upon the appellant and the Regional Administrator.

(e) At any time prior to notifying the Regional Administrator pursuant to § 906.17(a), the NAO may issue a revised decision to make corrections and serve a copy of its revised decision upon the appellant and the Regional Administrator.

§ 906.17 Review by the Regional Administrator.

(a) If NAO does not receive a timely motion for reconsideration pursuant to § 906.16(a), receives a timely motion and rejects it pursuant to § 906.16(d)(1), or issues a revised decision pursuant to § 906.16(d)(2) or (e), NAO will notify the Regional Administrator and the appellant, and provide a copy of the case record for its decision or revised decision to the Regional Administrator.

(b) In reviewing NAO's findings of fact, the Regional Administrator may only consider the evidentiary record including arguments, claims, evidence of record and other documents of record that were before NAO when it rendered its decision or revised decision.

(c) The Regional Administrator may take the following action within 30 days of service of NAO's notification and receipt of the case record under paragraph (a) of this section:

(1) Issue a written decision adopting, remanding, reversing, or modifying NAO's decision or revised decision.

(2) Issue a stay for no more than 90 days to prevent NAO's decision or revised decision from taking effect.

(d) The Regional Administrator must provide a written decision explaining why an NAO decision or revised decision has been remanded, reversed, or modified. Consistent with § 906.18(b), the Regional Administrator may, but does not need to, issue a written decision to adopt an NAO decision or revised decision.

(e) The Regional Administrator will serve a copy of any written decision or stay on NAO and the appellant.

§ 906.18 Final decision of the Department.

(a) The Regional Administrator's written decision to adopt, reverse, or

modify an NAO decision or revised decision pursuant to §906.17(c) is the final decision of the Department for the purposes of judicial review.

(b) If the Regional Administrator does not take action pursuant to §906.17(c)(1), NAO's decision issued pursuant to §906.15(a) or revised decision issued pursuant to §906.16(d)(2) or (e) becomes the final decision of the Department for the purposes of judicial review 30 days after service of NAO's notification under §906.17(a), or upon expiration of any stay issued by the Regional Administrator pursuant to §906.17(c)(2).

(c) The office that issued the initial administrative determination shall implement the final decision of the Department within 30 days of service of the final decision issued pursuant to §906.18(a), or within 30 days of the decision becoming final pursuant to §906.18(b), to the extent practicable.

PART 908—MAINTAINING RECORDS AND SUBMITTING REPORTS ON WEATHER MODIFICATION ACTIVITIES

Sec.

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AUTHORITY: Pub. L. 92–205, 85 Stat. 735, December 18, 1971.

SOURCE: 41 FR 23394, June 10, 1976, unless otherwise noted.

§908.1 Definitions.

As used in this part, terms shall have the meaning ascribed in this section.

(a) *Administrator.* The Administrator of the National Oceanic and Atmospheric Administration.

(b) *Person.* Any individual, corporation, company, association, firm, partnership, society, joint stock company, any State or local government or any agency thereof, or any other organization, whether commercial or nonprofit, except where acting solely as an employee, agent, or independent contractor of the Federal government.

(c) *Weather modification activity.* Any activity performed with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere.

(d) *United States.* The several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or insular possession of the United States.

(e) *Persons whose activities relate to weather modification.* Persons engaged in weather modification activities or engaged in the distribution or sale of weather modification apparatus or materials known by them to be destined for use in weather modification activities.

(f) *Project.* A related series of weather modification activities having a common objective.

(g) *Target area.* The ground area within which the effects of the weather modification activity are expected to be found.

(h) *Control area.* A preselected, untreated ground area used for comparison with a target area.

(i) *Weather modification apparatus.* Any apparatus used with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere. For example: Seeding generators, propane devices, flares, rockets, artillery projectiles, jet engines, etc.

(j) *Sponsor.* The primary person for whom the weather modification activity is performed.

(k) *Operator.* The person who is primarily responsible for carrying out the weather modification activity.

[41 FR 23394, June 10, 1976, as amended at 46 FR 32233, June 22, 1981]

§ 908.2 Persons subject to reporting.

Any person engaged or intending to engage in any weather modification activity in the United States shall be subject to the reporting provisions of this part.

§ 908.3 Activities subject to reporting.

(a) The following, when conducted as weather modification activities, shall be subject to reporting:

(1) Seeding or dispersing of any substance into clouds or fog, to alter drop size distribution, produce ice crystals or coagulation of droplets, alter the development of hail or lightning, or influence in any way the natural development cycle of clouds or their environment;

(2) Using fires or heat sources to influence convective circulation or to evaporate fog;

(3) Modifying the solar radiation exchange of the earth or clouds, through the release of gases, dusts, liquids, or aerosols into the atmosphere;

(4) Modifying the characteristics of land or water surfaces by dusting or treating with powders, liquid sprays, dyes, or other materials;

(5) Releasing electrically charged or radioactive particles, or ions, into the atmosphere;

(6) Applying shock waves, sonic energy sources, or other explosive or acoustic sources to the atmosphere;

(7) Using aircraft propeller downwash, jet wash, or other sources of artificial wind generation; or

(8) Using lasers or other sources of electromagnetic radiation.

(b) In addition to the activities listed above, other similar activities falling within the definition of weather modification as set forth in § 908.1 are also subject to reporting.

(c) The requirement for reporting shall not apply to activities of a purely local nature that can reasonably be expected not to modify the weather outside of the area of operation. This exception is presently restricted to the use of lightning deflection or static discharge devices in aircraft, boats, or buildings, and to the use of small heat sources, fans, fogging devices, aircraft downwash, or sprays to prevent the occurrence of frost in tracts or fields planted with crops susceptible to frost or freeze damage. Also expected from the requirement for reporting are religious activities or other ceremonies, rites and rituals intended to modify the weather.

(d) All activities noted in paragraphs (a) and (b) of this section are subject to initial reporting. However, after the Administrator has received initial notification of a planned activity, he may waive some of the subsequent reporting requirements. This decision to waive certain reporting requirements will be based on the general acceptability, from a technical or scientific viewpoint, of the apparatus and techniques to be used.

(e) Other reporting exceptions may be made in the future by rule of the Administrator.

§ 908.4 Initial report.

(a) Any person intending to engage in any weather modification project or activity in the United States shall provide a report of his intention, to be received by the Administrator at least 10 days before the commencement of such project or activity. This report shall contain at least the following:

(1) The designation, if any, used by the operator for the project or activity;

(2) The following dates for weather modification activities:

(i) The date the first actual weather modification activity is to be undertaken;

(ii) The date on which the final modification activity is expected to occur;

(3) The following information on persons involved with the project or activity:

(i) The name, affiliation, and address of the sponsor;

(ii) The name, affiliation, and address of the operator;

(4) The purpose of the project or activity;

(5) A map showing the approximate size and location of the target and control areas, and the location of each item of ground-based weather modification apparatus, precipitation measuring device, and, for airborne operations, the airport;

(6) A description of the weather modification apparatus, modification agents, and the techniques to be employed;

(7) The name and address of the responsible individual from whom log books or other records of the project or activity may be obtained;

(8) Answers to the following questions on project safeguards:

(i) Has an Environmental Impact Statement, Federal or State, been filed: Yes__ No __. If Yes, please furnish a copy as applicable.

(ii) Have provisions been made to acquire the latest forecasts, advisories, warnings, etc. of the National Weather Service, Forest Service, or others when issued prior to and during operations? Yes __ No __. If Yes, please specify on a separate sheet.

(iii) Have any safety procedures (operational contraints, provisions for suspension of operations, monitoring methods, etc.) and any environmental guidelines (related to the possible effects of the operations) been included in the operational plans? Yes __ No __. If Yes, please furnish copies or a description of the specific procedures and guidelines; and

(9) Optional remarks, to include any additional items which the person deems significant or of interest and such other information as the Administrator may request the person to submit.

(b) If circumstances prevent the signing of a contract or agreement to perform, or receipt of an authorization to proceed with, a weather modification activity at a date early enough to comply with paragraph (a) of this section, the initial report shall be provided so as to be received by the Administrator within 10 days of the date of signing of the contract or agreement, or receipt of authorization to proceed. In such cases, the report shall be accompanied by an explanation as to why it was not submitted at least 10 days prior to the commencement of the activity.

(c) In the event that circumstances beyond the control of the person liable to report under these regulations prevent the submission of the initial report in a timely manner as described above, the report shall be forwarded as early as possible, accompanied by an explanation as to why a timely report has not been provided. If such explanation is deemed adequate, the Administrator will consider the report as timely filed.

§ 908.5 Interim reports.

(a) Any person engaged in a weather modification project or activity in the United States on January 1 in any year shall submit to the Administrator, not later than 45 days thereafter, an interim report setting forth as of such date the information required below with respect to any such continuing project or activity not previously furnished to the Administrator in a prior interim report; provided that the January 1 date shall not apply if other arrangements have previously been made with the written approval of the Administrator.

(b) The interim report shall include the file number assigned by the Administrator and shall provide a summary of the project or activity containing at least the following information for each month:

(1) Number of days on which actual modification activities took place;

(2) Number of days on which weather modification activities were conducted, segregated by each of the major purposes of the activities;

(3) Total number of hours of operation of each type of weather modification apparatus (*i.e.*, net hours of agent release);

(4) Total amount of agent used. If more than one agent was used, each should be totaled separately (e.g., carbon dioxide, sodium chloride, urea, silver iodide).

(c) The totals for the items in paragraph (b) of this section shall be provided for the period covered by the interim report.

[41 FR 23394, June 10, 1976, as amended at 46 FR 32233, June 22, 1981]

§ 908.6 Final report.

Upon completion of a weather modification project or activity the person who performed the same shall submit a report to the Administrator not later than 45 days after completion of the project or activity. The report shall include the file number assigned by the Administrator and the following items:

(a) Information required for the interim reports (to the extent not previously reported).

(b) The total number of days on which actual modification activities took place during the project or activity.

(c) The total number of days during the project or activity on which weather modification activities were conducted, segregated by each of the major purposes of the activities.

(d) The total number of hours of operation of each type of weather modification apparatus during the project or activity (*i.e.*, net hours of agent release).

(e) The total amount of modification agent(s) dispensed during the project or activity. If more than one agent was used, each should be totaled separately (e.g., carbon dioxide, sodium chloride, urea, silver iodide).

(f) The date on which the final weather modification activity occurred.

[41 FR 23394, June 10, 1976, as amended at 46 FR 32233, June 22, 1981]

§ 908.7 Supplemental reports.

Notwithstanding other regulations, a supplemental report in letter form referring to the appropriate NOAA file number, if assigned, must be made to the Administrator immediately if any report of weather modification activities submitted under § 908.4, § 908.5, or § 908.6 is found to contain any material inaccuracies, misstatements, and omissions. A supplemental report must also be made if there are changes in plans for the project or activity.

§ 908.8 Maintenance of records.

(a) Any person engaging in a weather modification activity in the United States shall maintain a record of such activity. This record shall contain at least the following, when applicable:

(1) A chronological record of activities carried on, preferably in the form of a daily log, which shall include the NOAA file number assigned to the project, the designation of each unit of weather modification apparatus, and at least the following information for each unit:

(i) Date of the weather modification activity.

(ii) Position of each aircraft or location of each item of weather modification apparatus during each modification mission. Maps may be used.

(iii) Time when weather modification activity began and ended.

(iv) Total duration of operation of each unit of weather modification apparatus (*i.e.*, net hours of agent release).

(v) Type of each modification agent used.

(vi) Rate of dispersal of each agent during the period of actual operation of weather modification apparatus.

(vii) Total amount of agent used. If more than one agent was used, report total for each type separately.

(viii) Number of days on which weather modification activities were conducted, segregated by each of the major purposes of the activities.

(2) The monthly totals of hours of modification activity, the amount of modification agent used, and the number of days on which weather modification activities were conducted, segregated by each of the major purposes of the activities, shall be shown on the daily log sheet for the last day of each month.

(b) When the activity involves ground-based weather modification apparatus, records of the following shall also be maintained, when applicable, but need not be made part of the daily log:

(1) The location of each item of weather modification apparatus in use and its identification such as type and manufacturer's model number. If the apparatus is not commercially available, a brief description of the apparatus and the method of operation should be recorded.

(2) The name and address of the person responsible for operating each weather modification apparatus.

(3) The altitude and type of weather phenomenon subjected to weather modification activity during each operational period (e.g., cumulus clouds between 10,000 and 30,000 feet m.s.l.; ground fog).

(c) When the activity involves airborne weather modification apparatus, records of the following shall also be maintained, when applicable, but need not be made a part of the daily log: For each airborne weather modification apparatus run: Altitude, air speed; release points of modification agents,

method of modification and characteristics of flares, rockets, or other delivery systems employed; temperature at release altitude; and, for aircraft: The type of aircraft, its identification number, the airport or airports used, and the names and addresses of crew members and the person responsible for operating the weather modification apparatus; and the altitude and type of weather phenomenon subjected to weather modification activity during each operational period (e.g., cumulus clouds between 10,000 and 30,000 feet m.s.l.; ground fog).

(d) The following records shall also be maintained, whenever applicable, but need not be made a part of the daily log. Only data specifically collected for the reported activity need be retained; data available from other sources need not be included.

(1) Any descriptions that were recorded of meteorological condiitons in target and control areas during the periods of operation; for example: Percent of cloud cover, temperature, humidity, the presence of lightning, hail, funnel clouds, heavy rain or snow, and unusual radar patterns.

(2) All measurements made of precipitation in target and control areas.

(3) Any unusual results.

§ 908.9 Retention of records.

Records required under § 908.8 shall be retained and available for inspection by the Administrator or his designated representatives for 3 years after completion of the activity to which they relate. Such records shall be required to be produced for inspection only at the place where normally kept. The Administrator shall have the right to make copies of such records, if he or she deems necessary.

[52 FR 4896, Feb. 18, 1987]

§ 908.10 Penalties.

Knowing and willful violation of any rule adopted under the authority of section 2 of Public Law 92–205 shall subject the person violating such rule to a fine of not more than $10,000, upon conviction thereof.

§ 908.11 Maintenance of records of related activities.

(a) Persons whose activities relate to weather modification activities, other than persons engaged in weather modification activities, shall maintain records concerning the identities of purchasers or users of weather modification apparatus or materials, the quantities or numbers of items purchased, and the times of such purchases. Such information shall be retained for at least 3 years.

(b) In addition, persons whose activities relate to weather modification shall be required, under the authority of section 4 of Public Law 92–205, to provide the Administrator, on his request, with information he deems necessary to carry out the purposes of this act.

[41 FR 23394, June 10, 1976, as amended at 52 FR 4896, Feb. 18, 1987]

§ 908.12 Public disclosure of information.

(a) Any records or other information obtained by the Administrator under these rules or otherwise under the authority of Public Law 92–205 shall be made publicly available to the fullest practicable extent. Such records or information may be inspected on written request to the Administrator. However, the Administrator will not disclose any information referred to in section 1905 of title 18, United States Code, and that is otherwise unavailable to the public, except that such information shall be disclosed:

(1) To other Federal government departments, agencies, and officials for official use upon request;

(2) In any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding; and

(3) To the public, if necessary to protect their health and safety.

(b) Certified copies of such reports and information, to the extent publicly disclosable, may be obtained from the Administrator at cost in accordance with the Department of Commerce implementation of the Freedom of Information Act.

(c) Persons reporting on weather modification projects or related activities shall specifically identify all information that they consider not to be subject to public disclosure under the terms of Public Law 92–205 and provide reasons in support thereof. A determination as to whether or not reported information is subject to public dissemination shall be made by the Administrator.

(d) When consideration of a weather modification activity report and related information indicates that a proposed project may significantly depart from the practices or procedures generally employed in similar circumstances to avoid danger to persons, property, or the environment, or indicates that success of Federal research projects may be adversely affected if the proposed project is carried out as described, the Administrator will notify the operator(s) and State officials of such possibility and make recommendations where appropriate. The purpose of such notification shall be to inform those notified of existing practices and procedures or Federal research projects known to NOAA. Notification or recommendation, or failure to notify or recommend, shall not be construed as approval or disapproval of a proposed project or as an indication that, if carried out as proposed or recommended it may, in any way, protect or endanger persons, property, or the environment or affect the success of any Federal research project. Any advisory notification issued by the Administrator shall be available to the public and be included in the pertinent activity report file.

§ 908.13 Address of letters.

Letters and other communications intended for the Administrator, in connection with weather modification reporting or activities, shall be addressed to: The Administrator, National Oceanic and Atmospheric Administration, Environmental Modification Office, Rockville, Md. 20852.

§ 908.14 Business to be transacted in writing.

All business transacted with the National Oceanic and Atmospheric Administration with regard to reports of weather modification activities should be transacted in writing. Actions of the National Oceanic and Atmospheric Administration will be based exclusively on the written record.

§ 908.15 Times for taking action; expiration on Saturday, Sunday, or holiday.

Whenever periods of time are specified in these rules in days, calendar days are intended. When the day, or the last day, fixed under these rules for taking any action falls on a Saturday, Sunday, or on a Federal holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or Federal holiday.

§ 908.16 Signature.

All reports filed with the National Oceanic and Atmospheric Administration must be dated and signed by or on behalf of the person conducting or intending to conduct the weather modification activities referred to therein by such person, individually or, in the case of a person other than an individual, by a partner, officer, or other person having corresponding functions and authority. For this purpose ''officer'' means a president, vice president, treasurer, secretary, or comptroller. Notwithstanding the foregoing, such reports may also be signed by the duly authorized agent or attorney of the person whose activities are being reported. Proof of such authorization shall be furnished to the Administrator when filing a report, unless previously furnished.

§ 908.17 Suspension or waiver of rules.

In an extraordinary situation, any requirement of these rules may be suspended or waived by the Administrator on request of the interested party, to the extent such waiver is consistent with the provisions of Public Law 92–205 and subject to such other requirements as may be imposed.

§ 908.18 Matters not specifically provided for in rules.

All matters not specifically provided for or situations not specifically addressed in these rules will be decided in accordance with the merits of each case by or under the authority of the

Administrator, and such decision will be communicated in writing to all parties involved in the case.

§ 908.19 Publication of notice of proposed amendments.

Whenever required by law, and in other cases whenever practicable, notice of proposed amendments to these rules will be published in the FEDERAL REGISTER. If not published with the notice, copies of the text of proposed amendments will be furnished to any person requesting the same. All comments, suggestions, and briefs received within the time specified in the notice will be considered before adoption of the proposed amendments, which may be modified in the light thereof. Informal hearings may be held at the discretion of the Administrator.

§ 908.20 Effective date.

These rules are effective on June 10, 1976.

§ 908.21 Report form.

Public Law 92–205 and these rules should be studied carefully prior to reporting. Reports required by these rules shall be submitted on forms obtainable on request from the Administrator, or on an equivalent format.[1] In special situations, such alterations to the forms as the circumstances thereto may render necessary may be made, provided they do not depart from the requirements of these rules or of Public Law 92–205.

PART 909—MARINE DEBRIS

AUTHORITY: 33 U.S.C. 1951–1958 (2006).

§ 909.1 Definition of marine debris for the purposes of the Marine Debris Research, Prevention, and Reduction Act.

(a) *Marine debris.* For the purposes of the Marine Debris Research, Prevention, and Reduction Act (33 U.S.C. 1951–1958 (2006)) only, marine debris is defined as any persistent solid material that is manufactured or processed and directly or indirectly, intentionally or unintentionally, disposed of or abandoned into the marine environment or the Great Lakes.

(b) NOAA and the Coast Guard have jointly promulgated the definition of marine debris in this part. Coast Guard's regulation may be found in 33 CFR 151.3000.

[74 FR 45560, Sept. 3, 2009]

PART 911—POLICIES AND PROCEDURES CONCERNING USE OF THE NOAA SPACE-BASED DATA COLLECTION SYSTEMS

Sec.

911.1 Purpose.
911.2 Scope.
911.3 Definitions.
911.4 Use of the NOAA Data Collection Systems.
911.5 NOAA Data Collection Systems Use Agreements.
911.6 Treatment of data.
911.7 Continuation of the NOAA Data Collection Systems.
911.8 Technical requirements.
APPENDIX A TO PART 911—ARGOS DCS USE POLICY DIAGRAM
APPENDIX B TO PART 911—GOES DCS USE POLICY DIAGRAM

AUTHORITY: 15 U.S.C. 313, 49 U.S.C. 44720; 15 U.S.C. 1525; 7 U.S.C. 450b; 5 U.S.C. 552.

SOURCE: 63 FR 24922, May 6, 1998, unless otherwise noted.

§ 911.1 Purpose.

These regulations set forth the procedural, informational and technical requirements for use of the NOAA Data Collection Systems (DCS). In addition, they establish the criteria NOAA will employ when making determinations as to whether to authorize the use of its space-based DCS. The regulations are intended to facilitate the collection of environmental data as well as other such data which the Government is interested in collecting. In those instances where space-based commercial systems do not meet users' requirements, the intent is to not disadvantage the development of the commercial space-based services in this sector. Obtaining a system use agreement to operate data collection platforms pursuant to these regulations does not affect related licensing requirements of other Federal agencies such as the Federal Communications Commission.

[1] Filed as part of the original document.

§911.2 Scope.

(a) These regulations apply to any person subject to the jurisdiction or control of the United States who operates or proposes to operate data collection platforms to be used with the NOAA DCS either directly or through an affiliate or subsidiary. For the purposes of these regulations a person is subject to the jurisdiction or control of the United States if such person is:

(1) An individual who is a U.S. citizen; or

(2) A corporation, partnership, association, or other entity organized or existing under the laws of any state, territory, or possession of the United States.

(b) These regulations apply to all existing Geostationary Operational Environmental Satellite (GOES) and Argos DCS users as well as all future applications for NOAA DCS use.

§911.3 Definitions.

For purposes of this part:

(a) *Approving authority* means NOAA for the GOES DCS; and it means the Argos Participating Agencies, via the Argos Operations Committee, for the Argos DCS.

(b) *Argos DCS* means the system which collects data from fixed and moving platforms and provides platform location data. This system consists of platforms, the Argos French instrument on the Polar-orbiting Operational Environmental Satellites (POES) and other international satellites; a ground processing system; and telemetry ground stations.

(c) *Argos participating agencies* means those agencies of the United States and other countries that participate in the management of the Argos DCS.

(d) *Assistant Administrator* means the Assistant Administrator for Satellite and Information Services, NOAA, or his/her designee.

(e) *Director* means the Director of the Office of Satellite Data Processing and Distribution for the National Environmental Satellite, Data, and Information Service of NOAA.

(f) *Environmental data* means environmental measurement data for the purpose of using the GOES DCS; and it means environmental measurement and environmental protection data for the purpose of using the Argos DCS.

(g) *Environmental measurement data* means data that relate to the characteristics of the Earth and its natural phenomena by helping to better understand, evaluate, or monitor its natural resources.

(h) *Environmental protection data* means data that relate to the characteristics of the Earth and its environment (including its ecosystems and the species which inhabit them) by helping to protect against any unreasonable adverse effects thereto.

(i) *Episodic use* means the use of the system for short events where there is a significant possibility of loss of life, such as for Arctic expeditions or scientific campaigns into remote areas.

(j) *Government interest* means that the use is determined in advance to be of interest to one or more governmental entities of the United States, France or, once they have become an Argos Participating Agency, Japan or a European Organization for the Exploitation of Meteorological Satellites (EUMETSAT) member state; or also, in the case of the GOES DCS, a state or local government.

(k) *Government user* means agencies of international governmental organizations, national government or any subdivision thereof, or any of those agencies' contractors or grantees, so long as the contractor is using the data collected by the NOAA DCS to fulfill its contractual obligations to the government agency or in the case of a grantee that these data are being used in accordance with the statement of work for the award.

(l) *NOAA DCS* means the GOES and Argos space-based DCS.

(m) *Non-profit user* means a not-for-profit academic, research, or other non-governmental organization, which is using these data, for education and/or scientific, non-commercial purposes.

(n) *Operational use* means the use of data in a situation where the utility of the data are significantly reduced if not collected or delivered in a specific time window. This includes situations where extensive preparation work is in place and a delay in acquisition of data would jeopardize the project.

(o) *Platform compatibility* means the compatibility of the platform with the space segment of the system, and includes elements such as message length and composition, signal strength, and transmission protocol (e.g., continuous versus event drive).

(p) *Sensitive use* means the use of the NOAA DCS where the users' requirements dictate the use of a governmental system such as National security, homeland security, law enforcement and humanitarian operations.

(q) *Testing use* means the use of the NOAA DCS by manufacturers of platforms for use in conjunction with the NOAA DCS, for the limited purpose of testing and certifying the compatibility of new platforms with the technical requirements of the NOAA DCS.

(r) *User* means the entity and/or organization that owns or operates user platforms for the purpose of collecting and transmitting data through the NOAA DCS, or the organization requiring the collection of the data.

(s) *User platform* means device designed in accordance with the specifications delineated and approved by the Approving Authority used for the in-situ collection and subsequent transmission of data via the NOAA DCS. Those devices which are used in conjunction with the GOES DCS are referred to as data collection platforms (DCP) and those which are used in conjunction with the Argos DCS are referred to as Platform Transmitter Terminals (PTT). For purposes of these regulations, the terms ''user platform,'' ''DCP'', and ''PTT'' are interchangeable.

(t) *User requirement* means the requirement expressed and explained in the System Use Agreement.

[63 FR 24922, May 6, 1998, as amended at 68 FR 45161, Aug. 1, 2003]

§ 911.4 Use of the NOAA Data Collection Systems.

(a) Use of the NOAA DCS will only be authorized in accordance with the conditions and requirements set forth in paragraphs (b), (c), (d), (e), and (f) of this section.

(b)(1) Use of the NOAA DCS will only be authorized where it is determined that there are no commercial space-based services available that meet the user's requirements.

(2) A determination under paragraph (b)(1) of this section must be based on such factors as satellite coverage, accuracy, data throughput, platform power consumption, size and weight, service continuity and reliability, platform compatibility, system access mode, and, in the case of government agencies, cost-effectiveness.

(c)(1) Except as provided in paragraphs (c)(2), (3), (4), and (5) of this section, NOAA DCS shall only be used for the collection of environmental data by governmental and/or non-profit users.

(2) Non-governmental, environmental use of the NOAA DCS is only authorized where there is a Government interest in the collection and/or receipt of the data.

(3) Except as provided in paragraph (c)(4) of this section, non-environmental use of the NOAA DCS is only authorized for government use and non-profit users where there is a government interest. The NOAA DCS will continue to be predominantly used for environmental applications. Non-environmental use of the system shall be limited to sensitive use, and to episodic use as defined below in paragraph (c)(4) of this section.

(4) Episodic use of the NOAA DCS may also be authorized in specific instances where there is a significant possibility for loss of life. Such use shall be closely monitored.

(5) Testing use of the NOAA DCS will only be authorized for manufacturers of NOAA DCS platforms, that require access to the system in order to test and certify prototype and production models.

(d) Because of capacity limitations on the GOES DCS, system applicants will be admitted to use the GOES system in accordance with the following priority:

(1) NOAA programs or users whose data are required for implementation of NOAA programs, as determined by the Assistant Administrator, will be accorded first priority.

(2) Users whose data are desired to support NOAA programs will be accorded second priority.

(3) Users whose data and/or use of the GOES DCS will further a program of an agency or department of the U.S. Government, other than NOAA, will be accorded third priority.

(4) Users whose data are required by a state or local Government of the United States will be accorded fourth priority.

(5) Testing users of the system will be accorded fifth priority.

(6) No other usage will be authorized for the GOES DCS.

(e) In the event that Argos DCS capacity limitations require that priority determinations be made, priority will be given to those platforms that provide environmental data of broad international interest, especially of an operational nature, and to those requiring the unique capabilities of the Argos DCS, such as platform location or polar coverage.

[63 FR 24922, May 6, 1998, as amended at 68 FR 45161, Aug. 1, 2003]

§911.5 NOAA Data Collection Systems Use Agreements.

(a)(1) In order to use a NOAA DCS, each user must have an agreement with the approving authority for that system.

(2) Persons interested in entering into a system use agreement should contact the Director.

(b) These agreements will address, but may not be limited to, the following matters:

(1) The period of time the agreement is valid and procedures for its termination,

(2) The authorized use(s), and its priorities for use,

(3) The extent of the availability of commercial space-based services which meet the user's requirements and the reasons for necessitating the use of the Government system,

(4) Any applicable government interest in the data,

(5) Required equipment standards,

(6) Standards of operation,

(7) Conformance with applicable ITU and FCC agreements and regulations,

(8) Reporting time and frequencies,

(9) Data formats,

(10) Data delivery systems and schedules, and

(11) User-borne costs.

(c) The Director shall evaluate user requests for System Use Agreements and renewals and conclude agreements for use of the NOAA DCS.

(d)(1) Agreements for the collection, via the Argos DCS, of environmental data by government agencies or nonprofit institutions shall be valid for 3 years from the date of initial in-situ deployment of the platforms, and may be renewed for additional 3-year periods.

(2) Agreements for the collection of environmental data, via the Argos DCS, by non-government users shall be valid for 1 year from the date of initial in-situ deployment of the platforms, and may be renewed for additional 1-year periods, but only for so long as there exists a governmental interest in the receipt of these data.

(3) Agreements for the collection of non-environmental data, via the Argos DCS, by government agencies, or nonprofit institutions where there is a government interest, shall be valid for 1 year from the date of initial in-situ deployment of the platforms, and may be renewed for additional 1-year periods.

(4) Agreements for the episodic collection of non-environmental data, via the Argos DCS under §911.4(c)(4), shall be of short, finite duration not to exceed 1 year without exception, and usually shall not exceed 6 months. These agreements shall be closely monitored and shall not be renewed.

(5) Agreements for the testing use of the Argos DCS by equipment manufacturers shall be valid for 1 year from the date of initial testing, and may be renewed for additional 1-year periods.

(e)(1) Agreements for the collection of environmental data, by the GOES DCS, shall be valid for 5 years from the date of initial in-situ deployment, and may be renewed for additional 5-year periods.

(2) Agreements for the testing use of the GOES DCS, by equipment manufacturers, shall be valid for 1 year from the date of initial testing, and may be renewed for additional 1-year periods.

(3) Agreements for the collection of non-environmental data, via the GOES DCS, by government agencies, or nonprofit institutions where there is a government interest, shall be valid for 1

year from the date of initial *in-situ* deployment of the platforms, and may be renewed for additional 1-year periods.

(4) Agreements for the episodic collection of non-environmental data, via the GOES DCS under §911.4(c)(4), shall be of short, finite duration not to exceed 1 year without exception, and usually shall not exceed 6 months. These agreements shall be closely monitored and shall not be renewed.

[63 FR 24922, May 6, 1998, as amended at 68 FR 45161, Aug. 1, 2003]

§ 911.6 Treatment of data.

(a) All NOAA DCS users must agree to permit NOAA and other agencies of the U.S. Government the full, open, timely, and appropriate use as determined by NOAA, of all environmental data collected from their platforms; this may include the international distribution of environmental data under the auspices of the World Meteorological Organization.

(b) Raw data from the NOAA space segment is openly transmitted and accessible.

(c) Accessibility of the NOAA DCS processed data from the ground segment is handled in accordance with the users specifications and system design limitations, subject to the provisions stated in paragraph (a) of this section.

[68 FR 45161, Aug. 1, 2003]

§ 911.7 Continuation of the NOAA Data Collection Systems.

(a) NOAA expects to continue to operate DCS on its geostationary and polar-orbiting satellites, subject to the availability of future appropriations. However, viable commercial space-based alternatives may eventually obviate the need for NOAA to operate its own space-based DCS.

(b) If use of the system in support of NOAA programs increases, it eventually may be necessary to the further restrict system usage by other users. If such restrictions on use become necessary, or in the event that NOAA discontinues operation of GOES and/or POES, NOAA will provide, to the maximum extent practicable, advance notice and an orderly transition.

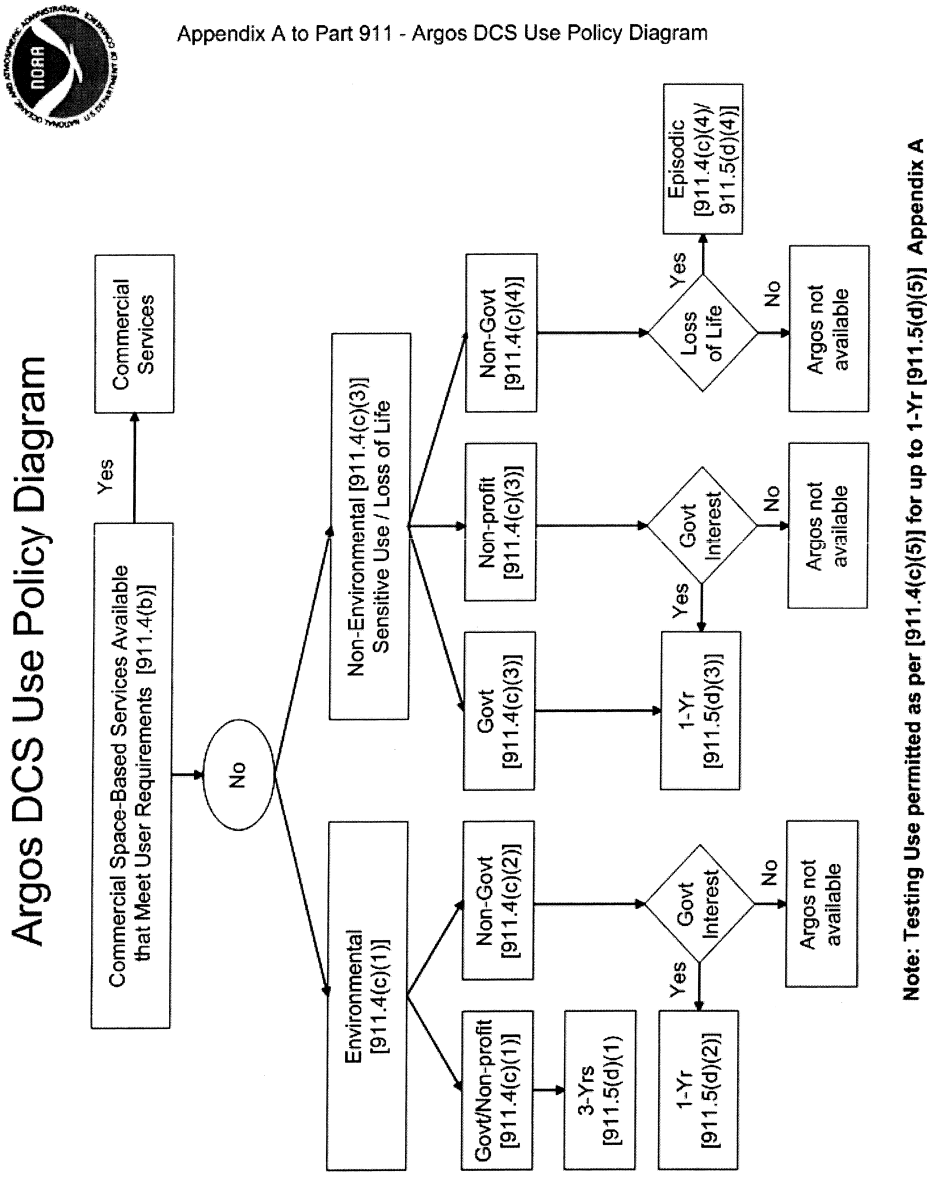
(c) NOAA will not be responsible for any losses resulting from the nonavailability of the NOAA DCS.

§ 911.8 Technical requirements.

(a) All platform operators of the NOAA DCS must use a data collection platform radio set whose technical and design characteristics are certified to conform to applicable specifications and regulations.

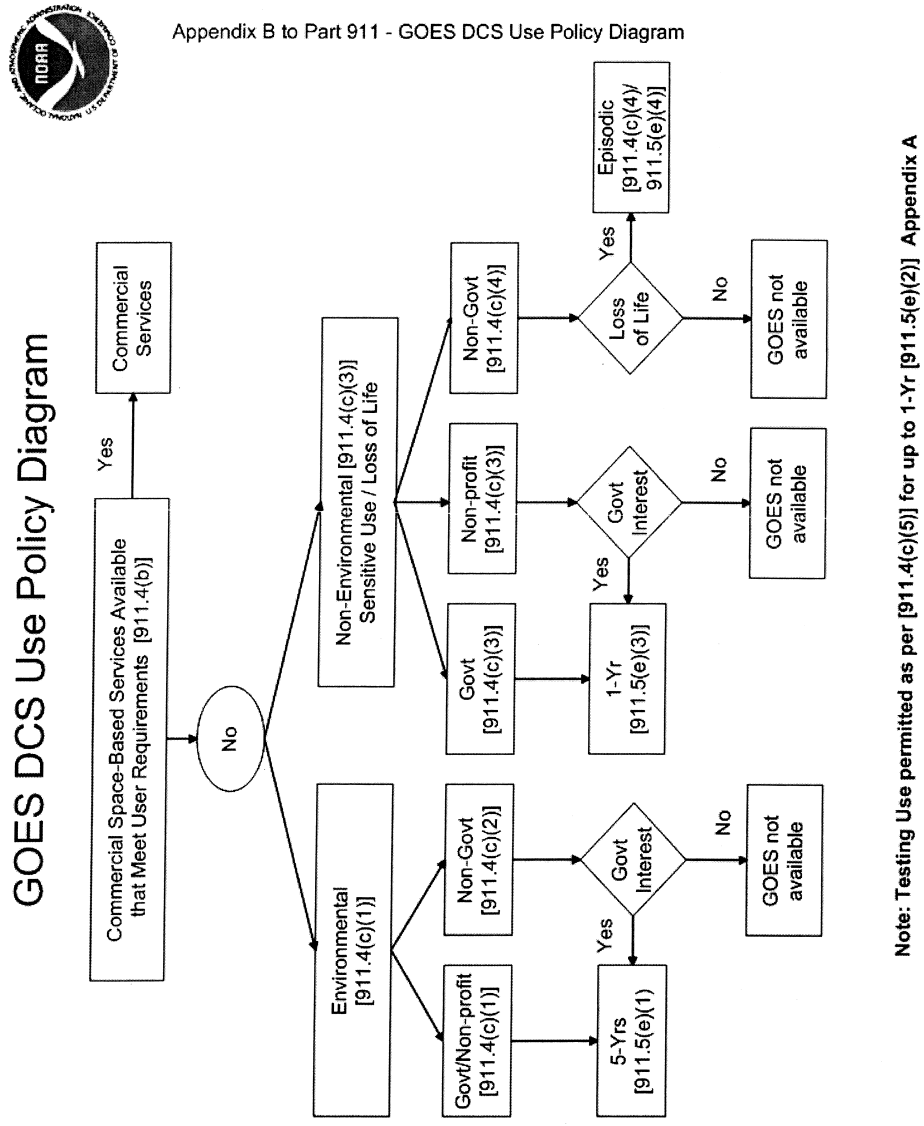
(b) All platform operators are responsible for all costs associated with the procurement and operation of the platforms, and for the acquisition of data from those platforms, either directly from the satellite or from the applicable data processing center.

APPENDIX A TO PART 911—ARGOS DCS USE POLICY DIAGRAM



[68 FR 45161, Aug. 1, 2003]

APPENDIX B TO PART 911—GOES DCS USE POLICY DIAGRAM



[68 FR 45162, Aug. 1, 2003]

PART 917—NATIONAL SEA GRANT PROGRAM FUNDING REGULATIONS

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AUTHORITY: Pub. L. 94–461, 90 Stat. 1961 (33 U.S.C. 1121 *et seq.*).

SOURCE: 43 FR 15307, Apr. 11, 1978, unless otherwise noted.

Subpart A—General

§ 917.1 Basic provisions.

(a) This section sets forth the basic purposes for which Sea Grant funding may be made pursuant to the following sections of the Act: 33 U.S.C. 1124, 1127, 1125 and 1124a. These sections provide for the funding of programs and projects in fields related to ocean and coastal resources that involve marine research, marine education and training, and marine advisory services. However, there is a significant difference in focus among these sections since section 1124(a) is concerned chiefly with regional and state needs relative to ocean and coastal resources (including the funding of Sea Grant Fellowships under section 1127) while section 1125 is concerned with national needs and problems relative to ocean and coastal resources, and section 1124a is concerned with programs of international cooperation assistance with respect to those resources.

(b) *Comment:* Statutory citation 33 U.S.C. 1124(a):

> In General. The Secretary may make grants and enter into contracts under this subsection to assist any Sea Grant program or project if the Secretary finds that such program or project will—
>
> (1) Implement the objective set forth in Section 202(b); and
>
> (2) Be responsive to the needs or problems of individual states or regions.
>
> The total amount paid pursuant to any such grant or contract may equal 66⅔ percent, or any lesser percent, of the total cost of the Sea Grant program or project involved.

(c) *Comment:* Statutory citation 33 U.S.C. 1127(a):

> In General. The Secretary may enter into contracts and make grants under this section to—
>
> (1) Enhance the research and development capability of developing foreign nations with respect to ocean and coastal resources.
>
> (2) Promote the international exchange of information and data with respect to the assessment, development, utilization, and conservation of such resources.

§ 917.2 Definitions.

(a) The term *Act* means the Sea Grant Program Improvement Act of 1976, as amended (33 U.S.C. 1121 *et seq.*).

(b) The term *Secretary* means the Secretary of Commerce.

(c) The term *Administrator* means the Administrator of the National Oceanic and Atmospheric Administration.

(d) The term *Office of Sea Grant* means the National Oceanic and Atmospheric Administration's Office of Sea Grant, which administers the National Sea Grant Program provided for in the Act.

(e) The term *objective of the Act* means the objective set forth at 33 U.S.C. 1121(b) and is ''is to increase the understanding, assessment, development, utilization, and conservation of the Nation's ocean and coastal resources by providing assistance to promote a strong educational base, responsive research and training activities, and broad and prompt dissemination of knowledge and techniques.''

(f) The term *ocean and coastal resource(s)* is as defined at 33 U.S.C. 1122(7) and means:

any resource (whether living, nonliving, manmade, tangible, intangible, actual, or potential) which is located in, derived from, or traceable to, the marine environment.

Such term includes the habitat of any such living resource, the coastal space, the ecosystems, the nutrient rich areas, and the other components of the marine environment which contribute to or provide (or which are capable of contributing to or providing) recreational, scenic, esthetic, biological, habitational, commercial, economic, or conservation values. Living resources include natural and cultured plant life, fish, shellfish, marine mammals, and wildlife. Nonliving resources include energy sources, minerals, and chemical substances.

(g) The term *marine environment* used in the definition for ''ocean and coastal resources'' in §917.2(e) and used elsewhere in these regulations is as defined at 33 U.S.C. 1122(6) and means:

the coastal zone, as defined in Section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)); the seabed, subsoil, and waters of the territorial sea of the United States; the waters of any zone over which the United States asserts exclusive fishery management authority; the waters of the high seas; and the seabed and subsoil of and beyond the outer Continental Shelf.

(h) The term *person* is as defined at 33 U.S.C. 1122(9) and means: ''any individual; any public or private corporation, partnership, or other association or entity (including any Sea Grant College, Sea Grant Regional Consortium, education, institute, or laboratory); or any state, political subdivision of a state, or agency or officer thereof.''

(i) The term *Sea Grant College* is as defined at 33 U.S.C. 1122(10) and means: ''any public or private institution of higher education which is designated as such by the Secretary . . .'' pursuant to regulations promulgated at 15 CFR part 918.

(j) The term *Sea Grant Program* is as defined at 33 U.S.C. 1122(11) and means: ''any program which'' (1) is administered by a Sea Grant College, Sea Grant Regional Consortium, institution of higher education, institute, laboratory, or state or local agency; and (2) includes two or more projects involving one or more of the following activities in fields related to ocean and coastal resources:

(i) Research,

(ii) Education,

(iii) Training, or

(iv) Advisory services.

(k) The term *Sea Grant Program Directors* means the local Directors of the Sea Grant coherent area programs, insititutional programs, Sea Grant Colleges, and Sea Grant Regional Consortia.

(l) The term *Sea Grant Regional Consortium* is as defined at 33 U.S.C. 1122(12) and means: ''any association or alliance which is designated as such by the Secretary . . .'' pursuant to regulations promulgated at 15 CFR part 918.

(m) The term *state* is as defined at 33 U.S.C. 1122 (14) and means: ''any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands, or any other territory or possession of the United States.''

(n) The term *developing foreign nations* includes any foreign nation other than a foreign nation that is ineligible for designation under section 502(b) of the Trade Act of 1974, (19 U.S.C. 2462(b)) as a beneficiary developing country under Title of that Act.

Subpart B—Sea Grant Matched Funding Program

§917.10 General.

(a) 33 U.S.C. 1124(a) establishes a program for the funding of Sea Grant Programs and projects dealing with marine research, marine education and training, and/or marine advisory services, that are designed to achieve the objective of the Act and that generally respond to the needs of individual states or regions. Included as a part of this program is the Sea Grant Fellowship Program, established by 33 U.S.C. 1127. Any person may apply to the Office of Sea Grant for Sea Grant Matched Funding Program Monies, except for Sea Grant Fellowship funding. Sea Grant Fellowship funding may be granted only to Sea Grant Colleges, Sea Grant Regional Consortia, institutions of higher education, and professional associations and institutions.

(b) Federal Sea Grant funding for the section 1124(a) Matched Funding Program cannot exceed 66⅔ percent of the total cost of the project involved.

§ 917.11 Guidelines for Sea Grant Fellowships.

(a) Sea Grant Fellowships are designed to provide educational and training assistance to qualified individuals at the undergraduate and graduate levels of education in fields related to ocean and coastal resources. The objective of the program is to increase the national supply of individuals educated and trained in the assessment, development, utilization, and conservation of ocean and coastal resources. The purpose of this section is to provide guidelines regarding the content of applications for Sea Grant Fellowship funding.

(b) Funding will be made to eligible entities (see § 917.10 of this part) that are selected to award and administer Sea Grant Fellowships. Fellowships will not be awarded directly to students by the Office of Sea Grant. The entity receiving Fellowship funding will select the students to be awarded the Fellowships and will handle the administration of the Fellowships.

(c) Proposals for Fellowship funding will be expected to address (1) the nature and focus of the proposed Fellowship Program, (2) the utilization of institutional or other appropriate resources in the education and training of Sea Grant Fellows, (3) the method of advertising availability of the Fellowships, (4) the method of selection of recipients, and (5) the terms of tenure and method of determining continuity of tenure.

(d) Innovation and uniqueness will be significant factors in the determination of which proposals will be funded. Another factor considered will be the potential of the proposed program to stimulate interest in marine related careers among those individuals; for example, minorities, women, and the handicapped whose previous background or training might not have generated such an interest.

(e) The total amount that may be provided for grants under the Sea Grant Fellowship Program during any fiscal year cannot exceed an amount equal to five percent of the total funds appropriated for the Matched Funding Program for that year. Fellowship programs are subject to the requirement of a minimum of 33⅓ percent matching funds from non-Federal sources to which all Matched Funding Program projects are subject. Indirect costs are not allowable for either the Fellowships or for any costs associated with the Fellowships.

Considering the variations in the cost-of-living and the differences in tuition, fees, etc., between one college or university and another, the amount of money requested and awarded per Fellowship may vary.

Subpart C—National Projects

§ 917.20 General.

(a) 33 U.S.C. 1125 requires the Secretary to identify specific national needs and problems relative to ocean and coastal resources. This responsibility has been delegated to the Administrator. The designation is intended to focus public attention on needs and problems of the marine environment that are considered to be of particular national importance at a given point in time.

(b) 33 U.S.C. 1125 provides for the funding of national projects in marine research, marine education and training, and marine advisory services that are designed to deal with the national needs and problems concerning ocean and coastal resources identified by the Administrator.

(c) The Administrator will identify the national needs and problems apart from considerations of Office of Sea Grant funding for ''National Projects'' responsive to national needs and problems that are identified.

§ 917.21 National needs and problems.

(a) The Administrator will, periodically, publish in the FEDERAL REGISTER the identified national needs and problems with respect to ocean and coastal resources at a given point in time.

(b) Suggestions from the general public as to the identity of national needs and problems may be submitted to the Office of Sea Grant at any time. These suggestions will be reviewed by the Office of Sea Grant and the Sea Grant Review Panel, and those receiving a

positive critique will be forwarded to the Administrator. In addition, suggestions concerning the identification of national needs and problems will be requested from the Sea Grant Program Directors.

(c) The Administrator has identified the following as currently being national needs and problems with respect to ocean and coastal resources:global and regional climate and primary productivity.

(1) Improve the prediction of extreme natural events and their effects on ocean coastal and continental shelf locations as well as analogous regions of the Great Lakes.

(2) Improve the predictability of global sea-level change and determine the impact of this change on coastal areas.

(3) Define the processes that determine ocean variability on the time scale of a few weeks to a few years, and the relationship to fluctuations in global and regional climate, primary productivity, and fisheries production.

(4) Improve understanding of the flow fields and mixing processes on the continental shelves of the United States.

(5) Develop an increased understanding of the arctic and antarctic environment and a capability to predict the special hazards posed to transportation and resource development.

(6) Develop and increased capability to characterize the engineering properties of ocean botton sediments.

(7) Reduce the recurring economic loss due to corrosion of structures, vessels, and other devices in the marine environment.

(8) Gain a fundamental understanding of the processes by which biological fouling and associated corrosion are initiated upon material surfaces exposed to seawater.

(9) Investigate methods to improve man's underwater capability to conduct undersea research and perform useful work.

(10) Investigate the wider application of remotely operated and artificial intelligence techniques for vehicles for undersea activities.

(11) Expand/improve remote sensing technologies for use on the ocean and Great Lakes.

(12) Advance knowledge of acoustics in the ocean and ocean bottom in order to exploit the burgeoning acoustics technologies.

(13) Develop techniques for in-situ monitoring of biological, chemical, and physical processes in the Great Lakes, oceans, and their connecting waterways which are cost effective and provide data in real time.

(14) Improve the position of the U.S. seafood industry in world seafood markets.

(15) Design more efficient mechanisms to allocate U.S. fish resources to achieve optimum yield and minimize industry dislocations.

(16) Gain a fundamental understanding of the biological productivity of estuarine and coastal waters.

(17) Conduct research leading to the restoration and/or enhancement of heavily exploited fishery stocks.

(18) Improve the capability for stock assessment, predicting yield, age-class strength, and long-term population status of important fisheries.

(19) Conduct research to increase the economic potential of low-value, high-volume fish products.

(20) Develop productive and profitable aquaculture industries in the United States and technology that can be exported to less developed nations of the world with different climate, cultural, and economic constraints.

(21) Explore marine biochemicals as source of chemical feedstocks, enzymes, pharmacological substance, and other bioactive agents such as pesticides.

(22) Apply modern biotechnology to exploiting marine plants, animals, and microorganisms for good and services.

(23) Develop rapid, efficient, and specific methods for assaying the potential of marine organisms to communicate disease to humans.

(24) Develop innovations that would promote safe, nondestructive, recreational access to and use of marine and Great Lakes water.

(25) Re-examine the ocean as an appropriate place for the disposal of wastes from land-based society.

(26) Develop an increased understanding of the impacts of low density, nonbiodegradable, solid wastes on marine and Great Lakes species.

(27) Conduct research for realizing the economic potential of the nonliving resources of the U.S. 200-mile Exclusive Economic Zone.

(28) Investigate the effect of seafloor hydrothermal systems on the seafloor, oceans, and atmosphere.

(29) Develop a better understanding of the value the marine sector contributes to the U.S. economy and culture.

(30) Improve the competitive position of American ports in the face of rapid technological and social change.

(31) Improve the capability of developing nations to address their marine resource needs.

(32) Develop eductional programs to increase application of marine sector research.

(33) Develop syntheses of and better access to existing multidisciplinary marine and Great Lakes information.

[43 FR 15307, Apr. 11, 1978, as amended at 51 FR 35210, Oct. 2, 1986]

§ 917.22 National Projects funding.

(a) National Projects funding proposals will be expected to address: (1) The relevance of the proposed project to a national need or problem that has been identified by the Administrator; (2) the nature and focus of the proposed project; (3) a demonstrated capacity to carry out the proposed project in a competent and cost-effective manner; and (4) the utilization of existing capability and coordination with other relevant projects. Innovation and uniqueness will be significant factors in determining whether to fund a proposed project.

(b) Any person may apply to the Office of Sea Grant for National Project funding. In addition, the Office of Sea Grant may invite applications for National Project funding.

(c) The total amount provided for National Projects' funding during any fiscal year can never exceed an amount equal to 10 percent of the total funds appropriated for the Matched Funding Program. Federal Sea Grant funding for National Projects can be up to 100 percent of the total cost of the project involved.

Subpart D—International Cooperation Assistance

§ 917.30 General.

(a) 33 U.S.C. 1124a sets up a program of International Cooperation Assistance in marine reseach, marine education and training, and marine advisory services designed to enhance the research and technical capability of developing foreign nations with respect to ocean and coastal resources and to promote the international exchange of information and data with respect to the assessment, development, utilization, and conservation of such resources. Any Sea Grant College or Sea Grant Regional Consortium or any institution of higher education, laboratory, or institute (if such institution, laboratory or institute is located within any state) may apply for and receive International Cooperation Assistance funding.

(b) International Cooperation Assistance funding proposals will be expected to address: (1) The nature and focus of the proposed project, (2) the utilization of institutional and other appropriate resources in the implementation of the project, (3) a clear indication of the foreign participant's (individual or institution) commitment to the project, (4) identification of accomplishments expected from a single granting interval, (5) implicit or explicit out-year commitment of resources, and (6) the impact of the proposed project on the institution receiving funding.

(c) The projects supported by International Cooperation Assistance funding are intended to be genuinely cooperative. Innovation and uniqueness will be significant factors in the determination of proposals to be funded. In the case of a proposed international project that is submitted from an institution where a Sea Grant program is in existence, the extent to which the proposed project takes advantage of the Sea Grant institutional capability existing at that institution and thereby strengthening it, as opposed to being a mere appendage to the ongoing Sea Grant program, will also be an important evaluation factor. The U.S. Department of State will be given the opportunity to review all International Cooperation Assistance projects and

none will be funded without this consultation. Because the United Nations Educational, Scientific, and Cultural Organization (UNESCO) also funds international projects of the kind that can be funded under the Sea Grant International Cooperation Assistance program, and, to effect coordination in this area between Sea Grant and UNESCO, the Division of Marine Sciences (UNESCO) will be informed of all International Cooperation Assistance projects funded.

Subpart E—General Considerations Pertaining to Sea Grant Funding

§ 917.40 General.

This subpart sets forth general considerations pertaining to Sea Grant funding.

§ 917.41 Application guidance for Sea Grant funding.

(a) Detailed guidance for submission of applications for National Sea Grant Program Funding is given in the publication, ''The National Sea Grant Program: Program Description and Suggestions for Preparing Proposals,'' available on request from: Office of Sea Grant Program, 3300 Whitehaven Street NW., Washington, DC 20235.

(b) It is noted here that application for Sea Grant funding shall be made pursuant to the following Federal provisions:

(1) OMB Circular A–110 ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.''

(2) OMB Circular A–111, ''Designation of Federal Programs Suitable for Joint Funding Purposes.''

(3) GSA FMC 73–6, ''Coordinating Indirect Cost Rates and Audit at Educational Institutions.''

(4) GSA FMC 73–7, ''Administration of College and University Research Grants.''

(5) GSA FMC 73–8, ''Cost Principles for Educational Institutions.''

(6) GSA FMC 74–4, ''Cost Principles Applicable to Grants and Contracts with State and Local Governments.''

(7) OMB Circular A–102, ''Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.''

(8) NOAA General Provisions implementing OMB Circular A–110, ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.''

§ 917.42 Categories of support available for the conducting of Sea Grant activities.

(a) Three categories of support are available for the conducting of Sea Grant activities: Projects; coherent area programs; and institutional programs. In general, funding for institutional programs and coherent area programs are made with expectation of renewal, as long as the funding recipient maintains a high level of quality and relevance in its activities. Project funding is made generally for a single item of research, education and training, or advisory service, but may be renewed under certain conditions; each renewal is negotiated individually.

(b) Project support is for a clearly defined activity to be conducted over a definite period of time to achieve a specified goal. The project may be in research, education, training, or advisory services. Support for a project is made to an individual investigator or project director through his organization.

(c) Intermediate between the institutional programs and individual projects are coherent area programs. These have two main purposes:

(1) To bring into the National Sea Grant Program institutions of higher education that have a strong core of capability in some aspects of marine affairs, but which do not qualify or do not wish to qualify for institutional program support at this time. The purpose of support in such cases is to enable the institution to apply its existing competence to its regional problems and opportunities while developing the broader base of capability and the internal organization that will lead to institutional support. This program category requires a definite commitment on the part of the institution to develop an institutional program and to present a multiproject, multidisciplinary program involving the existing competence of an institution in

a unified or coherent attack on well-defined local or regional problems. Such a coherent area program should include research, education and training, and advisory services, to the extent of the institution's capability.

(2) To bring into the National Sea Grant Program (on a more or less continuing basis) qualified entities that have rare or unique capability in a specialized field of marine affairs. Such entities need not be institutions of higher education.

(d) Institutional grants are made to institutions of higher education or to a combination of institutions that have an existing broad base of competence in marine affairs. To qualify, an institution must make a positive, long-range commitment to objectives of the National Sea Grant Program as evidence by committing the institution's own resources in the form of matching funds, creation of the organization necessary for management of the Sea Grant Program, quality education programs in marine areas, establishment of interdisciplinary research teams, and development of advisory service mechanisms for strong interaction with marine communities in its region. A Sea Grant institutional program is expected to provide intellectual leadership in assisting its region to solve problems and to realize opportunities of its marine environment. To the extent possible, an institutional program should involve all appropriate elements of the institution, whether colleges or departments, and devise cooperative or mutally supporting programs with other institutions of higher education, and with Federal and state agencies, local agencies, and industry. An institutional program should have substantial strength in the three basic Sea Grant activities: research, education and training, and advisory services. Sea Grant institutional programs that meet the qualifications for Sea Grant College or Sea Grant Regional Consortium status set forth at 15 CFR part 918 will be so designated by the Secretary.

§ 917.43 Terms and conditions of Sea Grant funding.

No Sea Grant funding may be applied to:

(a)(1) the purchase or rental of any land or (2) the purchase, rental, construction, preservation, or repair of any building, dock, or vessel, except that payment under any such grant or contract may (if approved by the Assistant Administrator for Administration of the National Oceanic and Atmospheric Administration or designee) be applied to the purchase, rental, construction, preservation, or repair of non-self-propelled habitats, buoys, platforms, and other similar devices or structures, or to the rental of any research vessel which is used in direct support of activities under any Sea Grant program or project.

(b) In addition, Sea Grant funding under the Sea Grant Matched Funding Program will be subject to the limitation that the total amount which may be obligated within any one state to persons under the Sea Grant Matched Funding Program in any fiscal year shall not exceed an amount equal to 15 percent of the funds appropriated for the Sea Grant Matched Funding Program.

(c) Any person who receives or utilizes Sea Grant funding shall keep the records required by OMB Circular A–110, ''Grant and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' and by NOAA General Provision, implementing OMB Circular A–110, by OMB Circular A–102, ''Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments,'' including records that fully disclose the amount and disposition by the recipient of such proceeds, the total cost of the program or project in which such proceeds were used, and the amount, if any, of such cost which was provided through other sources. Such records shall be maintained for three years after the completion of such a program or project. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and evaluation, to any books, documents, papers, and records of receipt which, in the opinion of the Secretary or the Comptroller General, may be related or pertinent to such grants and contracts.

PART 918—SEA GRANTS

Sec.
918.1 Introduction.
918.2 Definitions.
918.3 Eligibility, qualifications, and responsibility of a Sea Grant College.
918.4 Duration of Sea Grant College designation.
918.5 Eligibility, qualifications, and responsibilities—Sea Grant Regional Consortia.
918.6 Duration of Sea Grant Regional Consortium designation.
918.7 Application for designation.

AUTHORITY: Sec. 207, National Sea Grant College Program Act, as amended (Pub. L. 94–461, 33 U.S.C. 1121, *et seq.*).

SOURCE: 44 FR 75054, Dec. 18, 1979, unless otherwise noted.

§ 918.1 Introduction.

Pursuant to section 207 of the National Sea Grant College Program Act, as amended (Pub. L. 94–461, 33 U.S.C. 1121 *et seq.*), herein referred to as the Act, the following guidelines establish the procedures by which organizations can qualify for designation as Sea Grant Colleges or Sea Grant Regional Consortia, and the responsibilities required of organizations so designated.

§ 918.2 Definitions.

(a) *Marine environment.* The term *Marine Environment* means any or all of the following: the coastal zone, as defined in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)); the seabed, subsoil and waters of the territorial sea of the United States, including the Great Lakes; the waters of any zone over which the United States asserts exclusive fishery management authority; the waters of the high seas; and the seabed and subsoil of and beyond the Outer Continental Shelf.

(b) *Ocean, Great Lakes, and coastal resources.* The term *ocean, Great Lakes, and coastal resources* means any resource (whether living, nonliving, manmade, tangible, intangible, actual, or potential) which is located in, derived from, or traceable to, the marine environment. Such term includes the habitat of any such living resource, the coastal space, the ecosystems, the nutrient-rich areas, and the other components of the marine environment which contribute to or provide (or which are capable of contributing to or providing) recreational, scenic, aesthetic, biological, habitational, commercial, economic, or conservation values. Living resources include natural and cultured plant life, fish, shellfish, marine mammals, and wildlife. Nonliving resources include energy sources, minerals, and chemical substances.

(c) *Person.* The term *Person* means any public or private corporation, partnership, or other association or entity (including any Sea Grant College, Sea Grant Regional Consortium, institution of higher education, institute, or laboratory); or any State, political subdivision of a State, or agency or officer thereof.

(d) *Sea Grant College.* The term *Sea Grant College* means any public or private institution of higher education or confederation of such institutions which is designated as such by the Secretary under section 207 of the National Sea Grant Program Act. Included in this term are all campuses (or other administrative entities) of a designated Sea Grant College, working through the established management structure of the Sea Grant College.

(e) *Sea Grant Program.* The term *Sea Grant Program* means any program which:

(1) Is administered by a Sea Grant College, Sea Grant Regional Consortium, institution of higher education, institute, laboratory, or State or local agency; and

(2) Includes two or more Sea Grant projects involving one or more of the following activities in fields related to ocean, Great Lakes, and coastal resources:

(i) Research,

(ii) Education and training, and

(iii) Advisory services.

(f) *Sea Grant project.* A Sea Grant project is any separately described activity which has been proposed to the National Sea Grant College Program, and has subsequently been approved.

(g) *Sea Grant Regional Consortium.* The term *Sea Grant Regional Consortium* means any association or other alliance of two or more persons as defined above (other than individuals) established for the purpose of pursuing programs in marine research education,

training, and advisory services on a regional basis (*i.e.*, beyond the boundaries of a single state) and which is designated as a consortium by the Secretary under section 207 of the National Sea Grant Program Act.

(h) *Field related to Ocean, Great Lakes, and coastal resources.* The term *field related to Ocean, Great Lakes, and coastal resources* means any discipline or field (including marine sciences and the physical, natural, and biological sciences, and engineering, included therein, marine technology, education, economics, sociology, communications, planning law, international affairs, public administration, humanities, and the arts) which is concerned with, or likely to improve the understanding, assessment, development, utilization, or conservation of, ocean, Great Lakes, and coastal resources.

§918.3 Eligibility, qualifications, and responsibility of a Sea Grant College.

(a) To be eligible for designation as a Sea Grant College, the institution of higher education or confederation of such institutions must have demonstrated a capability to maintain a high quality and balanced program of research, education, training, and advisory services in fields related to ocean, Great Lakes, and coastal resources for a minimum of three years, and have received financial assistance as an Institutional program under either section 205 of the National Sea Grant College Program Act or under section 204(c) of the earlier National Sea Grant College and Program Act of 1966.

(b) To be eligible for designation as a Sea Grant College, the candidate institution or confederation of institutions must meet the qualifications set forth above as evaluated by a site review team composed of members of the Sea Grant Review Panel, NOAA's Office of Sea Grant, and other experts named by NOAA. As a result of this review, the candidate must be rated highly in all of the following qualifying areas:

(1) *Leadership.* The Sea Grant College candidate must have achieved recognition as an intellectual and practical leader in marine science, engineering, education, and advisory service in its state and region.

(2) *Organization.* The Sea Grant College candidate must have created the management organization to carry on a viable and productive Sea Grant Program, and must have the backing of its administration at a sufficiently high level to fulfill its multidisciplinary and multifaceted mandate.

(3) *Relevance.* The Sea Grant College candidate's program must be relevant to local, State, regional, or National opportunities and problems in the marine environment. Important factors in evaluating relevance are the need for marine resource emphasis and the extent to which capabilities have been developed to be responsive to that need.

(4) *Programmed team approach.* The Sea Grant College candidate must have a programmed team approach to the solution of marine problems which includes relevant, high quality, multidisciplinary research with associated educational and advisory services capable of producing identifiable results.

(5) *Education and training.* Education and training must be clearly relevant to National, regional, State and local needs in fields related to ocean, Great Lakes, and coastal resources. As appropriate, education may include pre-college, college, post-graduate, public and adult levels.

(6) *Advisory services.* The Sea Grant College candidate must have a strong program through which information, techniques,and research results from any reliable source, domestic or international, may be communicated to and utilized by user communities. In addition to the educational and information dissemination role, the advisory service program must aid in the identification and communication of user communities' research and educational needs.

(7) *Relationships.* The Sea Grant College candidate must have close ties with Federal agencies. State agencies and administrations, local authorities, business and industry, and other educational institutions. These ties are: (i) To ensure the relevance of its programs, (ii) to give assistance to the

broadest possible audience, (iii) to involve a broad pool of talent in providing this assistance (including universities and other administrative entities outside the Sea Grant College), and (iv) to assist others in developing research and management competence. The extent and quality of an institution's relationships are critical factors in evaluating the institutional program.

(8) *Productivity*. The Sea Grant College candidate must have demonstrated the degree of productivity (of research results, reports, employed students, service to State agencies and industry, etc.) commensurate with the length of its Sea Grant operations and the level of funding under which it has worked.

(9) *Support*. The Sea Grant College candidate must have the ability to obtain matching funds from non-Federal sources, such as state legislatures, university management, state agencies, business, and industry. A diversity of matching fund sources is encouraged as a sign of program vitality and the ability to meet the Sea Grant requirement that funds for the general programs be matched with at least one non-Federal dollar for every two Federal dollars.

(c) Finally, it must be found that the Sea Grant College candidate will act in accordance with the following standards relating to its continuing responsibilities if it should be designated a Sea Grant College:

(1) Continue pursuit of excellence and high performance in marine research, education, training, and advisory services.

(2) Provide leadership in marine activities including coordinated planning and cooperative work with local, state, regional, and Federal agencies, other Sea Grant Programs, and non-Sea Grant universities.

(3) Maintain an effective management framework and application of institutional resources to the achievement of Sea Grant objectives.

(4) Develop and implement long-term plans for research, education, training, and advisory services consistent with Sea Grant goals and objectives.

(5) Advocate and further the Sea Grant concept and the full development of its potential within the institution and the state.

(6) Provide adequate and stable matching financial support for the program from non-Federal sources.

(7) Establish and operate an effective system to control the quality of its Sea Grant programs.

§ 918.4 Duration of Sea Grant College designation.

Designation will be made on the basis of merit and the determination by the Secretary of Commerce that such a designation is consistent with the goals of the Act. Continuation of the Sea Grant College designation is contingent upon the institution's ability to maintain a high quality performance consistent with the requirements outlined above. The Secretary may, for cause and after an opportunity for hearing, suspend or terminate a designation as a Sea Grant College.

§ 918.5 Eligibility, qualifications, and responsibilities—Sea Grant Regional Consortia.

(a) To be eligible for designation as a Sea Grant Regional Consortium, the candidate association or alliance of organizations must provide, in significant breadth and quality, one or more services in the areas of research, education, and training, or advisory service in fields related to ocean, Great Lakes, and coastal resources. Further, it is essential that the candidate Sea Grant Consortium be required to provide all three services as soon as possible after designation. Further, such association or alliance must demonstrate that:

(1) It has been established for the purpose of sharing expertise, research, educational facilities, or training facilities, and other capabilities in order to facilitate research, education, training, and advisory services in any field related to ocean, Great Lakes, and coastal resources; and

(2) It will encourage and follow a regional multi-State approach to solving problems or meeting needs relating to ocean, Great Lakes, and coastal resources, in cooperation with appropriate Sea Grant Colleges, Sea Grant Programs and other persons in the region.

(b) Although it is recognized that the distribution of effort between research,

education, training, and advisory services to achieve appropriate balance in a Sea Grant Regional Consortium may differ from a Sea Grant College, sustained effort in all of these areas is, nonetheless, an essential requirement for retention of such designation. To be eligible for designation as a Sea Grant Regional Consortium, the candidate association or alliance of organizations must meet the qualifications set forth above as evaluated by a site review team composed of members of the Sea Grant Review Panel, the Office of Sea Grant, and other experts. Further, the candidate must be rated highly in all of the following qualifying areas which are pertinent to the Consortium's program:

(1) *Leadership*. The Sea Grant Regional Consortium candidate must have achieved recognition as an intellectual and practical leader in marine science, engineering, education, and advisory service in its region.

(2) *Organization*. The Sea Grant Regional Consortium candidate must have created the management organization to carry on a viable and productive multidisciplinary Sea Grant Program and have the backing of the administrations of its component organizations at a sufficiently high level to fulfill its multidisciplinary and multifaceted mandate.

(3) *Relevance*. The Sea Grant Regional Consortium candidate's Sea Grant Program must be relevant to regional opportunities and problems in the marine environment. Important factors in evaluating relevance are the extent and depth of the need of a region for a focused marine resource emphasis and the degree to which the candidate has developed its capability to be responsive to that need.

(4) *Education and training*. Education and training must be clearly relevant to regional needs and must be of high quality in fields related to ocean, Great Lakes, and coastal resources. As appropriate, education may include precollege, college, post-graduate, public and adult levels.

(5) *Advisory services*. The Sea Grant Regional Consortium candidate must have a strong program through which information techniques, and research results from any reliable source, domestic or international, may be communicated to and utilized by user communities. In addition to the educational and information dissemination role, the advisory service program must aid in the identification and communication of user communities' research and educational needs.

(6) *Relationships*. The Sea Grant Regional Consortium candidate must have close ties with federal agencies, state agencies and administrations, regional authorities, regional business and industry, and other regional educational institutions. These regional ties are: (i) To ensure the relevance of programs, (ii) to generate requests for such assistance as the consortium may offer, and (iii) to assist others in developing research and management competence. The extent and quality of a candidate's relationships are critical factors in evaluating the proposed designation.

(7) *Productivity*. The Sea Grant Regional Consortium candidate must have demonstrated a degree of productivity (of research results, reports, employed students, service to regional agencies, industry, etc.) commensurate with the length of its Sea Grant operations and the level of funding under which it has worked.

(8) *Support*. The Sea Grant Regional Consortium candidate must have the ability to obtain matching funds from non-Federal sources, such as State legislatures, university management, State agencies, and business and industry. A diversity of matching funds sources is encouraged as a sign of program vitality and the ability to meet the Sea Grant requirement that funds for the general programs be matched with at least one non-Federal dollar for every two Federal dollars.

(c) Finally, it must be found that the Sea Grant Regional Consortium candidate will act in accordance with the following standards relating to its continuing responsibilities as a Sea Grant Regional Consortium:

(1) Continue pursuit of excellence and high performance in marine research education, training, and advisory services.

(2) Provide regional leadership in marine activities including coordinated planning and cooperative work with

local, State, regional, and Federal agencies, other Sea Grant Programs, and non-Sea Grant organizations.

(3) Maintain an effective management framework and application of organizational resources to the achievement of Sea Grant objectives.

(4) Develop and implement long-term plans for research, education, training, and advisory services consistent with Sea Grant goals and objectives.

(5) Advocate and further the Sea Grant concept and the full development of its potential within the consortium and the region.

(6) Provide adequate and stable matching financial support for the program from non-Federal sources.

(7) Establish and operate an effective system to control the quality of its Sea Grant program.

§ 918.6 Duration of Sea Grant Regional Consortium designation.

Designation will be made on the basis of merit and the determination by the Secretary of Commerce that such a designation is consistent with the goals of the Act. Continuation of the Sea Grant Regional Consortium designation is contingent upon the alliance's ability to maintain a high quality performance consistent with the standards outlined above. The Secretary may, for cause and after an opportunity for hearing, suspend or terminate the designation as a Sea Grant Regional Consortium.

§ 918.7 Application for designation.

(a) All applications for initial designation as a Sea Grant College or a Regional Consortium should be addressed to the Secretary of Commerce and submitted to the Director, National Sea Grant College Program, National Oceanic and Atmospheric Administration. The application should contain an outline of the capabilities of the applicant and the reasons why the applicant believes that it merits designation under the guidelines contained in this regulation. Upon receipt of the application, the Director will present the institution's case to the Sea Grant Review Panel for evaluation. The Panel's recommendation will be forwarded to the Secretary for final action.

(b) An existing Sea Grant College or Regional Consortium may also apply as in paragraph (a) of this section, for a change in the scope of designation to include or exclude other administrative entities of the institution or association. If approved by the Secretary such included (excluded) administrative entities shall share (lose) the full rights and responsibilities of a Sea Grant College or Regional Consortium.

SUBCHAPTER B—OCEAN AND COASTAL RESOURCE MANAGEMENT

PART 921—NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM REGULATIONS

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APPENDIX I TO PART 921—BIOGEOGRAPHIC CLASSIFICATION SCHEME
APPENDIX II TO PART 921—TYPOLOGY OF NATIONAL ESTUARINE RESEARCH RESERVES

AUTHORITY: Section 315 of the Coastal Zone Management Act, as amended (16 U.S.C. 1461).

SOURCE: 58 FR 38215, July 15, 1993, unless otherwise noted.

Subpart A—General

§ 921.1 Mission, goals and general provisions.

(a) The mission of the National Estuarine Research Reserve Program is the establishment and management, through Federal-state cooperation, of a national system (National Estuarine Research Reserve System or System) of estuarine research reserves (National Estuarine Research Reserves or Reserves) representative of the various regions and estuarine types in the United States. National Estuarine Research Reserves are established to provide opportunities for long-term research, education, and interpretation.

(b) The goals of the Program are to:

(1) Ensure a stable environment for research through long-term protection of National Estuarine Research Reserve resources;

(2) Address coastal management issues identified as significant through coordinated estuarine research within the System;

(3) Enhance public awareness and understanding of estuarine areas and provide suitable opportunities for public education and interpretation;

(4) Promote Federal, state, public and private use of one or more Reserves within the System when such entities conduct estuarine research; and

(5) Conduct and coordinate estuarine research within the System, gathering and making available information necessary for improved understanding and management of estuarine areas.

(c) National Estuarine Research Reserves shall be open to the public to the extent permitted under state and Federal law. Multiple uses are allowed to the degree compatible with each Reserve's overall purpose as provided in the management plan (see §921.13) and consistent with paragraphs (a) and (b) of this section. Use levels are set by the state where the Reserve is located and analyzed in the management plan. The Reserve management plan shall describe the uses and establish priorities among these uses. The plan shall identify uses requiring a state permit, as well as areas where uses are encouraged or prohibited. Consistent with resource protection and research objectives, public access and use may be restricted to certain areas or components within a Reserve.

(d) Habitat manipulation for research purposes is allowed consistent with the following limitations. Manipulative research activities must be specified in the management plan, be consistent with the mission and goals of the program (see paragraphs (a) and (b) of this section) and the goals and objectives set forth in the Reserve's management plan, and be limited in nature and extent to the minimum manipulative activity necessary to accomplish the stated research objective. Manipulative research activities with a significant or long-term impact on Reserve resources require the prior approval of the state and the National Oceanic and Atmospheric Administration (NOAA). Manipulative research activities which can reasonably be expected to have a significant adverse impact on the estuarine resources and habitat of a Reserve, such that the activities themselves or their resulting short- and long-term consequences compromise the representative character and integrity of a Reserve, are prohibited. Habitat manipulation for resource management purposes is prohibited except as specifically approved by NOAA as: (1) A restoration activity consistent with paragraph (e) of this section; or (2) an activity necessary for the protection of public health or the preservation of other sensitive resources which have been listed or are eligible for protection under relevant Federal or state authority (e.g., threatened/endangered species or significant historical or cultural resources) or if the manipulative activity is a long-term pre-existing use (*i.e.,* has occurred prior to designation) occurring in a buffer area. If habitat manipulation is determined to be necessary for the protection of public health, the preservation of sensitive resources, or if the manipulation is a long-term pre-existing use in a buffer area, then these activities shall be specified in the Reserve management plan in accordance with §921.13(a)(10) and shall be limited to the reasonable alternative which has the least adverse and shortest term impact on the representative and ecological integrity of the Reserve.

(e) Under the Act an area may be designated as an estuarine Reserve only if the area is a representative estuarine ecosystem that is suitable for long-term research. Many estuarine areas have undergone some ecological change as a result of human activities (e.g., hydrological changes, intentional/unintentional species composition changes—introduced and exotic species). In those areas proposed or designated as National Estuarine Research Reserves, such changes may have diminished the representative character and integrity of the site. Although restoration of degraded areas is not a primary purpose of the System, such activities may be permitted to improve the representative character and integrity of a Reserve. Restoration activities must be carefully planned and approved by NOAA through the Reserve management plan. Historical research may be necessary to determine the ''natural'' representative state of an estuarine area (*i.e.,* an estuarine ecosystem minimally affected by

human activity or influence). Frequently, restoration of a degraded estuarine area will provide an excellent opportunity for management oriented research.

(f) NOAA may provide financial assistance to coastal states, not to exceed, per Reserve, 50 percent of all actual costs or $5 million whichever amount is less, to assist in the acquisition of land and waters, or interests therein. NOAA may provide financial assistance to coastal states not to exceed 70 percent of all actual costs for the management and operation of, the development and construction of facilities, and the conduct of educational or interpretive activities concerning Reserves (see subpart I). NOAA may provide financial assistance to any coastal state or public or private person, not to exceed 70 percent of all actual costs, to support research and monitoring within a Reserve. Notwithstanding any financial assistance limits established by this Part, when financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, such assistance may be used to pay 100 percent of all actual costs of activities carrier out with this assistance, as long as such funds are available. Predesignation, acquisition and development, operation and management, special research and monitoring, and special education and interpretation awards are available under the National Estuarine Reserve Program. Predesignation awards are for site selection/feasibility, draft management plan preparation and conduct of basic characterization studies. Acquisition and development awards are intended primarily for acquisition of interests in land, facility construction and to develop and/or upgrade research, monitoring and education programs. Operation and management awards provide funds to assist in implementing, operating and managing the administrative, and basic research, monitoring and education programs, outlined in the Reserve management plan. Special research and monitoring awards provide funds to conduct estuarine research and monitoring projects with the System. Special educational and interpretive awards provide funds to conduct estuarine educational and interpretive projects within the System.

(g) Lands already in protected status managed by other Federal agencies, state or local governments, or private organizations may be included within National Estuarine Research Reserves only if the managing entity commits to long-term management consistent with paragraphs (d) and (e) of this section in the Reserve management plan. Federal lands already in protected status may not comprise a majority of the key land and water areas of a Reserve (see § 921.11(c)(3)).

(h) To assist the states in carrying out the Program's goals in an effective manner, NOAA will coordinate a research and education information exchange throughout the National Estuarine Research Reserve System. As part of this role, NOAA will ensure that information and ideas from one Reserve are made available to others in the System. The network will enable Reserves to exchange information and research data with each other, with universities engaged in estuarine research, and with Federal, state, and local agencies. NOAA's objective is a system-wide program of research and monitoring capable of addressing the management issues that affect long-term productivity of our Nation's estuaries.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12540, Mar. 17, 1997; 63 FR 26717, May 14, 1998]

§ 921.2 Definitions.

(a) *Act* means the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq*.

(b) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management or delegee.

(c) *Coastal state* means a state of the United States, in or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of America, Long Island Sound, or one or more of the Great Lakes. For the purposes of these regulations the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas Islands, the Trust Territories of the Pacific Islands, and American Samoa (see 16 U.S.C. 1453(4)).

(d) *State agency* means an instrumentality of a coastal state to whom the coastal state has delegated the authority and responsibility for the creation and/or management/operation of a National Estuarine Research Reserve. Factors indicative of this authority may include the power to receive and expend funds on behalf of the Reserve, acquire and sell or convey real and personal property interests, adopt rules for the protection of the Reserve, enforce rules applicable to the Reserve, or develop and implement research and education programs for the reserve. For the purposes of these regulations, the terms ''coastal state'' and ''State agency'' shall be synonymous.

(e) *Estuary* means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes estuary-type areas with measurable freshwater influence and having unimpaired connections with the open sea, and estuary-type areas of the Great Lakes and their connecting waters (see 16 U.S.C. 1453(7)).

(f) *National Estuarine Research Reserve* means an area that is a representative estuarine ecosystem suitable for long-term research, which may include all of the key land and water portion of an estuary, and adjacent transitional areas and uplands constituting to the extent feasible a natural unit, and which is set aside as a natural field laboratory to provide long-term opportunities for research, education, and interpretation on the ecological relationships within the area (see 16 U.S.C. 1453(8)) and meets the requirements of 16 U.S.C. 1461(b). This includes those areas designated as National Estuarine Sanctuaries or Reserves under section 315 of the Act prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990 and each area subsequently designated as a National Estuarine Research Reserve.

[58 FR 38215, July 15, 1993, as amended at 90 FR 38002, Aug. 7, 2025]

§ 921.3 National Estuarine Research Reserve System biogeographic classification scheme and estuarine typologies.

(a) National Estuarine Research Reserves are chosen to reflect regional differences and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's coastal zone has been developed. The biogeographic classification scheme is used to ensure that the National Estuarine Research Reserve System includes at least one site from each region. The estuarine typology system is utilized to ensure that sites in the System reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in appendix I, contains 29 regions. Figure 1 graphically depicts the biogeographic regions of the United States.

(c) The typology system is presented in appendix II.

§ 921.4 Relationship to other provisions of the Coastal Zone Management Act, and to the Marine Protection, Research and Sanctuaries Act.

(a) The National Estuarine Research Reserve System is intended to provide information to state agencies and other entities involved in addressing coastal management issues. Any coastal state, including those that do not have approved coastal management programs under section 306 of the Act, is eligible for an award under the National Estuarine Research Reserve Program (see § 921.2(c)).

(b) For purposes of consistency review by states with a federally approved coastal management program, the designation of a National Estuarine Research Reserve is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved state coastal management program as provided by section 1456(c)(1) of the Act, and implementing regulations at 15 CFR part 930, subpart C. In accordance with section 1456(c)(1) of the Act and the applicable regulations NOAA will be responsible for certifying that designation of the

Reserve is consistent with the state's approved coastal management program. The state must concur with or object to the certification. It is recommended that the lead state agency for Reserve designation consult, at the earliest practicable time, with the appropriate state officials concerning the consistency of a proposed National Estuarine Research Reserve.

(c) The National Estuarine Research Reserve Program will be administered in close coordination with the National Marine Sanctuary Program (Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431–1445), also administered by NOAA. Title III authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries to protect or restore such areas for their conservation, recreational, ecological, historical, research, educational or esthetic values. National Marine Sanctuaries and Estuarine Research Reserves may not overlap, but may be adjacent.

Subpart B—Site Selection, Post Site Selection and Management Plan Development

§ 921.10 General.

(a) A coastal state may apply for Federal financial assistance for the purpose of site selection, preparation of documents specified in § 921.13 (draft management plan (DMP) and environmental impact statement (EIS)), and the conduct of limited basic characterization studies. The total Federal share of this assistance may not exceed $100,000. Federal financial assistance for preacquisition activities under § 921.11 and § 921.12 is subject to the total $5 million for which each Reserve is eligible for land acquisition. Notwithstanding the above, when financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, such assistance may be used to pay 100 percent of all actual costs of activities carried out with this assistance, as long as such funds are available. In the case of a biogeographic region (see appendix I) shared by two or more coastal states, each state is eligible for Federal financial assistance to establish a separate National Estuarine Research Reserve within their respective portion of the shared biogeographic region. Each separate National Estuarine Research Reserve is eligible for the full complement of funding. Financial assistance application procedures are specified in subpart I.

(b) In developing a Reserve program, a state may choose to develop a multiple-site Reserve reflecting a diversity of habitats in a single biogeographic region. A multiple-site Reserve allows the state to develop complementary research and educational programs within the individual components of its multi-site Reserve. Multiple-site Reserves are treated as one Reserve in terms of financial assistance and development of an overall management framework and plan. Each individual site of a proposed multiple-site Reserve shall be evaluated both separately under § 921.11(c) and collectively as part of the site selection process. A coastal state may propose to establish a multiple-site Reserve at the time of the initial site selection, or at any point in the development or operation of the Reserve. If the state decides to develop a multiple-site National Estuarine Research Reserve after the initial acquisition and development award is made for a single site, the proposal is subject to the requirements set forth in § 921.33(b). However, a state may not propose to add one or more sites to an already designated Reserve if the operation and management of such Reserve has been found deficient and uncorrected or the research conducted is not consistent with the Estuarine Research Guidelines referenced in § 921.51. In addition, Federal funds for the acquisition of a multiple-site Reserve remain limited to $5,000,000 (see § 921.20). The funding for operation of a multiple-site Reserve is limited to the maximum allowed for any one Reserve per year (see § 921.32(c)) and preacquisition funds are limited to $100,000 per Reserve. Notwithstanding the above, when financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, such assistance may be used to pay 100 percent of all actual costs of

activities carrier out with this assistance, as long as such funds are available.

[58 FR 38215, July 15, 1993, as amended at 63 FR 26717, May 14, 1998]

§ 921.11 Site selection and feasibility.

(a) A coastal state may use Federal funds to establish and implement a site selection process which is approved by NOAA.

(b) In addition to the requirements set forth in subpart I, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the biogeographic classification scheme and typology (§ 921.3);

(2) An identification of the site selection agency and the potential management agency; and

(3) A description of how public participation will be incorporated into the process (see § 921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site(s). NOAA has final authority in approving such sites. Site selection shall be guided by the following principles:

(1) The site's contribution to the biogeographical and typological balance of the National Estuarine Research Reserve System. NOAA will give priority consideration to proposals to establish Reserves in biogeographic regions or subregions or incorporating types that are not represented in the system. (see the biogeographic classification scheme and typology set forth in § 921.3 and appendices I and II);

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site must be a representative estuarine ecosystem and should, to the maximum extent possible, be an estuarine ecosystem minimally affected by human activity or influence (see § 921.1(e)).

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. Reserve boundaries must encompass the area within which adequate control has or will be established by the managing entity over human activities occurring within the Reserve. Generally, Reserve boundaries will encompass two areas: Key land and water areas (or ''core area'') and a buffer zone. Key land and water areas and a buffer zone will likely require significantly different levels of control (see § 921.13(a)(7)). The term ''key land and water areas'' refers to that core area within the Reserve that is so vital to the functioning of the estuarine ecosystem that it must be under a level of control sufficient to ensure the long-term viability of the Reserve for research on natural processes. Key land and water areas, which comprise the core area, are those ecological units of a natural estuarine system which preserve, for research purposes, a full range of significant physical, chemical and biological factors contributing to the diversity of fauna, flora and natural processes occurring within the estuary. The determination of which land and water areas are ''key'' to a particular Reserve must be based on specific scientific knowledge of the area. A basic principle to follow when deciding upon key land and water areas is that they should encompass resources representative of the total ecosystem, and which if compromised could endanger the research objectives of the Reserve. The term *buffer zone* refers to an area adjacent to or surrounding key land and water areas and essential to their integrity. Buffer zones protect the core area and provide additional protection for estuarine-dependent species, including those that are rare or endangered. When determined appropriate by the state and approved by NOAA, the buffer zone may also include an area necessary for facilities required for research and interpretation. Additionally, buffer zones should be established sufficient to accommodate a shift of the core area as a result of biological, ecological or geomorphological change which reasonably could be expected to occur. National Estuarine Research Reserves

may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced. However, NOAA will not approve a site for potential National Estuarine Research Reserve status that is dependent primarily upon the inclusion of currently protected Federal lands in order to meet the requirements for Reserve status (such as key land and water areas). Such lands generally will be included within a Reserve to serve as a buffer or for other ancillary purposes; and may be included, subject to NOAA approval, as a limited portion of the core area;

(4) The site's suitability for long-term estuarine research, including ecological factors and proximity to existing research facilities and educational institutions;

(5) The site's compatibility with existing and potential land and water uses in contiguous areas as well as approved coastal and estuarine management plans; and

(6) The site's importance to education and interpretive efforts, consistent with the need for continued protection of the natural system.

(d) Early in the site selection process the state must seek the views of affected landowners, local governments, other state and Federal agencies and other parties who are interested in the area(s) being considered for selection as a potential National Estuarine Research Reserve. After the local government(s) and affected landowner(s) have been contacted, at least one public meeting shall be held in the vicinity of the proposed site. Notice of such a meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal newspaper at least 15 days prior to the date of the meeting and by NOAA in the FEDERAL REGISTER.

(e) A state request for NOAA approval of a proposed site (or sites in the case of a multi-site Reserve) must contain a description of the proposed site(s) in relationship to each of the site selection principals (§ 921.11(c)) and the following information:

(1) An analysis of the proposed site(s) based on the biogeographical scheme/typology discussed in § 921.3 and set forth in appendices I and II;

(2) A description of the proposed site(s) and its (their) major resources, including location, proposed boundaries, and adjacent land uses. Maps are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted. Copies of all correspondence, including contact letters to all affected landowners must be appended;

(4) A list of all sites considered and a brief statement of the reasons why a site was not preferred; and

(5) A nomination of the proposed site(s) for designation as a National Estuarine Research Reserve by the Governor of the coastal state in which the state is located.

(f) A state proposing to reactivate an inactive site, previously approved by NOAA for development as an Estuarine Sanctuary or Reserve, may apply for those funds remaining, if any, provided for site selection and feasibility (§ 921.11a)) to determine the feasibility of reactivation. This feasibility study must comply with the requirements set forth in § 921.11 (c) through (e).

§ 921.12 Post site selection.

(a) At the time of the coastal state's request for NOAA approval of a proposed site, the state may submit a request for funds to develop the draft management plan and for preparation of the EIS. At this time, the state may also submit a request for the remainder of the predesignation funds to perform a limited basic characterization of the physical, chemical and biological characteristics of the site approved by NOAA necessary for providing EIS information to NOAA. The state's request for these post site selection funds must be accompanied by the information specified in subpart I and, for draft management plan development and EIS information collection, the following programmatic information:

(1) A draft management plan outline (see § 921.13(a) below); and

(2) An outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state role in Reserve management during the initial period of Federal funding and expressing the state's long-term commitment to operate and manage the Reserve.

(b) The state is eligible to use the funds referenced in §921.12(a) after the proposed site is approved by NOAA under the terms of §921.11.

§921.13 Management plan and environmental impact statement development.

(a) After NOAA approves the state's proposed site and application for funds submitted pursuant to §921.12, the state may begin draft management plan development and the collection of information necessary for the preparation by NOAA of an EIS. The state shall develop a draft management plan, including an MOU. The plan shall set out in detail:

(1) Reserve goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) An administrative plan including staff roles in administration, research, education/interpretation, and surveillance and enforcement;

(3) A research plan, including a monitoring design;

(4) An education/interpretive plan;

(5) A plan for public access to the Reserve;

(6) A construction plan, including a proposed construction schedule, general descriptions of proposed developments and general cost estimates. Information should be provided for proposed minor construction projects in sufficient detail to allow these projects to begin in the initial phase of acquisition and development. A categorical exclusion, environmental assessment, or EIS may be required prior to construction;

(7)(i) An acquisition plan identifying the ecologically key land and water areas of the Reserve, ranking these areas according to their relative importance, and including a strategy for establishing adequate long-term state control over these areas sufficient to provide protection for Reserve resources to ensure a stable environment for research. This plan must include an identification of ownership within the proposed Reserve boundaries, including land already in the public domain; the method(s) of acquisition which the state proposes to use—acquisition (including less-than-fee simple options) to establish adequate long-term state control; an estimate of the fair market value of any property interest—which is proposed for acquisition; a schedule estimating the time required to complete the process of establishing adequate state control of the proposed research reserve; and a discussion of any anticipated problems. In selecting a preferred method(s) for establishing adequate state control over areas within the proposed boundaries of the Reserve, the state shall perform the following steps for each parcel determined to be part of the key land and water areas (control over which is necessary to protect the integrity of the Reserve for research purposes), and for those parcels required for research and interpretive support facilities or buffer purposes:

(A) Determine, with appropriate justification, the minimum level of control(s) required [e.g., management agreement, regulation, less-than-fee simple property interest (e.g., conservation easement), fee simple property acquisition, or a combination of these approaches]. This does not preclude the future necessity of increasing the level of state control;

(B) Identify the level of existing state control(s);

(C) Identify the level of additional state control(s), if any, necessary to meet the minimum requirements identified in paragraph (a)(7)(i)(A) of this section;

(D) Examine all reasonable alternatives for attaining the level of control identified in paragraph (a)(7)(i)(C) of this section, and perform a cost analysis of each; and

(E) Rank, in order of cost, the methods (including acquisition) identified in paragraph (a)(7)(i)(D) of this section.

(ii) An assessment of the relative cost-effectiveness of control alternatives shall include a reasonable estimate of both short-term costs (e.g., acquisition of property interests, regulatory program development including associated enforcement costs, negotiation, adjudication, etc.) and long-term costs (e.g., monitoring, enforcement, adjudication, management and coordination). In selecting a preferred method(s) for establishing adequate state control over each parcel examined under the process described above, the state shall give priority consideration to the least costly method(s) of attaining the minimum level of long-term control required. Generally, with the possible exception of buffer areas required for support facilities, the level of control(s) required for buffer areas will be considerably less than that required for key land and water areas. This acquisition plan, after receiving the approval of NOAA, shall serve as a guide for negotiations with landowners. A final boundary for the reserve shall be delineated as a part of the final management plan;

(8) A resource protection plan detailing applicable authorities, including allowable uses, uses requiring a permit and permit requirements, any restrictions on use of the research reserve, and a strategy for research reserve surveillance and enforcement of such use restrictions, including appropriate government enforcement agencies;

(9) If applicable, a restoration plan describing those portions of the site that may require habitat modification to restore natural conditions;

(10) If applicable, a resource manipulation plan, describing those portions of the Reserve buffer in which long-term pre-existing (prior to designation) manipulation for reasons not related to research or restoration is occurring. The plan shall explain in detail the nature of such activities, shall justify why such manipulation should be permitted to continue within the reserve buffer; and shall describe possible effects of this manipulation on key land and water areas and their resources;

(11) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the National Estuarine Research Reserve, and expressing a long-term commitment by the state to maintain and manage the Reserve in accordance with section 315 of the Act, 16 U.S.C. 1461, and applicable regulations. In conjunction with the MOU, and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection and operation of the National Estuarine Research Reserve. If other MOUs are necessary (such as with a Federal agency, another state agency or private organization), drafts of such MOUs must be included in the plan. All necessary MOU's shall be signed prior to Reserve designation; and

(12) If the state has a federally approved coastal management program, a certification that the National Estuarine Research Reserve is consistent to the maximum extent practicable with that program. See §§ 921.4(b) and 921.30(b).

(b) Regarding the preparation of an EIS under the National Environmental Policy Act on a National Estuarine Research Reserve proposal, the state and NOAA shall collect all necessary information concerning the socioeconomic and environmental impacts associated with implementing the draft management plan and feasible alternatives to the plan. Based on this information, the state will draft and provide NOAA with a preliminary EIS.

(c) Early in the development of the draft management plan and the draft EIS, the state and NOAA shall hold a scoping meeting (pursuant to NEPA) in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action. NOAA will publish a notice of the meeting in the FEDERAL REGISTER at least 15 days prior to the meeting. The state shall be responsible for publishing a similar notice in the local media.

(d) NOAA will publish a FEDERAL REGISTER notice of intent to prepare a draft EIS. After the draft EIS is prepared and filed with the Environmental Protection Agency (EPA), a Notice of Availability of the draft EIS will appear in the FEDERAL REGISTER. Not less than 30 days after publication of the

notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed national estuarine research reserve. The hearing will be held no sooner than 15 days after appropriate notice of the meeting has been given in the principal news media by the state and in the FEDERAL REGISTER by NOAA. After a 45-day comment period, a final EIS will be prepared by the state and NOAA.

Subpart C—Acquisition, Development and Preparation of the Final Management Plan

§ 921.20 General.

The acquisition and development period is separated into two major phases. After NOAA approval of the site, draft management plan and draft MOU, and completion of the final EIS, a coastal state is eligible for an initial acquisition and development award(s). In this initial phase, the state should work to meet the criteria required for formal research reserve designation; e.g., establishing adequate state control over the key land and water areas as specified in the draft management plan and preparing the final management plan. These requirements are specified in § 921.30. Minor construction in accordance with the draft management plan may also be conducted during this initial phase. The initial acquisition and development phase is expected to last no longer than three years. If necessary, a longer time period may be negotiated between the state and NOAA. After Reserve designation, a state is eligible for a supplemental acquisition and development award(s) in accordance with § 921.31. In this post-designation acquisition and development phase, funds may be used in accordance with the final management plan to construct research and educational facilities, complete any remaining land acquisition, for program development, and for restorative activities identified in the final management plan. In any case, the amount of Federal financial assistance provided to a coastal state with respect to the acquisition of lands and waters, or interests therein, for any one National Estuarine Research Reserve may not exceed an amount equal to 50 percent of the costs of the lands, waters, and interests therein or $5,000,000, whichever amount is less, except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of all actual costs of activities carrier out with this assistance, as long as such funds are available.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12540, Mar. 17, 1997; 63 FR 26717, May 14, 1998]

§ 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient prior to designation in:

(1) Acquiring a fee simple or less-than-fee simple real property interest in land and water areas to be included in the Reserve boundaries (see § 921.13(a)(7); § 921.30(d));

(2) Minor construction, as provided in paragraphs (b) and (c) of this section;

(3) Preparing the final management plan; and

(4) Initial management costs, e.g., for implementing the NOAA approved draft management plan, hiring a Reserve manager and other staff as necessary and for other management-related activities. Application procedures are specified in subpart I.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. The preparation of architectural and engineering plans, including specifications, for any proposed construction, or for proposed restorative activities, is permitted. In addition, minor construction activities, consistent with paragraph (c) of this section also are allowed. The NOAA-approved draft management plan must, however, include a construction plan and a public access plan before any award funds can be spent on construction activities.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted during the initial acquisition and development phase. No more than five (5) percent of the initial acquisition and development award may be expended

on such activities. NOAA must make a specific determination, based on the final EIS, that the construction activity will not be detrimental to the environment.

(d) Except as specifically provided in paragraphs (a) through (c) of this section, construction projects, to be funded in whole or in part under an acquisition and development award(s), may not be initiated until the Reserve receives formal designation (see § 921.30). This requirement has been adopted to ensure that substantial progress in establishing adequate state control over key land and water areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in establishing adequate state control/acquisition has been made, as defined by the state in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

(e) For any real property acquired in whole or part with Federal funds for the Reserve, the state shall execute suitable title documents to include substantially the following provisions, or otherwise append the following provisions in a manner acceptable under applicable state law to the official land record(s):

(1) Title to the property conveyed by this deed shall vest in the [recipient of the award granted pursuant to section 315 of the Act, 16 U.S.C. 1461 or other NOAA approved state agency] subject to the condition that the designation of the [name of National Estuarine Reserve] is not withdrawn and the property remains part of the federally designated [name of National Estuarine Research Reserve]; and

(2) In the event that the property is no longer included as part of the Reserve, or if the designation of the Reserve of which it is part is withdrawn, then NOAA or its successor agency, after full and reasonable consultation with the State, may exercise the following rights regarding the disposition of the property:

(i) The recipient may retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property;

(ii) If the recipient does not elect to retain title, the Federal Government may either direct the recipient to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (after deducting actual and reasonable selling and repair or renovation expenses, if any, from the sale proceeds), or direct the recipient to transfer title to the Federal Government. If directed to transfer title to the Federal Government, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the original project to the current fair market value of the property; and

(iii) Fair market value of the property must be determined by an independent appraiser and certified by a responsible official of the state, as provided by Department of Commerce regulations at 15 CFR part 24, and Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally assisted programs at 15 CFR part 11.

(f) Upon instruction by NOAA, provisions analogous to those of § 921.21(e) shall be included in the documentation underlying less-then-fee-simple interests acquired in whole or part with Federal funds.

(g) Federal funds or non-Federal matching share funds shall not be spent to acquire a real property interest in which the state will own the land concurrently with another entity unless the property interest has been identified as a part of an acquisition strategy pursuant to § 921.13(7) which has been approved by NOAA prior to the effective date of these regulations.

(h) Prior to submitting the final management plan to NOAA for review and approval, the state shall hold a public meeting to receive comment on the plan in the area affected by the estuarine research reserve. NOAA will publish a notice of the meeting in the FEDERAL REGISTER at least 15 days prior to the public meeting. The state

shall be responsible for having a similar notice published in the local newspaper(s).

Subpart D—Reserve Designation and Subsequent Operation

§ 921.30 Designation of National Estuarine Research Reserves.

(a) The Under Secretary may designate an area proposed for designation by the Governor of the state in which it is located, as a National Esturaine Research Reserve if the Under Secretary finds:

(1) The area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(2) Key land and water areas of the proposed Reserve, as identified in the management plan, are under adequate state control sufficient to provide long-term protection for reserve resources to ensure a stable environment for research;

(3) Designation of the area as a Reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation;

(4) A final management plan has been approved by NOAA;

(5) An MOU has been signed between the state and NOAA ensuring a long-term commitment by the state to the effective operation and implementation of the area as a National Estuarine Research Reserve;

(6) All MOU's necessary for reserve management (*i.e.*, with relevant Federal, state, and local agencies and/or private organizations) have been signed; and

(7) The coastal state in which the area is located has complied with the requirements of subpart B.

(b) NOAA will determine whether the designation of a National Estuarine Research Reserve in a state with a federally approved coastal zone management program directly affects the coastal zone. If the designation is found to directly affect the coastal zone, NOAA will make a consistency determination pursuant to §307(c)(1) of the Act, 16 U.S.C. 1456, and 15 CFR part 930, subpart C. See §921.4(b). The results of this consistency determination will be published in the FEDERAL REGISTER when the notice of designation is published. See §921.30(c).

(c) NOAA will publish the notice of designation of a National Estuarine Research Reserve in the FEDERAL REGISTER. The state shall be responsible for having a similar notice published in the local media.

(d) The term *state control* in §921.30(a)(3) does not necessarily require that key land and water areas be owned by the state in fee simple. Acquisition of less-than-fee simple interests e.g., conservation easements) and utilization of existing state regulatory measures are encouraged where the state can demonstrate that these interests and measures assure adequate long-term state control consistent with the purposes of the research reserve (see also §§921.13(a)(7); 921.21(g)). Should the state later elect to purchase an interest in such lands using NOAA funds, adequate justification as to the need for such acquisition must be provided to NOAA.

§ 921.31 Supplemental acquisition and development awards.

After National Estuarine Research Reserve designation, and as specified in the approved management plan, a coastal state may request a supplemental acquisition and/or development award(s) for acquiring additional property interests identified in the management plan as necessary to strengthen protection of key land and water areas and to enhance long-term protection of the area for research and education, for facility and exhibit construction, for restorative activities identified in the approved management plan, for administrative purposes related to acquisition and/or facility construction and to develop and/or upgrade research, monitoring and education/interpretive programs. Federal financial assistance provided to a National Estuarine Research Reserve for supplemental development costs directly associated with facility construction (*i.e.*, major construction activities) may not exceed 70 percent of the total project cost, except

when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of the costs. NOAA must make a specific determination that the construction activity will not be detrimental to the environment. Acquisition awards for the acquisition of lands or waters, or interests therein, for any one reserve may not exceed an amount equal to 50 percent of the costs of the lands, waters, and interests therein of $5,000,000, whichever amount is less, except when the financial assistance is provided from amounts recovered as result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of all actual costs of activities carrier out with this assistance, as long as such funds are available. In the case of a biogeographic region (see appendix I) shared by two or more states, each state is eligible independently for Federal financial assistance to establish a separate National Estuarine Research Reserve within their respective portion of the shared biogeographic region. Application procedures are specified in subpart I. Land acquisition must follow the procedures specified in §§ 921.13(a)(7), 921.21(e) and (f) and 921.81.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12540, Mar. 17, 1997; 63 FR 26717, May 14, 1998]

§ 921.32 Operation and management: Implementation of the management plan.

(a) After the Reserve is formally designated, a coastal state is eligible to receive Federal funds to assist the state in the operation and management of the Reserve including the management of research, monitoring, education, and interpretive programs. The purpose of this Federally funded operation and management phase is to implement the approved final management plan and to take the necessary steps to ensure the continued effective operation of the Reserve.

(b) State operation and management of the Reserves shall be consistent with the mission, and shall further the goals of the National Estuarine Research Reserve program (see § 921.1).

(c) Federal funds are available for the operation and management of the Reserve. Federal funds provided pursuant to this section may not exceed 70 percent of the total cost of operating and managing the Reserve for any one year, except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of the costs. In the case of a biogeographic region (see Appendix I) shared by two or more states, each state is eligible for Federal financial assistance to establish a separate Reserve within their respective portion of the shared biogeographic region (see § 921.10).

(d) Operation and management funds are subject to the following limitations:

(1) Eligible coastal state agencies may apply for up to the maximum share available per Reserve for that fiscal year. Share amounts will be announced annually by letter from the Sanctuary and Reserves Division to all participating states. This letter will be provided as soon as practicable following approval of the Federal budget for that fiscal year.

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12541, Mar. 17, 1997]

§ 921.33 Boundary changes, amendments to the management plan, and addition of multiple-site components.

(a) Changes in the boundary of a Reserve and major changes to the final management plan, including state laws or regulations promulgated specifically for the Reserve, may be made only after written approval by NOAA. NOAA may require public notice, including notice in the FEDERAL REGISTER and an opportunity for public comment before approving a boundary or management plan change. Changes in the boundary of a Reserve involving the acquisition of properties not listed in the management plan or final EIS require public

notice and the opportunity for comment; in certain cases, a categorical exclusion, an environmental assessment and possibly an environmental impact statement may be required. NOAA will place a notice in the FEDERAL REGISTER of any proposed changes in Reserve boundaries or proposed major changes to the final management plan. The state shall be responsible for publishing an equivalent notice in the local media. See also requirements of §§ 921.4(b) and 921.13(a)(11).

(b) As discussed in § 921.10(b), a state may choose to develop a multiple-site National Estuarine Research Reserve after the initial acquisition and development award for a single site has been made. NOAA will publish notice of the proposed new site including an invitation for comments from the public in the FEDERAL REGISTER. The state shall be responsible for publishing an equivalent notice in the local newspaper(s). An EIS, if required, shall be prepared in accordance with section § 921.13 and shall include an administrative framework for the multiple-site Reserve and a description of the complementary research and educational programs within the Reserve. If NOAA determines, based on the scope of the project and the issues associated with the additional site(s), that an environmental assessment is sufficient to establish a multiple-site Reserve, then the state shall develop a revised management plan which, concerning the additional component, incorporates each of the elements described in § 921.13(a). The revised management plan shall address goals and objectives for all components of the multi-site Reserve and the additional component's relationship to the original site(s).

(c) The state shall revise the management plan for a Reserve at least every five years, or more often if necessary. Management plan revisions are subject to (a) above.

(d) NOAA will approve boundary changes, amendments to management plans, or the addition of multiple-site components, by notice in the FEDERAL REGISTER. If necessary NOAA will revise the designation document (findings) for the site.

Subpart E—Ongoing Oversight, Performance Evaluation and Withdrawal of Designation

§ 921.40 Ongoing oversight and evaluations of designated National Estuarine Research Reserves.

(a) The Sanctuaries and Reserve Division shall conduct, in accordance with section 312 of the Act and procedures set forth in 15 CFR part 928, ongoing oversight and evaluations of Reserves. Interim sanctions may be imposed in accordance with regulations promulgated under 15 CFR part 928.

(b) The Assistant Administrator may consider the following indicators of non-adherence in determining whether to invoke interim sanctions:

(1) Inadequate implementation of required staff roles in administration, research, education/interpretation, and surveillance and enforcement. Indicators of inadequate implementation could include: No Reserve Manager, or no staff or insufficient staff to carry out the required functions.

(2) Inadequate implementation of the required research plan, including the monitoring design. Indicators of inadequate implementation could include: Not carrying out research or monitoring that is required by the plan, or carrying out research or monitoring that is inconsistent with the plan.

(3) Inadequate implementation of the required education/interpretation plan. Indicators of inadequate implementation could include: Not carrying out education or interpretation that is required by the plan, or carrying out education/interpretation that is inconsistent with the plan.

(4) Inadequate implementation of public access to the Reserve. Indicators of inadequate implementation of public access could include: Not providing necessary access, giving full consideration to the need to keep some areas off limits to the public in order to protect fragile resources.

(5) Inadequate implementation of facility development plan. Indicators of inadequate implementation could include: Not taking action to propose and budget for necessary facilities, or not undertaking necessary construction in a timely manner when funds are available.

(6) Inadequate implementation of acquisition plan. Indicators of inadequate implementation could include: Not pursuing an aggressive acquisition program with all available funds for that purpose, not requesting promptly additional funds when necessary, and evidence that adequate long-term state control has not been established over some core or buffer areas, thus jeopardizing the ability to protect the Reserve site and resources from offsite impacts.

(7) Inadequate implementation of Reserve protection plan. Indicators of inadequate implementation could include: Evidence of non-compliance with Reserve restrictions, insufficient surveillance and enforcement to assure that restrictions on use of the Reserve are adhered to, or evidence that Reserve resources are being damaged or destroyed as a result of the above.

(8) Failure to carry out the terms of the signed Memorandum of Understanding (MOU) between the state and NOAA, which establishes a long-term state commitment to maintain and manage the Reserve in accordance with section 315 of the Act. Indicators of failure could include: State action to allow incompatible uses of state-controlled lands or waters in the Reserve, failure of the state to bear its fair share of costs associated with long-term operation and management of the Reserve, or failure to initiate timely updates of the MOU when necessary.

§ 921.41 Withdrawal of designation.

The Assistant Administrator may withdraw designation of an estuarine area as a National Estuarine Research Reserve pursuant to and in accordance with the procedures of section 312 and 315 of the Act and regulations promulgated thereunder.

Subpart F—Special Research Projects

§ 921.50 General.

(a) To stimulate high quality research within designated National Estuarine Research Reserves, NOAA may provide financial support for research projects which are consistent with the Estuarine Research Guidelines referenced in § 921.51. Research awards may be awarded under this subpart to only those designated Reserves with approved final management plans. Although research may be conducted within the immediate watershed of the Reserve, the majority of research activities of any single research project funded under this subpart may be conducted within Reserve boundaries. Funds provided under this subpart are primarily used to support management-related research projects that will enhance scientific understanding of the Reserve ecosystem, provide information needed by Reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues. Special research projects may be oriented to specific Reserves; however, research projects that would benefit more than one Reserve in the National Estuarine Reserve Research System are encouraged.

(b) Funds provided under this subpart are available on a competitive basis to any coastal state or qualified public or private person. A notice of available funds will be published in the FEDERAL REGISTER. Special research project funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70 percent of the total cost of the project, consistent with § 921.81(e)(4) (''allowable costs''), except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of the costs.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12541, Mar. 17, 1997]

§ 921.51 Estuarine research guidelines.

(a) Research within the National Estuarine Research Reserve System shall be conducted in a manner consistent with Estuarine Research Guidelines developed by NOAA.

(b) A summary of the Estuarine Research Guidelines is published in the FEDERAL REGISTER as a part of the notice of available funds discussed in § 921.50(c).

(c) The Estuarine Research Guidelines are reviewed annually by NOAA. This review will include an opportunity

for comment by the estuarine research community.

§ 921.52 Promotion and coordination of estuarine research.

(a) NOAA will promote and coordinate the use of the National Estuarine Research Reserve System for research purposes.

(b) NOAA will, in conducting or supporting estuarine research other than that authorized under section 315 of the Act, give priority consideration to research that make use of the National Estuarine Research Reserve System.

(c) NOAA will consult with other Federal and state agencies to promote use of one or more research reserves within the National Estuarine Research Reserve System when such agencies conduct estuarine research.

Subpart G—Special Monitoring Projects

§ 921.60 General.

(a) To provide a systematic basis for developing a high quality estuarine resource and ecosystem information base for National Estuarine Research Reserves and, as a result, for the System, NOAA may provide financial support for basic monitoring programs as part of operations and management under § 921.32. Monitoring funds are used to support three major phases of a monitoring program:

(1) Studies necessary to collect data for a comprehensive site description/characterization;

(2) Development of a site profile; and

(3) Formulation and implementation of a monitoring program.

(b) Additional monitoring funds may be available on a competitive basis to the state agency responsible for Reserve management or a qualified public or private person or entity. However, if the applicant is other than the managing entity of a Reserve that applicant must submit as a part of the application a letter from the Reserve manager indicating formal support of the application by the managing entity of the Reserve. Funds provided under this subpart for special monitoring projects are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70 percent of the total cost of the project, consistent with § 921.81(e)(4) (''allowable costs''), except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of the costs.

(c) Monitoring projects funded under this subpart must focus on the resources within the boundaries of the Reserve and must be consistent with the applicable sections of the Estuarine Research Guidelines referenced in § 921.51. Portions of the project may occur within the immediate watershed of the Reserve beyond the site boundaries. However, the monitoring proposal must demonstrate why this is necessary for the success of the project.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12541, Mar. 17, 1997]

Subpart H—Special Interpretation and Education Projects

§ 921.70 General.

(a) To stimulate the development of innovative or creative interpretive and educational projects and materials to enhance public awareness and understanding of estuarine areas, NOAA may fund special interpretive and educational projects in addition to those activities provided for in operations and management under § 921.32. Special interpretive and educational awards may be awarded under this subpart to only those designated Reserves with approved final management plans.

(b) Funds provided under this subpart may be available on a competitive basis to any state agency. However, if the applicant is other than the managing entity of a Reserve, that applicant must submit as a part of the application a letter from the Reserve manager indicating formal support of the application by the managing entity of the Reserve. These funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70 percent of the total cost of the project, consistent with § 921.81(e)(4) (''allowable costs''),

except when the financial assistance is provided from amounts recovered as a result of damage to natural resources located in the coastal zone, in which case the assistance may be used to pay 100 percent of the costs.

(c) Applicants for education/interpretive projects that NOAA determines benefit the entire National Estuarine Research Reserve System may receive Federal assistance of up to 100% of project costs.

[58 FR 38215, July 15, 1993, as amended at 62 FR 12541, Mar. 17, 1997]

Subpart I—General Financial Assistance Provisions

§ 921.80 Application information.

(a) Only a coastal state may apply for Federal financial assistance awards for preacquisition, acquisition and development, operation and management, and special education and interpretation projects under subpart H. Any coastal state or public or private person may apply for Federal financial assistance awards for special estuarine research or monitoring projects under subpart G. The announcement of opportunities to conduct research in the System appears on an annual basis in the FEDERAL REGISTER. If a state is participating in the national Coastal Zone Management Program, the applicant for an award under section 315 of the Act shall notify the state coastal management agency regarding the application.

(b) An original and two copies of the formal application must be submitted at least 120 working days prior to the proposed beginning of the project to the following address: Sanctuaries and Reserves Division Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235. Application for Federal Assistance Standard Form 424 (Non-construction Program) constitutes the formal application for site selection, post-site selection, operation and management, research, and education and interpretive awards. The Application for Federal Financial Assistance Standard Form 424 (Construction Program) constitutes the formal application for land acquisition and development awards. The application must be accompanied by the information required in subpart B (predesignation), subpart C and § 921.31 (acquisition and development), and § 921.32 (operation and management) as applicable. Applications for development awards for construction projects, or restorative activities involving construction, must include a preliminary engineering report, a detailed construction plan, a site plan, a budget and categorical exclusion check list or environmental assessment. All applications must contain back up data for budget estimates (Federal and non-Federal shares), and evidence that the application complies with the Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Written approval from NOAA of the draft management plan for initial acquisition and development award(s); and

(3) A preliminary engineering report for construction activities.

§ 921.81 Allowable costs.

(a) Allowable costs will be determined in accordance with applicable OMB Circulars and guidance for Federal financial assistance, the financial assistant agreement, these regulations, and other Department of Commerce and NOAA directives. The term ''costs'' applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the award period.

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) General guidelines for the non-Federal share are contained in Department of Commerce Regulations at 15 CFR part 24 and OMB Circular A–110.

Copies of Circular A–110 can be obtained from the Sanctuaries and Reserves Division; 1825 Connecticut Avenue, NW., suite 714; Washington, DC 20235. The following may be used in satisfying the matching requirement:

(1) *Site selection and post site selection awards.* Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) *Acquisition and development awards.* Cash and in-kind contributions are allowable. In general, the fair market value of lands to be included within the Reserve boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. However, the fair market value of real property allowable as match is limited to the fair market value of a real property interest equivalent to, or required to attain, the level of control over such land(s) identified by the state and approved by the Federal Government as that necessary for the protection and management of the National Estuarine Research Reserve. Appraisals must be performed according to Federal appraisal standards as detailed in Department of Commerce regulations at 15 CFR part 24 and the Uniform Relocation Assistance and Real Property Acquisition for Federal land Federally assisted programs in 15 CFR part 11. The fair market value of privately donated land, at the time of donation, as established by an independent appraiser and certified by a responsible official of the state, pursuant to 15 CFR part 11, may also be used as match. Land, including submerged lands already in the state's possession, may be used as match to establish a National Estuarine Research Reserve. The value of match for these state lands will be calculated by determining the value of the benefits foregone by the state, in the use of the land, as a result of new restrictions that may be imposed by Reserve designation. The appraisal of the benefits foregone must be made by an independent appraiser in accordance with Federal appraisal standards pursuant to 15 CFR part 24 and 15 CFR part 11. A state may initially use as match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the National Estuarine Research Reserve (see also § 921.20). Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match.

(3) *Operation and management awards.* Generally, cash and in-kind contributions (directly benefiting and specifically identifiable to operations and management), except land, are allowable.

(4) *Research, monitoring, education and interpretive awards.* Cash and in-kind contributions (directly benefiting and specifically identifiable to the scope of work), except land, are allowable.

§ 921.82 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revisions of the approved project budget or original scope of work, or extension of the performance period must be submitted to NOAA on Standard Form 424 and approved in writing.

APPENDIX I TO PART 921—BIOGEOGRAPHIC CLASSIFICATION SCHEME

Acadian

1. Northern of Maine (Eastport to the Sheepscot River.)
2. Southern Gulf of Maine (Sheepscot River to Cape Cod.)

Virginian

3. Southern New England (Cape Cod to Sandy Hook.)
4. Middle Atlantic (Sandy Hook to Cape Hatteras.)
5. Chesapeake Bay.

Carolinian

6. North Carolinas (Cape Hatteras to Santee River.)
7. South Atlantic (Santee River to St. John's River.)
8. East Florida (St. John's River to Cape Canaveral.)

West Indian

9. Caribbean (Cape Canaveral to Ft. Jefferson and south.)
10. West Florida (Ft. Jefferson to Cedar Key.)

Louisianian

11. Panhandle Coast (Cedar Key to Mobile Bay.)
12. Mississippi Delta (Mobile Bay to Galveston.)
13. Western Gulf (Galveston to Mexican border.)

Californian

14. Southern California (Mexican border to Point Conception.)
15. Central California (Point Conception to Cape Mendocino.)
16. San Francisco Bay.

Columbian

17. Middle Pacific (Cape Mendocino to the Columbia River.)
18. Washington Coast (Columbia River to Vancouver Island.)
19. Puget Sound.

Great Lakes

20. Lake Superior (including St. Mary's River.)
21. Lakes Michigan and Huron (including Straits of Mackinac, St. Clair River, and Lake St. Clair.)
22. Lake Erie (including Detroit River and Niagara Falls.)
23. Lake Ontario (including St. Lawrence River.)

Fjord

24. Southern Alaska (Prince of Wales Island to Cook Inlet.)
25. Aleutian Island (Cook Inlet Bristol Bay.)

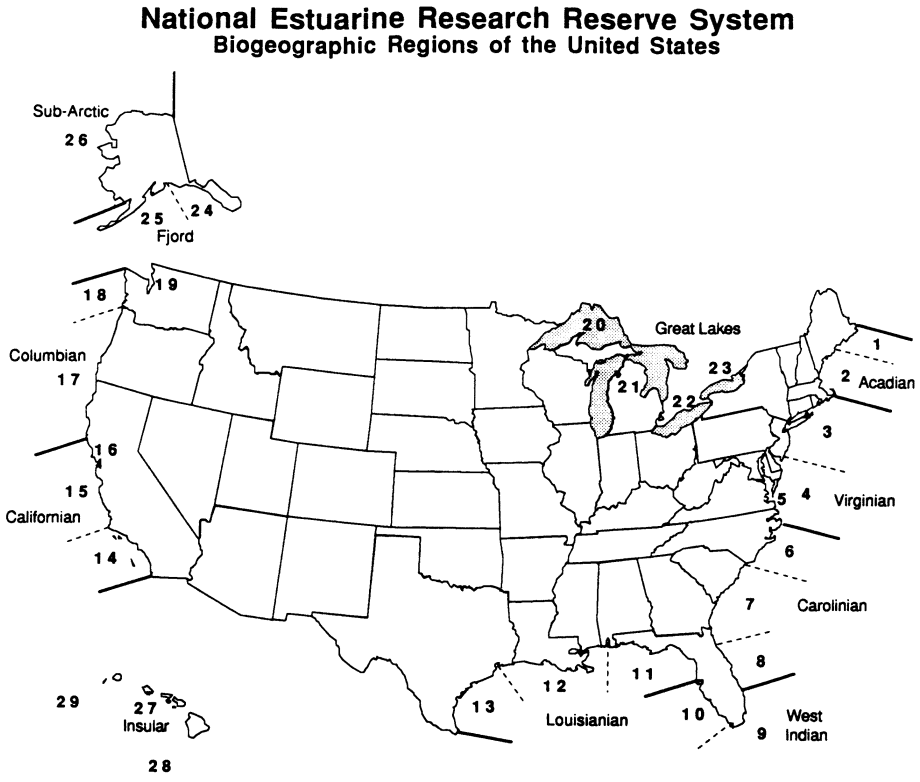
Sub-Arctic

26. Northern Alaska (Bristol Bay to Damarcation Point.)

Insular

27. Hawaiian Islands.
28. Western Pacific Island.
29. Eastern Pacific Island.

FIGURE 1



APPENDIX II TO PART 921—TYPOLOGY OF NATIONAL ESTUARINE RESEARCH RESERVES

This typology system reflects significant differences in estuarine characteristics that are not necessarily related to regional location. The purpose of this type of classification is to maximize ecosystem variety in the selection of national estuarine reserves. Priority will be given to important ecosystem types as yet unrepresented in the reserve system. It should be noted that any one site may represent several ecosystem types or physical characteristics.

Class I—Ecosystem Types

Group I—Shorelands

A. Maritime Forest-Woodland. That have developed under the influence of salt spray. It can be found on coastal uplands or recent features such as barrier islands and beaches, and may be divided into the following biomes:

1. Northern coniferous forest biome: This is an area of predominantly evergreens such as the sitka spruce (Picea), grand fir (Abies), and white cedar (Thuja), with poor development of the shrub and herb leyera, but high annual productivity and pronounced seasonal periodicity.

2. Moist temperate (Mesothermal) coniferous forest biome: Found along the west coast of North America from California to Alaska, this area is dominated by conifers, has relatively small seasonal range, high humidity with rainfall ranging from 30 to 150 inches, and a well-developed understory of vegetation with an abundance of mosses and other moisture-tolerant plants.

3. Temperate deciduous forest biome: This biome is characterized by abundant, evenly distributed rainfall, moderate temperatures which exhibit a distinct seasonal pattern,

well-developed soil biota and herb and shrub layers, and numerous plants which produce pulpy fruits and nuts. A distinct subdivision of this biome is the pine edible forest of the southeastern coastal plain, in which only a small portion of the area is occupied by climax vegetation, although it has large areas covered by edaphic climax pines.

4. Broad-leaved evergreen subtropical forest biome: The main characteristic of this biome is high moisture with less pronounced differences between winter and summer. Examples are the hammocks of Florida and the live oak forests of the Gulf and South Atlantic coasts. Floral dominants include pines, magnolias, bays, hollies, wild tamarine, strangler fig, gumbo limbo, and palms.

B. Coast shrublands. This is a transitional area between the coastal grasslands and woodlands and is characterized by woody species with multiple stems and a few centimeters to several meters above the ground developing under the influence of salt spray and occasional sand burial. This includes thickets, scrub, scrub savanna, heathlands, and coastal chaparral. There is a great variety of shrubland vegetation exhibiting regional specificity:

1. Northern areas: Characterized by Hudsonia, various erinaceous species, and thickets of Myricu, prunus, and Rosa.
2. Southeast areas: Floral dominants include Myrica, Baccharis, and Iles.
3. Western areas: Adenostoma, arcotyphylos, and eucalyptus are the dominant floral species.

C. Coastal grasslands. This area, which possesses sand dunes and coastal flats, has low rainfall (10 to 30 inches per year) and large amounts of humus in the soil. Ecological succession is slow, resulting in the presence of a number of seral stages of community development. Dominant vegetation includes mid-grasses (5 to 8 feet tall), such as Spartina, and trees such as willow (Salix sp.), cherry (Prunus sp.), and cottonwood (Pupulus deltoides.) This area is divided into four regions with the following typical strand vegetation:

1. Arctic/Boreal: Elymus;
2. Northeast/West: Ammophla;
3. Southeast Gulf: Uniola; and
4. Mid-Atlantic/Gulf: Spartina patens.

D. Coastal tundra. This ecosystem, which is found along the Arctic and Boreal coasts of North America, is characterized by low temperatures, a short growing season, and some permafrost, producing a low, treeless mat community made up of mosses, lichens, heath, shrubs, grasses, sedges, rushes, and herbaceous and dwarf woody plants. Common species include arctic/alpine plants such as Empetrum nigrum and Betula nana, the lichens Cetraria and Cladonia, and herbaceous plants such as Potentilla tridentata and Rubus chamaemorus. Common species on the coastal beach ridges of the high arctic desert include Bryas intergrifolia and Saxifrage oppositifolia. This area can be divided into two main subdivisions:

1. Low tundra: Characterized by a thick, spongy mat of living and undecayed vegetation, often with water and dotted with ponds when not frozen; and
2. High Tundra: A bare area except for a scanty growth of lichens and grasses, with underlaying ice wedges forming raised polygonal areas.

E. Coastal cliffs. This ecosystem is an important nesting site for many sea and shore birds. It consists of communities of herbaceous, graminoid, or low woody plants (shrubs, heath, etc.) on the top or along rocky faces exposed to salt spray. There is a diversity of plant species including mosses, lichens, liverworts, and ''higher'' plant representatives.

GROUP II—TRANSITION AREAS

A. Coastal marshes. These are wetland areas dominated by grasses (Poacea), sedges (Cyperaceae), rushes (Juncaceae), cattails (Typhaceae), and other graminoid species and is subject to periodic flooding by either salt or freshwater. This ecosystem may be subdivided into: (a) Tidal, which is periodically flooded by either salt or brackish water; (b) nontidal (freshwater); or (c) tidal freshwater. These are essential habitats for many important estuarine species of fish and invertebrates as well as shorebirds and waterfowl and serve important roles in shore stabilization, flood control, water purification, and nutrient transport and storage.

B. Coastal swamps. These are wet lowland areas that support mosses and shrubs together with large trees such as cypress or gum.

C. Coastal mangroves. This ecosystem experiences regular flooding on either a daily, monthly, or seasonal basis, has low wave action, and is dominated by a variety of salt-tolerant trees, such as the red mangrove (Rhizophora mangle), black mangrove (Avicennia Nitida), and the white mangrove (Laguncularia racemosa.) It is also an important habitat for large populations of fish, invertebrates, and birds. This type of ecosystem can be found from central Florida to extreme south Texas to the islands of the Western Pacific.

D. Intertidal beaches. This ecosystem has a distinct biota of microscopic animals, bacteria, and unicellular algae along with macroscopic crustaceans, mollusks, and worms with a detritus-based nutrient cycle. This area also includes the driftline communities found at high tide levels on the beach. The dominant organisms in this ecosystem include crustaceans such as the mole crab (Emerita), amphipods (Gammeridae), ghost crabs (Ocypode), and bivalve mollusks such

as the coquina (Donax) and surf clams (Spisula and Mactra.)

E. Intertidal mud and sand flats. These areas are composed of unconsolidated, high organic content sediments that function as a short-term storage area for nutrients and organic carbons. Macrophytes are nearly absent in this ecosystem, although it may be heavily colonized by benthic diatoms, dinoflaggellates, filamintous blue-green and green algae, and chaemosynthetic purple sulfur bacteria. This system may support a considerable population of gastropods, bivalves, and polychaetes, and may serve as a feeding area for a variety of fish and wading birds. In sand, the dominant fauna include the wedge shell Donax, the scallop Pecten, tellin shells Tellina, the heart urchin Echinocardium, the lug worm Arenicola, sand dollar Dendraster, and the sea pansy Renilla. In mud, faunal dominants adapted to low oxygen levels include the terebellid Amphitrite, the boring clam Playdon, the deep sea scallop Placopecten, the Quahog Mercenaria, the echiurid worm Urechis, the mud snail Nassarius, and the sea cucumber Thyone.

F. Intertidal algal beds. These are hard substrates along the marine edge that are dominated by macroscopic algae, usually thalloid, but also filamentous or unicellular in growth form. This also includes the rocky coast tidepools that fall within the intertidal zone. Dominant fauna of these areas are barnacles, mussels, periwinkles, anemones, and chitons. Three regions are apparent:

1. Northern latitude rocky shores: It is in this region that the community structure is best developed. The dominant algal species include Chondrus at the low tide level, Fucus and Ascophylium at the mid-tidal level, and Laminaria and other kelplike algae just beyond the intertidal, although they can be exposed at extremely low tides or found in very deep tidepools.

2. Southern latitudes: The communities in this region are reduced in comparison to those of the northern latitudes and possesses algae consisting mostly of single-celled or filamentour green, blue-green, and red algae, and small thalloid brown algae.

3. Tropical and subtropical latitudes: The intertidal in this region is very reduced and contains numerous calcareous algae such as Porolithon and Lithothamnion, as well and green algae with calcareous particles such as Halimeda, and numerous other green, red, and brown algae.

GROUP III—SUBMERGED BOTTOMS

A. Subtidal hardbottoms. This system is characterized by a consolidated layer of solid rock or large pieces of rock (neither of biotic origin) and is found in association with geomorphological features such as submarine canyons and fjords and is usually covered with assemblages of sponges, sea fans, bivalves, hard corals, tunicates, and other attached organisms. A significant feature of estuaries in many parts of the world is the oyster reef, a type of subtidal hardbottom. Composed of assemblages of organisms (usually bivalves), it is usually found near an estuary's mouth in a zone of moderate wave action, salt content, and turbidity. If light levels are sufficient, a covering of microscopic and attached macroscopic algae, such as keep, may also be found.

B. Subtidal softbottoms. Major characteristics of this ecosystem are an unconsolidated layer of fine particles of silt, sand, clay, and gravel, high hydrogen sulfide levels, and anaerobic conditions often existing below the surface. Macrophytes are either sparse or absent, although a layer of benthic microalgae may be present if light levels are sufficient. The faunal community is dominated by a diverse population of deposit feeders including polychaetes, bivalves, and burrowing crustaceans.

C. Subtidal plants. This system is found in relatively shallow water (less than 8 to 10 meters) below mean low tide. It is an area of extremely high primary production that provides food and refuge for a diversity of faunal groups, especially juvenile and adult fish, and in some regions, manatees and sea turtles. Along the North Atlantic and Pacific coasts, the seagrass Zostera marina predominates. In the South Atlantic and Gulf coast areas, Thalassia and Diplanthera predominate. The grasses in both areas support a number of epiphytic organisms.

Class II—Physical Characteristics

GROUP I—GEOLOGIC

A. Basin type. Coastal water basins occur in a variety of shapes, sizes, depths, and appearances. The eight basic types discussed below will cover most of the cases:

1. Exposed coast: Solid rock formations or heavy sand deposits characterize exposed ocean shore fronts, which are subject to the full force of ocean storms. The sand beaches are very resilient, although the dunes lying just behind the beaches are fragile and easily damaged. The dunes serve as a sand storage area making them chief stabilizers of the ocean shorefront.

2. Sheltered coast: Sand or coral barriers, built up by natural forces, provide sheltered areas inside a bar or reef where the ecosystem takes on many characteristics of confined waters-abundant marine grasses, shellfish, and juvenile fish. Water movement is reduced, with the consequent effects pollution being more severe in this area than in exposed coastal areas.

3. Bay: Bays are larger confined bodies of water that are open to the sea and receive strong tidal flow. When stratification is pronounced the flushing action is augmented by

river discharge. Bays vary in size and in type of shorefront.

4. Embayment: A confined coastal water body with narrow, restricted inlets and with a significant freshwater inflow can be classified as an embayment. These areas have more restricted inlets than bays, are usually smaller and shallower, have low tidal action, and are subject to sedimentation.

5. Tidal river: The lower reach of a coastal river is referred to as a tidal river. The coastal water segment extends from the sea or estuary into which the river discharges to a point as far upstream as there is significant salt content in the water, forming a salt front. A combination of tidal action and freshwater outflow makes tidal rivers well-flushed. The tidal river basin may be a simple channel or a complex of tributaries, small associated embayments, marshfronts, tidal flats, and a variety of others.

6. Lagoon: Lagoons are confined coastal bodies of water with restricted inlets to the sea and without significant freshwater inflow. Water circulation is limited, resulting in a poorly flushed, relatively stagnant body of water. Sedimentation is rapid with a great potential for basin shoaling. Shores are often gently sloping and marshy.

7. Perched coastal wetlands: Unique to Pacific islands, this wetland type found above sea level in volcanic crater remnants forms as a result of poor drainage characteristics of the crater rather than from sedimentation. Floral assemblages exhibit distinct zonation while the faunal constituents may include freshwater, brackish, and/or marine species. EXAMPLE: Aunu's Island, American Samoa.

8. Anchialine systems: These small coastal exposures of brackish water form in lava depressions or elevated fossil reefs have only a subsurface connection in the ocean, but show tidal fluctuations. Differing from true estuaries in having no surface continuity with streams or ocean, this system is characterized by a distinct biotic community dominated by benthis algae such as Rhizoclonium, the mineral encrusting Schiuzothrix, and the vascular plant Ruppia maritima. Characteristic fauna which exhibit a high degree of endemicity, include the mollusks Theosoxus neglectus and Tcariosus. Although found throughout the world, the high islands of the Pacific are the only areas within the U.S. where this system can be found.

B. Basin structure. Estuary basins may result from the drowning of a river valley (coastal plains estuary), the drowning of a glacial valley (fjord), the occurrence of an offshore barrier (bar-bounded estuary), some tectonic process (tectonic estuary), or volcanic activity (volcanic estuary).

1. Coastal plains estuary: Where a drowned valley consists mainly of a single channel, the form of the basin is fairly regular forming a simple coastal plains estuary. When a channel is flooded with numerous tributaries an irregular estuary results. Many estuaries of the eastern United States are of this type.

2. Fjord: Estuaries that form in elongated steep headlands that alternate with deep U-shaped valleys resulting from glacial scouring are called fjords. They generally possess rocky floors or very thin veneers of sediment, with deposition generally being restricted to the head where the main river enters. Compared to total fjord volume river discharge is small. But many fjords have restricted tidal ranges at their mouths due to sills, or upreaching sections of the bottom which limit free movement of water, often making river flow large with respect to the tidal prism. The deepest portions are in the upstream reaches, where maximum depths can range from 800m to 1200m while sill depths usually range from 40m to 150m.

3. Bar-bounded estuary: These result from the development of an offshore barrier such as a beach strand, a line of barrier islands, reef formations a line of moraine debris, or the subsiding remnants of a deltaic lobe. The basin is often partially exposed at low tide and is enclosed by a chain of offshore bars of barrier islands broken at intervals by inlets. These bars may be either deposited offshore or may be coastal dunes that have become isolated by recent seal level rises.

4. Tectonic estuary: These are coastal indentures that have formed through tectonic processes such as slippage along a fault line (San Francisco Bay), folding or movement of the earth's bedrock often with a large inflow of freshwater.

5. Volcanic estuary: These coastal bodies of open water, a result of volcanic processes are depressions or craters that have direct and/or subsurface connections with the ocean and may or may not have surface continuity with streams. These formations are unique to island areas of volcanic orgin.

C. Inlet type. Inlets in various forms are an integral part of the estuarine environment as they regulate to a certain extent, the velocity and magnitude of tidal exchange, the degree of mixing, and volume of discharge to the sea.

1. Unrestricted: An estuary with a wide unrestricted inlet typically has slow currents, no significant turbulence, and receives the full effect of ocean waves and local disturbances which serve to modify the shoreline. These estuaries are partially mixed, as the open mouth permits the incursion of marine waters to considerable distances upstream, depending on the tidal amplitude and stream gradient.

2. Restricted: Restrictions of estuaries can exist in many forms: Bars, barrier islands, spits, sills, and more. Restricted inlets result in decreased circulation, more pronounced longitudinal and vertical salinity gradients, and more rapid sedimentation. However, if

the estuary mouth is restricted by depositional features or land closures, the incoming tide may be held back until it suddenly breaks forth into the basin as a tidal wave, or bore. Such currents exert profound effects on the nature of the subtrate, turbidity, and biota of the estuary.

3. Permanent: Permanent inlets are usually opposite the mouths of major rivers and permit river water to flow into the sea.

4. Temporary (Intermittent): Temporary inlets are formed by storms and frequently shift position, depending on tidal flow, the depth of the sea, and sound waters, the frequency of storms, and the amount of littoral transport.

D. Bottom composition. The bottom composition of estuaries attests to the vigorous, rapid, and complex sedimentation processes characteristic of most coastal regions with low relief. Sediments are derived through the hydrologic processes of erosion, transport, and deposition carried on by the sea and the stream.

1. Sand: Near estuary mouths, where the predominating forces of the sea build spits or other depositional features, the shore and substrates of the estuary are sandy. The bottom sediments in this area are usually coarse, with a graduation toward finer particles in the head region and other zones of reduced flow, fine silty sands are deposited. Sand deposition occurs only in wider or deeper regions where velocity is reduced.

2. Mud: At the base level of a stream near its mouth, the bottom is typically composed of loose muds, silts, and organic detritus as a result of erosion and transport from the upper stream reaches and organic decomposition. Just inside the estuary entrance, the bottom contains considerable quantities of sand and mud, which support a rich fauna. Mud flats, commonly built up in estuarine basins, are composed of loose, coarse, and fine mud and sand, often dividing the original channel.

3. Rock: Rocks usually occur in areas where the stream runs rapidly over a steep gradient with its coarse materials being derived from the higher elevations where the stream slope is greater. The larger fragments are usually found in shallow areas near the stream mouth.

4. Oyster shell: Throughout a major portion of the world, the oyster reef is one of the most significant features of estuaries, usually being found near the mouth of the estuary in a zone of moderate wave action, salt content, and turbidity. It is often a major factor in modifying estuarine current systems and sedimentation, and may occur as an elongated island or peninsula oriented across the main current, or may develop parallel to the direction of the current.

GROUP II—HYDROGRAPHIC

A. Circulation. Circulation patterns are the result of combined influences of freshwater inflow, tidal action, wind and oceanic forces, and serve many functions: Nutrient transport, plankton dispersal, ecosystem flushing, salinity control, water mixing, and more.

1. Stratified: This is typical of estuaries with a strong freshwater influx and is commonly found in bays formed from ''drowned'' river valleys, fjords, and other deep basins. There is a net movement of freshwater outward at the top layer and saltwater at the bottom layer, resulting in a net outward transport of surface organisms and net inward transport of bottom organisms.

2. Non-stratified: Estuaries of this type are found where water movement is sluggish and flushing rate is low, although there may be sufficient circulation to provide the basis for a high carrying capacity. This is common to shallow embayments and bays lacking a good supply of freshwater from land drainage.

3. Lagoonal: An estuary of this type is characterized by low rates of water movement resulting from a lack of significant freshwater influx and a lack of strong tidal exchange because of the typically narrow inlet connecting the lagoon to the sea. Circulation whose major driving force is wind, is the major limiting factor in biological productivity within lagoons.

B. Tides. This is the most important ecological factor in an estuary as it affects water exchange and its vertical range determines the extent of tidal flats which may be exposed and submerged with each tidal cycle. Tidal action against the volume of river water discharged into an estuary results in a complex system whose properties vary according to estuary structure as well as the magnitude of river flow and tidal range. Tides are usually described in terms of the cycle and their relative heights. In the United States, tide height is reckoned on the basis of average low tide, which is referred to as datum. The tides, although complex, fall into three main categories:

1. Diurnal: This refers to a daily change in water level that can be observed along the shoreline. There is one high tide and one low tide per day.

2. Semidiurnal: This refers to a twice daily rise and fall in water that can be observed along the shoreline.

3. Wind/Storm tides: This refers to fluctuations in water elevation to wind and storm events, where influence of lunar tides is less.

C. Freshwater. According to nearly all the definitions advanced, it is inherent that all estuaries need freshwater, which is drained from the land and measurably dilutes seawater to create a brackish condition. Freshwater enters an estuary as runoff from the

land either from a surface and/or subsurface source.

1. Surface water: This is water flowing over the ground in the form of streams. Local variation in runoff is dependent upon the nature of the soil (porosity and solubility), degree of surface slope, vegetational type and development, local climatic conditions, and volume and intensity of precipitation.

2. Subsurface water: This refers to the precipitation that has been absorbed by the soil and stored below the surface. The distribution of subsurface water depends on local climate, topography, and the porosity and permeability of the underlying soils and rocks. There are two main subtypes of surface water:

a. Vadose water: This is water in the soil above the water table. Its volume with respect to the soil is subject to considerable fluctuation.

b. Groundwater: This is water contained in the rocks below the water table, is usually of more uniform volume than vadose water, and generally follows the topographic relief of the land being high hills and sloping into valleys.

GROUP III—CHEMICAL

A. Salinity. This reflects a complex mixture of salts, the most abundant being sodium chloride, and is a very critical factor in the distribution and maintenance of many estuarine organisms. Based on salinity, there are two basic estuarine types and eight different salinity zones (expressed in parts per thousand-ppt.)

1. Positive estuary: This is an estuary in which the freshwater influx is sufficient to maintain mixing, resulting in a pattern of increasing salinity toward the estuary mouth. It is characterized by low oxygen concentration in the deeper waters and considerable organic content in bottom sediments.

2. Negative estuary: This is found in particularly arid regions, where estuary evaporation may exceed freshwater inflow, resulting in increased salinity in the upper part of the basin, especially if the estuary mouth is restricted so that tidal flow is inhibited. These are typically very salty (hyperhaline), moderately oxygenated at depth, and possess bottom sediments that are poor in organic content.

3. Salinity zones (expressed in ppt):

a. Hyperhaline—greater than 40 ppt.

b. Euhaline—40 ppt to 30 ppt.

c. Mixhaline—30 ppt to 0.5 ppt.

(1) Mixoeuhaline—greater than 30 ppt but less than the adjacent euhaline sea.

(2) Polyhaline—30 ppt to 18 ppt.

(3) Mesohaline—18 ppt to 5 ppt.

(4) Oligohaline—5 ppt to 0.5 ppt.

d. Limnetic: Less than 0.5 ppt.

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

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

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

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

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

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

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

Subpart A—Regulations of General Applicability

SOURCE: 88 FR 958, Jan. 6, 2023, unless otherwise noted.

§ 922.1 Purposes and applicability of the regulations.

(a) The purposes of this part are:

(1) To implement 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 (NMSA or Act)), the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) (Pub. L. 101–605) and the Hawaiian Islands National Marine Sanctuary Act (sections 2301–2307 of Pub. L. 102–587); and

(2) To implement the designations of the national marine sanctuaries, for which specific regulations appear in subpart F through subsequent subparts of this part, by regulating activities affecting them, consistent with their respective terms of designation, in order to protect, restore, preserve, manage, and thereby ensure the health, integrity, and continued availability of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological, and aesthetic resources and qualities of these areas.

(b) The regulations of this part are binding on any person subject to the jurisdiction of the United States. Designation of a national marine sanctuary beyond the U.S. territorial sea does not constitute any claim to territorial jurisdiction on the part of the United States. The regulations of this part shall be applied in accordance with generally recognized principles of international law,[1] and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation of this part shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with:

(1) Generally recognized principles of international law;

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

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

(c) Unless noted otherwise, the regulations in this subpart and subpart D of this part apply to all national marine sanctuaries immediately upon designation.

[88 FR 958, Jan. 6, 2023, as amended at 89 FR 48286, June 6, 2024; 89 FR 83594, Oct. 16, 2024]

§ 922.2 Mission, goals, and special policies.

(a) In accordance with the standards set forth in the Act, the mission of the Office of National Marine Sanctuaries (Office) is to identify, designate, protect, restore, and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or aesthetic resources and qualities.

(b) The goal of the Office is to carry out the mission of the Act in a manner consistent with the purposes and policies of the Act (16 U.S.C. 1431(b)); the Florida Keys National Marine Sanctuary and Protection Act (Pub. L. 101–605) which designated Florida Keys National Marine Sanctuary; the Hawaiian Islands National Marine Sanctuary and Protection Act (Pub. L. 102–587), which designated Hawaiian Islands Humpback Whale National Marine Sanctuary; the Oceans Act of 1992 (Pub. L. 102–587), which designated Stellwagen Bank National Marine Sanctuary; and the National Marine Sanctuaries Preservation Act of 1996 (Pub. L. 104–283), which added Stetson Bank to Flower Garden Banks National Marine Sanctuary.

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

(d) Program regulations, policies, standards, guidelines, and procedures

[1] Based on the legislative history of the NMSA, NOAA has long interpreted the text of 16 U.S.C. 1435(a) as encompassing international law, including customary international law.

developed pursuant to 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, 54 U.S.C. 300101 *et seq.*, the Archeological and Historical Preservation Act of 1974, 54 U.S.C. 312501 *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.

§ 922.3 Issuance of regulations for fishing.

If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional Fishery Management Council(s). The appropriate Council(s) shall have one hundred and eighty (180) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishing regulations for the area within the exclusive economic zone and 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-Stevens Fishery Conservation and Management 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. Any fishing activities not proposed for regulation under section 304(a)(5) of the NMSA may be listed in the draft Sanctuary designation document as being subject to regulation, without following the procedures specified in section 304(a)(5) of the NMSA. If the Secretary subsequently determines that regulation of fishing is necessary, then NOAA will follow the procedures specified in section 304(a)(5) of the NMSA.

§ 922.4 Boundaries.

Subpart F and subsequent subparts of this part set forth the boundaries for all national marine sanctuaries.

[89 FR 83594, Oct. 16, 2024]

§ 922.5 Allowed activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in the site-specific regulations covered by this part, subject to any emergency regulations promulgated under this part, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including but not limited to, Federal, Tribal, and State fishery management authorities, and subject to the provisions of section 312 of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

[88 FR 958, Jan. 6, 2023; 88 FR 19826, Apr. 4, 2023]

§ 922.6 Prohibited or otherwise regulated activities.

Subpart F and subsequent subparts of this part set forth site-specific regulations applicable to the activities specified therein.

[89 FR 83594, Oct. 16, 2024]

§ 922.7 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition.

(b) This section does not apply to the following national marine sanctuaries

with site-specific regulations that establish procedures for issuing emergency regulations:

(1) Cordell Bank National Marine Sanctuary, § 922.112(e).

(2) Florida Keys National Marine Sanctuary, § 922.165.

(3) Hawaiian Islands Humpback Whale National Marine Sanctuary, § 922.185.

(4) Thunder Bay National Marine Sanctuary, § 922.196.

(5) Mallows Bay—Potomac River National Marine Sanctuary, § 922.204.

(6) Wisconsin Shipwreck Coast National Marine Sanctuary, § 922.214.

(7) Lake Ontario National Marine Sanctuary, § 922.224.

[88 FR 958, Jan 6, 2023, as amended by 89 FR 48286, June 6, 2024]

§ 922.8 Penalties.

(a) Each violation of the NMSA or the other statutes designating national marine sanctuaries listed in § 922.2(b), any regulation in this part or any permit issued pursuant thereto, is subject to a civil penalty. 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.

§ 922.9 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. 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.

§ 922.10 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

Any valid lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of final regulations for a designation or revised terms of designation of any National Marine Sanctuary may 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.

§ 922.11 Definitions.

The following definitions shall apply to this part, unless modified by the definitions for a specific subpart or regulation:

Abandoning means leaving without intent to remove any structure, material, or other matter on or in the seabed or submerged lands of a Sanctuary. For Thunder Bay National Marine Sanctuary and Underwater Preserve, abandoning means leaving without intent to remove any structure, material or other matter on the lake bottom associated with underwater cultural resources.

Act or NMSA 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.

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

Attract or attracting means the conduct of any activity that lures or may lure any animal by using food, bait, chum, dyes, decoys (e.g., surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

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

Clean means not containing detectable levels of harmful matter.

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 gear composed of a single line terminated by a combination of

sinkers and hooks or lures and spooled upon a reel that may be hand, electrically, or hydraulically operated, regardless of whether mounted. This term does not include longlines.

Cruise ship means any vessel with 250 or more passenger berths for hire.

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

Deserting means leaving a vessel aground, adrift, wrecked, junked, or in a substantially dismantled condition without notification to the Director of the vessel going aground or becoming adrift, wrecked, junked, or substantially dismantled within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification; after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts, or when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Director means, except where otherwise specified, the Director of the Office of National Marine Sanctuaries or designee.

Effective date means the date of final regulations described and published in the FEDERAL REGISTER. For regulations governing the designation of a new sanctuary or revising terms of designation, effective date means the date after the close of the review period of the 45th day of continuous session of Congress following submission of the FEDERAL REGISTER document of the designation together with final regulations to implement the designation and any other matters required by law, unless the Governor of any state in which the sanctuary is completely or partially located certifies that the designation or any of its terms is unacceptable pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)).

Exclusive economic zone means the zone established by Proclamation 5030, dated March 10, 1983, and as defined in the Magnuson-Stevens Fishery Conservation and Management Act, as amended 16 U.S.C. 1801 *et seq*.

Fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds, as defined in the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1802(12)).

Graywater means graywater as defined by section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat of injury to Sanctuary resources or qualities. Such substances or combination of substances may include, but is not limited to: fishing nets, fishing line, hooks, fuel, oil, and hazardous substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601(14) and designated at 40 CFR 302.4.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including a site, contextual information, structure, district, and object significantly associated with or representative of earlier people, culture, maritime heritage, and human activities and events. Historical resource includes ''cultural resource,'' ''submerged cultural resource,'' and ''historical property'' as that term is used in the National Historic Preservation Act, as amended, 54 U.S.C. 300101 *et seq*. and its implementing regulations, as amended.

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130.

Injure or injury means to change adversely, either in the short or long term, a chemical, biological or physical attribute, or the viability, of a sanctuary resource. This includes, but

is not limited to, to cause the loss of or destroy.

Introduced species means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Inventory 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.

Lawful fishing means fishing authorized by a tribal, State or Federal entity with jurisdiction over the activity.

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 or Sanctuary means an area of the marine environment of special national significance designated as such by the National Oceanic and Atmospheric Administration (NOAA) pursuant to the Act or by Congress pursuant to legislation.

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 the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*.

Sanctuary quality means any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of a national marine sanctuary, including, but not limited to, water quality, sediment quality, and air quality.

Sanctuary resource means any living or non-living resource of a national marine sanctuary, or the parts or products thereof, that contributes to the conservation, recreational, ecological, historical, educational, cultural, archaeological, scientific, or aesthetic value of the national marine sanctuary, including, but not limited to, waters of the sanctuary, the seabed or submerged lands 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, birds, sea turtles and other marine reptiles, marine mammals, and maritime heritage, cultural, archaeological, and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource is defined at § 922.191. For Hawaiian Islands Humpback Whale, Sanctuary resource is defined at § 922.182. For Mallows Bay-Potomac River National Marine Sanctuary, Sanctuary resource is defined at § 922.201(a). For Wisconsin Shipwreck Coast National Marine Sanctuary, sanctuary resource is defined at § 922.211. For Lake Ontario National Marine Sanctuary, sanctuary resource is defined at § 922.221.

Seagrass means any species of marine angiosperms (flowering plants) that inhabits a portion of the seabed in a national marine sanctuary. Those species include, but are not limited to: *Zostera asiatica* (Asian eelgrass), *Zostera marina* (eelgrass/common eelgrass); *Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens* (paddle grass), *H. engelmannii* (Engelmann's seagrass), *H. johnsonii* (Johnson's seagrass); and *Ruppia maritima* (widgeon grass).

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.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

Subsistence use means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles; and for barter, if for food or nonedible items other than money, if the exchange is of a limited and non-commercial nature.

Take (taking or taken) of a marine mammal, sea turtle, or bird means:

(1) Take as that term is defined in section 3(19) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1532(19) (ESA);

(2) Take as that term is defined in section 3(13) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1362(13) (MMPA); or

(3) Conducting an activity prohibited by section 703 of the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703 (MBTA).

(4) For purposes of paragraphs (1), (2), and (3) of this definition, take also includes, but is not limited to, collection of any dead or injured marine mammal, sea turtle, or bird, or any part thereof; or restraint or detainment of any marine mammal, sea turtle, or bird, no matter how temporarily; tagging any marine mammal, sea turtle, or bird, or operating a vessel or aircraft or conducting any other act that results in the disturbance or molestation of any marine mammal, sea turtle, or bird.

Vessel means a watercraft of any description capable of being used as a means of transportation in or on the waters of a sanctuary. The term includes but is not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes while maneuvering on the water. For purposes of this part, the terms ''vessel,'' ''watercraft,'' and ''boat'' have the same meaning.

Washington Coast treaty tribe means the Hoh, Makah, or Quileute Indian Tribes or the Quinault Indian Nation.

[88 FR 958, Jan. 6, 2023, as amended at 89 FR 48287, June 6, 2024]

§ 922.12 Sanctuary nomination process.

(a) The sanctuary nomination process (*see* National Marine Sanctuaries website *www.sanctuaries.noaa.gov*) is the means by which the public can submit areas of the marine and Great Lakes environments for consideration by NOAA as a national marine sanctuary.

(b) The Director will consider the following national significance criteria in determining if a nominated area is of special national significance:

(1) The area's natural resources and ecological qualities are of special significance and contribute to: biological productivity or diversity; maintenance or enhancement of ecosystem structure and function; maintenance of ecologically or commercially important species or species assemblages; maintenance or enhancement of critical habitat, representative biogeographic assemblages, or both; or maintenance or enhancement of connectivity to other ecologically significant resources.

(2) The area contains submerged maritime heritage resources of special historical, cultural, or archaeological significance, that: individually or collectively are consistent with the criteria of eligibility or listing on the National Register of Historic Places; have met or which would meet the criteria for designation as a National Historic Landmark; or have special or sacred meaning to the indigenous people of the region or nation.

(3) The area supports present and potential economic uses, such as: tourism; commercial and recreational fishing; subsistence and traditional uses; diving; and other recreational uses that depend on conservation and management of the area's resources.

(4) The publicly-derived benefits of the area, such as aesthetic value, public recreation, and access to places depend on conservation and management of the area's resources.

(c) The Director will consider the following management considerations in determining the manageability of a nominated area:

(1) The area provides or enhances opportunities for research in marine science, including marine archaeology.

(2) The area provides or enhances opportunities for education, including the understanding and appreciation of the marine and Great Lakes environments.

(3) Adverse impacts from current or future uses and activities threaten the area's significance, values, qualities, and resources.

(4) A national marine sanctuary would provide unique conservation and management value for this area that also have beneficial values for adjacent areas.

(5) The existing regulatory and management authorities for the area could be supplemented or complemented to meet the conservation and management goals for the area.

(6) There are commitments or possible commitments for partnerships opportunities such as cost sharing, office space or exhibit space, vessel time, or other collaborations to aid conservation or management programs for the area.

(7) There is community-based support for the nomination expressed by a broad range of interests, such as: individuals or locally-based groups (*e.g.*, friends of group, chamber of commerce); local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (*e.g.*, a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association).

(d) Following evaluation of a nomination against the national significance criteria and management considerations, the Director may place nominated areas in a publicly available inventory for future consideration of designation as a national marine sanctuary.

(e) A determination that a site is eligible for national marine sanctuary designation, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

§ 922.13 Selection of nominated areas for national marine sanctuary designation.

(a) The Director may select a nominated area from the inventory for future consideration as a national marine sanctuary.

(b) Selection of a nominated area from the inventory shall begin the formal sanctuary designation process. A notice of intent to prepare a draft environmental impact statement shall be published in the FEDERAL REGISTER and posted on the Office of National Marine Sanctuaries website. Any designation process will follow the procedures for designation and implementation set forth in section 304 of the Act.

Subparts B–C [Reserved]

Subpart D—National Marine Sanctuary Permitting

SOURCE: 88 FR 962, Jan. 6, 2023, unless otherwise noted.

§ 922.30 National Marine Sanctuary general permits.

(a) *Authority to issue general permits.* The Director may allow a person to conduct an activity that would otherwise be prohibited by this part through issuance of a general permit, provided the applicant complies with:

(1) The provisions of this subpart; and

(2) The permit procedures and criteria for all national marine sanctuaries in which the proposed activity is to take place in accordance with relevant site-specific regulations appearing in subpart F and subsequent subparts of this part.

(b) *Sanctuary general permit categories.* The Director may issue a sanctuary general permit under this subpart and the relevant site-specific subpart, subject to such terms and conditions as he

or she deems appropriate, if the Director finds that the proposed activity falls within one of the following categories or a category in the relevant site-specific subpart:

(1) Research—activities that constitute scientific research or scientific monitoring of a national marine sanctuary resource or quality;

(2) Education—activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resource or quality;

(3) Management—activities that assist in managing a national marine sanctuary;

(4) Jade removal—the removal of loose jade from the Jade Cove area, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, within Monterey Bay National Marine Sanctuary that cannot be collected under 15 CFR 922.132(a)(1)(ii) and (iii). Preference will be given for applications proposing to collect loose pieces of jade for research or educational purposes;

(5) Tribal self-determination—activities conducted by a Washington Coast treaty tribe and/or its designee as certified by the governing body of the tribe to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights, the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of tribal members

(6) Further FKNMS purposes—activities that further the purposes of Florida Keys National Marine Sanctuary, including those that facilitate multiple use of the sanctuary, to the extent compatible with the primary objective of resource protection;

(7) Native American cultural or ceremonial activities—activities within Chumash Heritage National Marine Sanctuary that will promote or enhance local Native American cultural or ceremonial activities; or will promote or enhance education and training related to local Native American cultural or ceremonial activities;

(8) Native Hawaiian Practices—activities that allow for Native Hawaiian practices within Papahānaumokuākea National Marine Sanctuary; and

(9) Recreation—recreational activities within Papahānaumokuākea National Marine Sanctuary limited to the Midway Atoll Special Management Area.

[88 FR 962, Jan. 6, 2023, as amended at 89 FR 83594, Oct. 16, 2024; 90 FR 4891, Jan. 16, 2025]

§ 922.31 National Marine Sanctuary special use permits.

(a) *In general.* A person may conduct a specified special use permit activity, if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, manner, terms and conditions of, a special use permit issued under this section.

(b) *Authority to issue.* The Director, at his or her discretion, may issue a special use permit in accordance with this subpart and section 310 of the Act (16 U.S.C. 1441).

(c) *Public notice.* The Director will not issue a special use permit for any category of activity unless the Director has published a notice in the FEDERAL REGISTER that such category of activity is subject to the requirements of section 310 of the Act.

(d) *Fees.* The Director may assess and collect fees for the conduct of any activity authorized by a special use permit issued pursuant to this section. The fee will be assessed in accordance with § 922.35.

[88 FR 958, Jan. 6, 2023, as amended at 89 FR 48287, June 6, 2024]

§ 922.32 Application requirements and procedures.

(a) *Submitting applications.* Permit applications must be submitted by mail to the address listed in the subpart for the relevant national marine sanctuary or by electronic means as defined in the instructions for the ONMS permit application. Applicants proposing to conduct an activity in more than one national marine sanctuary should send the application to each NOAA office for the relevant national marine sanctuaries in which the activity is proposed.

(b) *Application requirements.* All applications for a permit under this section must include the following information:

(1) A detailed description of the proposed activity including:

(i) A timetable for completion of the activity;

(ii) A detailed description of the proposed location for the activity; and

(iii) The equipment, personnel and methodology to be employed;

(2) The qualifications and experience of all personnel;

(3) The financial resources available to the applicant to conduct and complete the proposed activity and comply with any terms and conditions deemed necessary;

(4) A statement as to why it is necessary to conduct the activity within a national marine sanctuary;

(5) A description of the potential impacts of the activity, if any, on sanctuary resources and qualities;

(6) A description of the benefits the conduct of the activity would have for the national marine sanctuary or national marine sanctuary system;

(7) Copies of all other required licenses, permits, approvals, or other authorizations; and

(8) Such other information as the Director may request or is specified in the relevant subpart.

(c) *Additional information.* Upon receipt of an application, and as part of the evaluation of the permit application, the Director may:

(1) Request such additional information as he or she deems necessary to act on the application;

(2) Require a site visit; and

(3) Seek the views of any persons.

(d) *Time limit for submitting additional information.* Unless otherwise specified in writing by the Director, any information requested by the Director under paragraph (c) of this section must be received by the Director within 30 days of the postmark date of the request or, if email, the date of the email. Failure to provide such additional information may be deemed by the Director to constitute withdrawal of the permit application.

(e) *Incomplete applications.* The Director may consider an application incomplete, and therefore may refuse to further consider the application, if the applicant:

(1) Has failed to submit any of the information required under paragraph (b) of this section;

(2) Has failed to submit any of the information requested by the Director under paragraph (c) of this section;

(3) Has failed to pay any outstanding penalties that resulted from a violation of this part; or

(4) Has failed to fully comply with a permit issued pursuant to this subpart.

§ 922.33 Review procedures and evaluation.

(a) *Review criteria.* In addition to any relevant site-specific permit review criteria, the Director shall not issue a permit under this subpart or the relevant subpart, unless he or she also finds that:

(1) The proposed activity will be conducted in a manner compatible with the primary objective of protection of national marine sanctuary resources and qualities, taking into account the following factors: the extent to which the conduct of the activity may diminish or enhance national marine sanctuary resources and qualities; and any indirect or cumulative effects of the activity;

(2) It is necessary to conduct the proposed activity within the national marine sanctuary to achieve its stated purpose;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's stated purpose and avoid, minimize, or otherwise mitigate adverse effects on sanctuary resources and qualities as much as possible;

(4) The duration of the proposed activity and its effects are no longer than necessary to achieve the activity's stated purpose;

(5) The expected end value of the activity to the furtherance of national marine sanctuary goals and purposes outweighs any potential adverse impacts on sanctuary resources and qualities from the conduct of the activity;

(6) The applicant is professionally qualified to conduct and complete the proposed activity;

(7) The applicant has adequate financial resources available to conduct and complete the proposed activity and terms and conditions of the permit;

(8) There are no other factors that would make the issuance of a permit for the activity inappropriate;

(9) For Olympic Coast National Marine Sanctuary, the activity as proposed does not adversely affect any Washington Coast treaty tribe; and

(10) For Papahānaumokuākea National Marine Sanctuary, there is no practicable alternative to conducting the activity within the sanctuary and the activity can be conducted with adequate safeguards for the resources and ecological integrity of the sanctuary. Further, for Native Hawaiian Practices and Recreation permits in Papahānaumokuākea National Marine Sanctuary, the activity meets the additional site-specific permit review criteria identified in § 922.245.

(b) *Permit terms and conditions.* The Director, at his or her discretion, may subject a permit issued under this subpart or other relevant subpart to such terms and conditions as he or she deems appropriate. A permit granted pursuant to this subpart is nontransferable.

(c) *Permit actions.* The Director may amend, suspend, or revoke a permit issued pursuant to this part or other relevant subpart for good cause. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(d) *Denial of permit application.* The Director may deny a permit application, in whole or in part, if it is determined that:

(1) The proposed activity does not meet the review criteria specified in this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(2) The permittee or applicant has acted in violation of the terms and conditions of a permit issued under this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(3) The permittee or applicant has acted in violation of any regulation set forth in this subpart, the NMSA, or the FKNMSPA;

(4) The proposed activity has resulted in unforeseen adverse impacts to Sanctuary resources or qualities; or

(5) For other good cause.

(e) *Communication of actions and denials.* Any action taken by the Director under paragraphs (c) and (d) of this section shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken.

[88 FR 962, Jan. 6, 2023, as amended at 90 FR 4891, Jan. 16, 2025]

§ 922.34 Permit amendments.

(a) *Request for amendments.* Any person who has been issued a permit under this part (a permittee) may request to amend the permit at any time while that permit is valid. For purposes of this section, a permit time extension is treated as a permit amendment. A request for permit amendment must be submitted to the same NOAA office(s) as the original permit and include sufficient information to describe the requested amendment and any additional supporting information.

(b) *Review of amendment requests.* After receiving the permittee's request for amendment, the Director will:

(1) Review all reports submitted by the permittee as required by the permit terms and conditions; and

(2) Request such additional information as may be necessary to evaluate the request.

(c) *Denial of amendment request.* The Director may deny a permit amendment request, in whole or in part, if it is determined that:

(1) The proposed activity does not meet the review criteria specified in this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(2) The permittee or applicant has acted in violation of the terms or conditions of a permit issued under this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(3) The permittee or applicant has acted in violation of any regulation set forth in this subpart, the NMSA, or the FKNMSPA;

(4) The proposed activity has resulted in unforeseen adverse impacts to Sanctuary resources or qualities; or

(5) For other good cause.

§ 922.35 Special use permit fees.

(a) *Authority to assess fees.* The Director may assess a fee for the conduct of any activity authorized under a special

use permit issued under § 922.31. The Director may collect assessed fees through agreement with the permit applicant. No special use permit may be effective until all assessed fees are received unless otherwise provided by the Director by a fee schedule set forth as a permit condition.

(b) *Components of permit fees.* A fee assessed under this section may include:

(1) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:

(i) Personnel;

(ii) Personnel hours;

(iii) Equipment;

(iv) Environmental analysis, assessment or consultation;

(v) Copying; and

(vi) Overhead costs directly related to reviewing and processing the permit application;

(2) All costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the permit is being issued, including, but not limited to:

(i) The cost of monitoring the conduct both during the activity and after the activity is completed in order to assess the impacts to sanctuary resources and qualities;

(ii) The use of an official NOAA observer, including travel and expenses and personnel hours; and

(iii) Overhead costs directly related to the permitted activity; and

(3) An amount which represents the fair market value of the use of the sanctuary resource.

§ 922.36 National Marine Sanctuary authorizations.

(a) *Authority to issue authorizations.* The Director may authorize a person to conduct an activity otherwise prohibited by subparts L through P, or subparts R through V, of this part, if such activity is specifically allowed by any valid Federal, State, or local lease, permit, license, approval, or other authorization (hereafter called ''agency approval'') issued after the effective date of sanctuary designation or expansion, provided the applicant complies with the provisions of this section. Such an authorization by the Office of National Marine Sanctuaries (ONMS) is hereafter referred to as an ''ONMS authorization.''

(b) *Authorization notification to the Director*—(1) *Notification requirement.* An applicant must notify the Director in writing of the request for an ONMS authorization of an agency approval. The Director may treat an amendment or extension of such an agency approval as constituting a new agency approval for purposes of this section.

(i) Notification must occur within fifteen days after the date the applicant files of filing of the application for the agency approval.

(ii) Notification must be sent to the Director, Office of National Marine Sanctuaries, to the attention of the relevant Sanctuary Superintendent(s) at the address specified in subparts L through P, subpart R, subpart U, or subpart V of this part.

(iii) A copy of the application for the agency approval must accompany the notification.

(2) *Director's response to notification.* The Director shall respond in writing to the applicant and provide periodic updates on pending ONMS authorization request.

(c) *Authorization review procedures and evaluation*—(1) *Additional information.* The Director may request additional information from the applicant as the Director deems reasonably necessary to determine whether to issue an ONMS authorization and what terms and conditions are reasonably necessary to protect sanctuary resources and qualities.

(i) The information requested must be received by the Director within 45 days of the postmark date of the Director's request.

(ii) The Director may seek the views of any persons on the application.

(2) *Review criteria.* The Director shall consider the review criteria in § 922.33(a)(1) through (9) when deciding whether to issue an ONMS authorization.

(3) *Director's response.* The Director shall respond in writing to the applicant to inform the applicant of the Director's decision regarding the authorization request.

(i) The Director may deny a request for an ONMS authorization and shall provide the reason(s) therefore. If the

Director denies a request for an ONMS authorization, the applicant remains prohibited from conducting the activity in the sanctuary.

(ii) The Director may issue an ONMS authorization containing terms and conditions deemed reasonably necessary to protect sanctuary resources and qualities. Failure to comply with an ONMS authorization constitutes a violation of the NMSA and these regulations, which may result in an enforcement action and assessment of penalties.

(d) *Authorization actions.* The Director may amend, suspend, or revoke an ONMS authorization issued pursuant to this part for good cause. Procedures governing ONMS sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(e) *Communication of actions and denials.* Any action taken by the Director under paragraphs (c) and (d) of this section to deny, amend, suspend, or revoke an ONMS authorization shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken.

(f) *Time limits.* Any time limit prescribed in or established under this section may be extended by the Director for good cause.

[88 FR 958, Jan. 6, 2023, as amended at 89 FR 48287, June 6, 2024; 89 FR 83594, Oct. 16, 2024]

§ 922.37 Appeals of permitting decisions.

(a) *Potential appellant.* The following person may appeal an action listed in paragraph (b) of this section (hereinafter referred to as ''appellant''):

(1) An applicant or holder of a certification of any existing lease, permit, license, or right of subsistence use or of access pursuant to § 922.10;

(2) An applicant or a holder of a National Marine Sanctuary permit issued pursuant to § 922.30 or pursuant to site-specific regulations appearing in subparts F through V of this part;

(3) An applicant or a holder of a special use permit issued pursuant to section 310 of the Act and § 922.31; and

(4) An applicant or a holder of an ONMS authorization of an agency approval issued by any Federal, State, or local authority of competent jurisdiction pursuant to § 922.36.

(5) For those National Marine Sanctuaries described in subparts F through K and S and T of this part, any interested person may also appeal the same actions described in paragraph (b)(1) of this section.

(b) *Actions that may be appealed.* An appellant may appeal the following actions to the Assistant Administrator:

(1) The denial, conditioning, amendment, suspension, or revocation by the Director of a general permit pursuant to § 922.30 or other relevant subpart, special use permit pursuant to section 310 of the Act and § 922.31, or an ONMS authorization issued pursuant to § 922.36; or a certification under § 922.10.

(2) Reserved.

(c) *Appeal requirements.* Appeals must be made in writing to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910 and must:

(1) State the action(s) by the Director being appealed;

(2) State the reason(s) for the appeal; and

(3) Be received within 30 days of the appellant's receipt of notice of the action by the Director.

(d) *Appeal procedures.* (1) The Assistant Administrator may request the appellant submit such information as the Assistant Administrator deems necessary in order to render a decision on the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request.

(2) The Assistant Administrator may seek the views of any other persons when deciding an appeal.

(3) The Assistant Administrator may hold an informal hearing. If an informal hearing is held:

(i) The Assistant Administrator may designate an officer before whom the hearing shall be held;

(ii) The hearing officer shall give notice in the FEDERAL REGISTER of the time, place and subject matter of the hearing;

(iii) The appellant and 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; and

(iv) The hearing officer shall recommend a decision in writing to the Assistant Administrator ithin 60 days after the record for the hearing closes.

(e) *Deciding an appeal.* (1) 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 at the Assistant Administrator's request pursuant to paragraph (d)(1) or (2) of this section, regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision.

(2) The Assistant Administrator shall notify the appellant of the final decision and the reason(s) therefore in writing.

(3) The Assistant Administrator's decision shall constitute final agency action for purposes of the Administrative Procedure Act.

(f) *Authority to extend time limits.* Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal pursuant to paragraph (c)(3) of this section may be extended by the Assistant Administrator for good cause.

(g) Paragraphs (a) through (f) of this section do not apply to Papahānaumokuākea National Marine Sanctuary.

[88 FR 962, Jan. 6, 2023, as amended at 89 FR 83594, Oct. 16, 2024; 90 FR 4891, Jan. 16, 2025]

Subpart E [Reserved]

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 (0.593 square nautical miles (nmi^2) or (0.785 sq. mi.)) extending from the surface to the seabed, the center of which is at the following coordinates 35.00639, –75.40889.

[88 FR 965, Jan. 6, 2023]

§ 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 procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.61 if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Monitor National Marine Sanctuary, c/o The Mariners' Museum, 100 Museum Drive, Newport News, VA 23606.

(c) In addition to the requirements of subpart D of this part, the Director may not issue a permit under this section unless the Director also finds that the extent to which the conduct of the proposed activity may diminish the value of the Monitor as a source of historic, cultural, aesthetic and/or maritime information is appropriate in relation to goals of the proposed activity.

(d) In considering any application submitted pursuant to this section, the Director shall seek and consider the

views of the Advisory Council on Historic Preservation.

[88 FR 965, Jan. 6, 2023]

Subpart G—Channel Islands National Marine Sanctuary

§ 922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of approximately 1,110 square nautical miles (nmi^2) (1,470 sq. mi.) of coastal and ocean waters, and the submerged lands thereunder, off the southern coast of California. The Sanctuary boundary begins at the Mean High Water Line of and extends seaward to a distance of approximately six nmi from the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (the Islands). The seaward boundary coordinates are listed in appendix A to this subpart.

[74 FR 3260, Jan. 16, 2009, as amended by 88 FR 965, Jan. 6, 2023]

§ 922.71 Definitions.

In addition to those definitions found at §922.11, the following definitions apply to this subpart:

Motorized personal watercraft means a vessel, usually less than 16 feet in length, which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. The vessel is intended to be operated by a person or persons sitting, standing or kneeling on the vessel, rather than within the confines of the hull. The length is measured from end to end over the deck excluding sheer, meaning a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments, are not included in the measurement. Length is stated in feet and inches.

Oceangoing ship means a private, commercial, government, or military vessel of 300 gross registered tons or more, not including cruise ships.

Pelagic finfish are defined as: Northern anchovy (*Engraulis mordax*), barracudas (*Sphyraena spp.*), billfishes (family *Istiophoridae*), dolphinfish (*Coryphaena hippurus*), Pacific herring (*Clupea pallasi*), jack mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber japonicus*), salmon (*Oncorhynchus spp.*), Pacific sardine (*Sardinops sagax*), blue shark (*Prionace glauca*), salmon shark (*Lamna ditropis*), shortfin mako shark (*Isurus oxyrinchus*), thresher sharks (*Alopias spp.*), swordfish (*Xiphias gladius*), tunas (family *Scombridae*), and yellowtail (*Seriola lalandi*).

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

[74 FR 3260, Jan. 16, 2009, as amended at 88 FR 965, Jan. 6, 2023]

§ 922.72 Prohibited or otherwise regulated activities—Sanctuary-wide.

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

(1) Exploring for, developing, or producing hydrocarbons within the Sanctuary, except pursuant to leases executed prior to March 30, 1981, and except the laying of pipeline pursuant to exploring for, developing, or producing hydrocarbons.

(2) Exploring for, developing, or producing minerals within the Sanctuary, except producing by-products incidental to hydrocarbon production allowed by paragraph (a)(1) of this section.

(3)(i) Discharging or depositing from within or into the Sanctuary any material or other matter except:

(A) Fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or an oceangoing ship without sufficient holding tank capacity to hold sewage while

within the Sanctuary, biodegradable effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1321 *et seq*. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Biodegradable matter from:

(*1*) Vessel deck wash down;

(*2*) Vessel engine cooling water;

(*3*) Graywater from a vessel less than 300 gross registered tons;

(*4*) Graywater from an oceangoing ship without sufficient holding tank capacity to hold graywater while within the Sanctuary;

(D) Vessel engine or generator exhaust;

(E) Effluent routinely and necessarily discharged or deposited incidental to hydrocarbon exploration, development, or production allowed by paragraph (a)(1) of this section; or

(F) Discharge allowed under section 312(n) of the FWPCA.

(ii) Discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraphs (a)(3)(i)(B) through (F) of this section and fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity beyond the boundary of the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity there.

(4) Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing or placing any structure, material, or other matter on or in the submerged lands of the Sanctuary, except as incidental to and necessary to:

(i) Anchor a vessel;

(ii) Install an authorized navigational aid;

(iii) Conduct lawful fishing activity;

(iv) Lay pipeline pursuant to exploring for, developing, or producing hydrocarbons; or

(v) Explore for, develop, or produce hydrocarbons as allowed by paragraph (a)(1) of this section.

(5) Abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary.

(6) Except to transport persons or supplies to or from any Island, operating within one nmi of any Island any vessel engaged in the trade of carrying cargo, including, but not limited to, tankers and other bulk carriers and barges, any vessel engaged in the trade of servicing offshore installations, or any vessel of three hundred gross registered tons or more, except fishing or kelp harvesting vessels.

(7) Disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within one nautical mile of any Island, except to engage in kelp bed surveys or to transport persons or supplies to or from an Island. Failure to maintain a minimum altitude of 1,000 feet above ground level over such waters is presumed to disturb marine mammals or seabirds.

(8) Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess a Sanctuary historical resource.

(9) Taking any marine mammal, sea turtle, or seabird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq*., Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq*., Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq*., or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(10) Possessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird, except as authorized by the MMPA, ESA, MBTA, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(11) Marking, defacing, damaging, moving, removing, or tampering with any sign, notice, or placard, whether temporary or permanent, or any monument, stake, post, or other boundary marker related to the Sanctuary.

(12) Introducing or otherwise releasing from within or into the Sanctuary

an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(13) Operating a motorized personal watercraft within waters of the Sanctuary that are coextensive with the Channel Islands National Park, established by 16 U.S.C. 410(ff).

(b)(1) The prohibitions in paragraphs (a)(3) through (13) of this section and in §922.73 do not apply to military activities carried out by DOD as of the effective date of these regulations and specifically identified in section 3.5.9 (Department of Defense Activities) of the Final Channel Islands National Marine Sanctuary Management Plan/Final Environmental Impact Statement (FMP/FEIS), Volume II: Environmental Impact Statement, 2008, authored and published by NOAA (''pre-existing activities''). Copies of the document are available from the Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109. Other military activities carried out by DOD may be exempted by the Director after consultation between the Director and DOD.

(2) A military activity carried out by DOD as of the effective date of these regulations and specifically identified in the section entitled ''Department of Defense Activities'' of the FMP/FEIS is not considered a pre-existing activity if:

(i) It is modified in such a way that requires the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, relevant to a Sanctuary resource or quality;

(ii) It is modified, including but not limited to changes in location or frequency, in such a way that its possible adverse effects on Sanctuary resources or qualities are significantly greater than previously considered for the unmodified activity;

(iii) It is modified, including but not limited to changes in location or frequency, in such a way that its possible adverse effects on Sanctuary resources or qualities are significantly different in manner than previously considered for the unmodified activity; or

(iv) There are new circumstances or information relevant to a Sanctuary resource or quality that were not addressed in the FMP/FEIS.

(3) In the event of destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an incident, including, but not limited to, discharges, deposits, and groundings, caused by a DOD activity, DOD, in coordination with the Director, must promptly prevent and mitigate further damage and must restore or replace the Sanctuary resource or quality in a manner approved by the Director.

(4) All DOD activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(c) The prohibitions in paragraphs (a)(3) through (10) and (12) and (13) of this section and in §922.73 do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and §922.74.

(d) The prohibitions in paragraphs (a)(3) through (11) and (a)(13) of this section and in §922.73 do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

(e) The prohibitions in paragraphs (a)(3) through (11) and (a)(13) of this section and in §922.73 do not apply to any activity necessary for valid law enforcement purposes in the Sanctuary.

[74 FR 3260, Jan. 16, 2009, as amended at 77 FR 3922, Jan. 26, 2012; 88 FR 965, Jan. 6, 2023]

§922.73 Additional prohibited or otherwise regulated activities—marine reserves and marine conservation area.

(a) *Marine reserves.* Unless prohibited by 50 CFR part 660 (Fisheries off West Coast States), the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within a marine reserve described in appendix B to this subpart, except as specified in paragraphs (b) through (e) of §922.72:

(1) Harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, or attempting any of these activities.

(2) Possessing fishing gear on board a vessel unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, except legally harvested fish on board a vessel at anchor or in transit.

(b) *Marine conservation area.* Unless prohibited by 50 CFR part 660 (Fisheries off West Coast States), the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the marine conservation area described in appendix C to this subpart, except as specified in paragraphs (b) through (e) of §922.72:

(1) Harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any Sanctuary resource, or attempting any of these activities, except:

(i) Recreational fishing for pelagic finfish; or

(ii) Commercial and recreational fishing for lobster.

(2) Possessing fishing gear on board a vessel, except legal fishing gear used to fish for lobster or pelagic finfish, unless such gear is stowed and not available for immediate use.

(3) Possessing any Sanctuary resource, except legally harvested fish.

[74 FR 3260, Jan. 16, 2009]

§922.74 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by §922.72 or §922.73 if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and subpart D of this part.

(b) Permit applications should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Channel Islands National Marine Sanctuary, University of California Santa Barbara, Ocean Science Education Building 514, MC 6155, Santa Barbara, CA 93106–6155.

[88 FR 965, Jan. 6, 2023]

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

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

Point	Latitude (N)	Longitude (W)
1	33.94138	−119.27422
2	33.96776	−119.25010
3	34.02607	−119.23642
4	34.07339	−119.25686
5	34.10185	−119.29178
6	34.11523	−119.33040
7	34.11611	−119.39120
8	34.11434	−119.40212
9	34.11712	−119.42896
10	34.11664	−119.44844
11	34.13389	−119.48081
12	34.13825	−119.49198
13	34.14784	−119.51194
14	34.15086	−119.54670
15	34.15450	−119.54670
16	34.15450	−119.59170
17	34.15142	−119.61254
18	34.13411	−119.66024
19	34.14635	−119.69780
20	34.15988	−119.76688
21	34.15906	−119.77800
22	34.15928	−119.79327
23	34.16213	−119.80347
24	34.16962	−119.83643
25	34.17266	−119.85240
26	34.17588	−119.88903
27	34.17682	−119.93357
28	34.17258	−119.95830
29	34.13535	−120.01964
30	34.13698	−120.04206
31	34.12994	−120.08582
32	34.12481	−120.11104
33	34.12519	−120.16076
34	34.11008	−120.21190
35	34.11128	−120.22707
36	34.13632	−120.25292
37	34.15341	−120.28627
38	34.16408	−120.29310
39	34.17704	−120.30670
40	34.20492	−120.30670
41	34.20492	−120.38830
42	34.20707	−120.41801
43	34.20520	−120.42859
44	34.19254	−120.46041
45	34.20540	−120.50728
46	34.20486	−120.53987
47	34.18182	−120.60041
48	34.10208	−120.64208
49	34.08151	−120.63894
50	34.05848	−120.62862
51	34.01940	−120.58567
52	34.01349	−120.57464
53	33.98698	−120.56582
54	33.95039	−120.53282
55	33.92694	−120.46132
56	33.92501	−120.42170
57	33.91403	−120.37585
58	33.91712	−120.32506
59	33.90956	−120.30857
60	33.88976	−120.29540
61	33.84444	−120.25482
62	33.83146	−120.22927
63	33.81763	−120.20284
64	33.81003	−120.18731

Point	Latitude (N)	Longitude (W)
65	33.79425	−120.13422
66	33.79379	−120.10207
67	33.79983	−120.06995
68	33.81076	−120.04351
69	33.81450	−120.03158
70	33.84125	−119.96508
71	33.84865	−119.92316
72	33.86993	−119.88330
73	33.86195	−119.88330
74	33.86195	−119.80000
75	33.86110	−119.79017
76	33.86351	−119.77130
77	33.85995	−119.74390
78	33.86233	−119.68783
79	33.87330	−119.65504
80	33.88594	−119.62617
81	33.88688	−119.59423
82	33.88809	−119.58278
83	33.89414	−119.54861
84	33.90064	−119.51936
85	33.90198	−119.51609
86	33.90198	−119.43311
87	33.90584	−119.43311
88	33.90424	−119.42422
89	33.90219	−119.40730
90	33.90131	−119.38373
91	33.90398	−119.36333
92	33.90635	−119.35345
93	33.91304	−119.33280
94	33.91829	−119.32206
95	33.48250	−119.16874
96	33.44235	−119.16797
97	33.40555	−119.14878
98	33.39059	−119.13283
99	33.36804	−119.08891
100	33.36375	−119.06803
101	33.36241	−119.04812
102	33.36320	−119.03670
103	33.36320	−118.90879
104	33.47500	−118.90879
105	33.48414	−118.90712
106	33.52444	−118.91492
107	33.53834	−118.92271
108	33.58616	−118.99540
109	33.59018	−119.02374
110	33.58516	−119.06745
111	33.58011	−119.08521
112	33.54367	−119.14460
113	33.51161	−119.16367

[72 FR 29233, May 24, 2007]

Appendix B to Subpart G of Part 922—Marine Reserve Boundaries

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

B.1. Richardson Rock (San Miguel Island) Marine Reserve

The Richardson Rock Marine Reserve (Richardson Rock) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–1, and the following textual description.

The Richardson Rock boundary extends from Point 1 to Point 2 along a straight line. It then extends from Point 2 to Point 3 along a straight line. The boundary then extends along a straight line from Point 3 to the 3 nmi State boundary established under the Submerged Lands Act (3 nmi State boundary) where a line defined by connecting Point 3 and Point 4 with a straight line intersects the 3 nmi State boundary. The boundary then extends northwestward and then eastward along the 3 nmi State boundary until it intersects the line defined by connecting Point 5 and Point 6 with a straight line. At that intersection, the boundary extends from the 3 nmi SLA boundary to Point 6 along a straight line.

Table B–1—Richardson Rock (San Miguel Island) Marine Reserve

Point	Latitude	Longitude
1	34.17333 ° N	120.60483 ″ W
2	34.17333 ° N	120.47000 ″ W
3	34.12900 ° N	120.47000 ″ W
4	34.03685 ° N	120.52120 ″ W
5	34.03685 ° N	120.60483 ″ W
6	34.17333 ° N	120.60483 ″ W

B.2. Harris Point (San Miguel Island) Marine Reserve

The Harris Point Marine Reserve (Harris Point) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–2, and the following textual description.

The Harris Point boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary then follows the 3 nmi State boundary northwestward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

Table B–2—Harris Point (San Miguel Island) Marine Reserve

Point	Latitude	Longitude
1	34.20492 ° N	120.38830 ″ W
2	34.20492 ° N	120.30670 ″ W
3	34.10260 ° N	120.30670 ″ W
4	34.15200 ° N	120.38830 ″ W
5	34.20492 ° N	120.38830 ″ W

B.3. South Point (Santa Rosa Island) Marine Reserve

The South Point Marine Reserve (South Point) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–3, and the following textual description.

The South Point boundary extends from Point 1 to Point 2 along a straight line. It

then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary southeastward until it intersects the line defined by connecting Point 4 and Point 5 along a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–3—SOUTH POINT (SANTA ROSA ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	33.84000 ° N	120.10830 ″ W
2	33.84000 ° N	120.16670 ″ W
3	33.86110 ° N	120.16670 ″ W
4	33.84700 ° N	120.10830 ″ W
5	33.84000 ° N	120.10830 ″ W

B.4. GULL ISLAND (SANTA CRUZ ISLAND) MARINE RESERVE

The Gull Island Marine Reserve (Gull Island) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–4, and the following textual description.

The Gull Island boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary then follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–4—GULL ISLAND (SANTA CRUZ ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	33.86195 ° N	119.80000 ″ W
2	33.86195 ° N	119.88330 ″ W
3	33.92690 ° N	119.88330 ″ W
4	33.90700 ° N	119.80000 ″ W
5	33.86195 ° N	119.80000 ″ W

B.5. SCORPION (SANTA CRUZ ISLAND) MARINE RESERVE

The Scorpion Marine Reserve (Scorpion) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–5, and the following textual description.

The Scorpion boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary then follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–5—SCORPION (SANTA CRUZ ISLAND) MARINE RESERVE

Point	Latitude	Longitude
1	34.15450 ° N	119.59170 ″ W
2	34.15450 ° N	119.54670 ″ W
3	34.10140 ° N	119.54670 ″ W
4	34.10060 ° N	119.59170 ″ W
5	34.15450 ° N	119.59170 ″ W

B.6. FOOTPRINT MARINE RESERVE

The Footprint Marine Reserve (Footprint) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–6, and the following textual description.

The Footprint boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary northeastward and then southeastward until it intersects the line defined by connecting Point 4 and Point 5 along a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–6—FOOTPRINT MARINE RESERVE

Point	Latitude	Longitude
1	33.90198 ° N	119.43311 ″ W
2	33.90198 ° N	119.51609 ″ W
3	33.96120 ° N	119.51609 ″ W
4	33.95710 ° N	119.43311 ″ W
5	33.90198 ° N	119.43311 ″ W

B.7. ANACAPA ISLAND MARINE RESERVE

The Anacapa Island Marine Reserve (Anacapa Island) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–7, and the following textual description.

The Anacapa Island boundary extends from Point 1 to Point 2 along a straight line. It then extends to the 3 nmi State boundary where a line defined by connecting Point 2 and Pont 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE B–7—ANACAPA ISLAND MARINE RESERVE

Point	Latitude	Longitude
1	34.08330 ° N	119.41000 ″ W
2	34.08330 ° N	119.35670 ″ W
3	34.06450 ° N	119.35670 ″ W
4	34.06210 ° N	119.41000 ″ W
5	34.08330 ° N	119.41000 ″ W

B.8. SANTA BARBARA ISLAND MARINE RESERVE

The Santa Barbara Island Marine Reserve (Santa Barbara) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table B–8, and the following textual description.

The Santa Barbara boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary northeastward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line. The boundary then extends from Point 5 to Point 6 along a straight line.

TABLE B–8—SANTA BARBARA ISLAND MARINE RESERVE

Point	Latitude	Longitude
1	33.36320 ° N	118.90879 ″ W
2	33.36320 ° N	119.03670 ″ W
3	33.41680 ° N	119.03670 ″ W
4	33.47500 ° N	118.97080 ″ W
5	33.47500 ° N	118.90879 ″ W
6	33.36320 ° N	118.90879 ″ W

[72 FR 29233, May 24, 2007]

APPENDIX C TO SUBPART G OF PART 922—MARINE CONSERVATION AREA BOUNDARY

C.1. ANACAPA ISLAND MARINE CONSERVATION AREA

The Anacapa Island Marine Conservation Area (AIMCA) boundary is defined by the 3 nmi State boundary, the coordinates provided in Table C–1, and the following textual description.

The AIMCA boundary extends from Point 1 to Point 2 along a straight line. It then extends to the 3 nmi State boundary where a line defined by connecting Point 2 and Point 3 with a straight line intersects the 3 nmi State boundary. The boundary follows the 3 nmi State boundary westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the 3 nmi State boundary to Point 5 along a straight line.

TABLE C–1—ANACAPA ISLAND MARINE CONSERVATION AREA

Point	Latitude	Longitude
1	34.08330 ° N	119.44500 ″ W
2	34.08330 ° N	119.41000 ″ W
3	34.06210 ° N	119.41000 ″ W
4	34.06300 ° N	119.44500 ″ W
5	34.08330 ° N	119.44500 ″ W

[72 FR 29233, May 24, 2007; 72 FR 42317, Aug. 2, 2007]

Subpart H—Greater Farallones National Marine Sanctuary

SOURCE: 80 FR 13108, Mar. 12, 2015, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to subpart H appear at 80 FR 34048, June 15, 2015.

§ 922.80 Boundary.

(a) Greater Farallones National Marine Sanctuary (Sanctuary) encompasses an area of approximately 2,488 square nautical miles (nmi^2) (3,295 sq. mi.) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands and Noonday Rock along the northern coast of California. The precise boundary coordinates are listed in appendix A to this subpart.

(b) The western boundary of the Sanctuary extends south from Point 1 approximately 45 nautical miles (52 miles) to Point 2, which is the northwestern corner of Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then extends from Point 2 approximately 38 nautical miles (43 miles) east along the northern boundary of CBNMS to Point 3, which is approximately 6 nautical miles (7 miles) west of Bodega Head. From Point 3 the Sanctuary boundary continues south and west to Points 4 through 19 (in numerical sequence) and is coterminous with the eastern boundary of CBNMS. From Point 19 the Sanctuary boundary continues south and east to Points 20 through 25 (in numerical sequence) until it intersects the boundary for Monterey Bay National Marine Sanctuary (MBNMS) at Point 26. From Point 26 the Sanctuary

boundary extends eastward and northward, coterminous with MBNMS, to Points 27 through 33 (in numerical sequence). From Point 33 the boundary proceeds along a straight line arc towards Point 34 until it intersects the Mean High Water Line at Rocky Point, California. From this intersection the Sanctuary boundary follows the Mean High Water Line northward until it intersects the boundary for Point Reyes National Seashore approximately 0.7 nautical miles (0.8 miles) south and east of Bolinas Point in Marin County, California. The Sanctuary boundary then approximates the boundary for Point Reyes National Seashore, as established at the time of designation of the Sanctuary, to the intersection of the Point Reyes National Seashore boundary and the Mean High Water Line approximately 0.13 nautical miles (0.15 miles) south and east of Duck Cove in Tomales Bay. The Sanctuary boundary then follows the Mean High Water Line along Tomales Bay and up Lagunitas Creek to the U.S. Highway 1 Bridge. Here the Sanctuary boundary crosses Lagunitas Creek and follows the Mean High Water Line north to the Estero de San Antonio and up the Estero to the tide gate at Valley Ford-Franklin School Road. Here the Sanctuary boundary crosses the Estero de San Antonio and proceeds west and north following the Mean High Water Line to the Estero Americano and up the Estero to the bridge at Valley Ford-Estero Road. Here the Sanctuary boundary crosses the Estero Americano and proceeds west and north following the Mean High Water Line towards Salmon Creek. Approaching Salmon Creek the boundary continues along the Mean High Water Line until it intersects a straight line arc that passes through Points 35 and 36. From that intersection the boundary extends across the creek along the straight line arc towards Point 36 until it again intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line north towards the Russian River. Approaching the Russian River the boundary continues along the Mean High Water Line until it intersects a straight line arc that passes through Points 37 and Point 38. At that intersection the boundary extends across the river along the straight line arc towards Point 38 until it again intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line north towards the Gualala River. Approaching the Gualala River the boundary continues along the Mean High Water Line until it intersects a straight line arc that passes through Points 39 and Point 40. At that intersection the boundary extends across the river along the straight line arc towards Point 40 until it again intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line north to Arena Cove in Mendocino County. Approaching Arena Cove the boundary continues along the Mean High Water Line until it intersects a straight line arc that passes through Points 41 and Point 42. At that intersection the boundary extends across the cove along the straight line arc towards Point 42 until it again intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line north towards the Garcia River. Approaching the Garcia River the boundary continues along the Mean High Water Line until it intersects a straight line arc that passes through Points 43 and Point 44. At that intersection the boundary extends across the river along the straight line arc towards Point 44 until it intersects the Mean High Water Line. The Sanctuary boundary then continues north following the Mean High Water Line until it intersects the rhumb line connecting Point 45 and Point 46. From this intersection the Sanctuary boundary continues west along its northernmost extent to Point 46. The Sanctuary includes Bolinas Lagoon, Estero de San Antonio (to the tide gate at Valley Ford-Franklin School Road) and Estero Americano (to the bridge at Valley Ford-Estero Road), as well as Bodega Bay, but does not include Bodega Harbor, the Salmon Creek Estuary, the Russian River Estuary, the Gualala River Estuary, Arena Cove, or the Garcia River Estuary. Unless otherwise specified, where the Sanctuary boundary crosses a waterway, the Sanctuary

excludes this waterway upstream of the crossing.

[80 FR 13108, Mar. 12, 2015; 88 FR 965, Jan. 6, 2023]

§ 922.81 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Motorized personal watercraft means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.

Routine maintenance means customary and standard procedures for maintaining docks or piers.

Special Wildlife Protection Zones are areas surrounding or adjacent to high abundance of white sharks, breeding pinnipeds (seals and sea lions) or high abundance and high biological diversity of breeding birds that are susceptible to human caused disturbance, including federally listed and specially protected species. Coordinates for Special Wildlife Protection Zones are found in appendix C of this Subpart.

[80 FR 13108, Mar. 12, 2015, as amended at 88 FR 965, Jan. 6, 2023; 88 FR 19826, Apr. 4, 2023]

§ 922.82 Prohibited or otherwise regulated activities.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Exploring for, developing, or producing oil, gas or minerals.

(2) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(ii) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) that is approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(iii) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(iv) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(v) Vessel engine or generator exhaust; or

(vi) For a United States Coast Guard vessel without sufficient holding tank capacity and without a Type I or II marine sanitation device, and operating within the designated area [2015 expansion area] defined in appendix G of this subpart, sewage and non-clean graywater as defined by section 312 of the FWPCA generated incidental to vessel use, and ammunition, pyrotechnics or other materials directly related to search and rescue and live ammunition training activities conducted by United States Coast Guard vessels and aircraft in the designated areas defined in appendix G of this subpart.

(3) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(4) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the material or other matter excepted in paragraphs (a)(2)(i) through (vi) and (a)(3) of this section.

(5) Constructing any structure other than a navigation aid on or in the submerged lands of the Sanctuary; placing

or abandoning any structure on or in the submerged lands of the Sanctuary; or drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary in any way, except:

(i) By anchoring vessels (in a manner not otherwise prohibited by this part (see paragraph (a)(16) of this section);

(ii) While conducting lawful fishing activities;

(iii) Routine maintenance and construction of docks and piers on Tomales Bay; or

(iv) Aquaculture activities conducted pursuant to a valid lease, permit, license or other authorization issued by the State of California.

(6) Operating motorized personal watercraft (MPWC) anywhere in Bodega Bay and anywhere in the Sanctuary south of 38.29800 degrees North Latitude (the southernmost tip of Bodega Head), except for emergency search and rescue missions or law enforcement operations (other than routine training activities) carried out by the National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions.

(7) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act (ESA), as amended, 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle, or bird taken, except as authorized by the MMPA, ESA, MBTA, by any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(9) Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource.

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except:

(i) Striped bass (*Morone saxatilis*) released during catch and release fishing activity; or

(ii) Species cultivated by commercial shellfish aquaculture activities in Tomales Bay pursuant to a valid lease, permit, license or other authorization issued by the State of California. Tomales Bay is defined in § 922.80. The coordinates for the northern terminus of Tomales Bay are listed in appendix C to this subpart.

(11) Disturbing marine mammals or seabirds by flying motorized aircraft at less than 1,000 feet over the waters within any of the seven designated Special Wildlife Protection Zones described in appendix D to this subpart, except transiting Zone 6 to transport persons or supplies to or from Southeast Farallon Island authorized by the U.S. Fish and Wildlife Service, Farallon National Wildlife Refuge, or for enforcement purposes. Failure to maintain a minimum altitude of 1,000 feet above ground level over such waters is presumed to disturb marine mammals or seabirds.

(12) Operating any vessel engaged in the trade of carrying cargo within any area designated Special Wildlife Protection Zone or within one nautical mile from these zones. The coordinates are listed in appendix E to this subpart. This includes but is not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations, except to transport persons or supplies to or from the Farallon Islands. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(13) Attracting a white shark anywhere in the Sanctuary; or approaching within 50 meters of any white shark within Special Wildlife Protection Zone 6 and 7 or within one nautical mile from these zones The coordinates are listed in appendix F to this subpart.

(14) Deserting a vessel aground, at anchor, or adrift in the Sanctuary.

(15) Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(16) Anchoring a vessel in a designated seagrass protection zone in Tomales Bay, except as necessary for

aquaculture operations conducted pursuant to a valid lease, permit or license. The coordinates for the no-anchoring seagrass protection zones are listed in Appendix B to this subpart.

(17) 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) 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 shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with subpart D of this part.

(d) The prohibitions in paragraphs (a)(2) through (9) and (11) through (16) 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 in accordance with subpart D of this part and § 922.83, or a special use permit issued pursuant to subpart D of this part.

[80 FR 13108, Mar. 12, 2015, as amended at 83 FR 55966, Nov. 9, 2018; 88 FR 965, Jan. 6, 2023; 88 FR 19826, Apr. 4, 2023]

§ 922.83 Permit procedures and issuance criteria.

(a) A person may conduct an activity otherwise prohibited by § 922.82(a)(2) through (9) and (11) through (16) if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Greater Farallones National Marine Sanctuary, 991 Marine Dr., The Presidio, San Francisco, CA 94129.

[88 FR 966, Jan. 6, 2023, as amended at 88 FR 19826, Apr. 4, 2023]

§ 922.84 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.82(a)(1) through (17) if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence prior to the June 9, 2015 effective date of sanctuary expansion and within the sanctuary expansion area and complies with § 922.10 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

(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) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit, license, or other authorization and the issuing agency and shall set forth reason(s) for the action taken.

(d) Requests for findings or certifications should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, Greater Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) For an activity described in paragraph (a) of this section, the holder of the authorization or right may conduct the activity prohibited by § 922.82 (a)(1) through (17) provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date

of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

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

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(f) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by §922.82 may conduct the activity without being in violation of applicable provisions of §922.82, pending final agency action on his or her certification request, provided the holder is otherwise in compliance with this section.

(g) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(h) The Director may amend any certification made under this section whenever additional information becomes available that he determines justifies such an amendment.

(i) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in §922.37.

(k) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

[80 FR 13108, Mar. 12, 2015, as amended at 88 FR 19829, Apr. 4, 2023]

§922.85 Review of State permits and leases for certain aquaculture projects.

NOAA has described in a Memorandum of Agreement (MOA) with the State of California how the State will consult and coordinate with NOAA to review any new, amended or expanded lease or permit application for aquaculture projects in Tomales Bay involving introduced species.

Appendix A to Subpart H of Part 922—Greater Farallones National Marine Sanctuary Boundary Coordinates

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID No.	Latitude	Longitude
1	39.00000	−124.33350
2	38.29989	−123.99988
3	38.29989	−123.20005
4	38.26390	−123.18138
5	38.21001	−123.11913
6	38.16576	−123.09207
7	38.14072	−123.08237
8	38.12829	−123.08742
9	38.10215	−123.09804
10	38.09069	−123.10387
11	38.07898	−123.10924
12	38.06505	−123.11711
13	38.05202	−123.12827
14	37.99227	−123.14137
15	37.98947	−123.23615
16	37.95880	−123.32312
17	37.90464	−123.38958
18	37.83480	−123.42579
19	37.76687	−123.42694
20	37.75932	−123.42686
21	37.68892	−123.39274
22	37.63356	−123.32819
23	37.60123	−123.24292
24	37.59165	−123.22641
25	37.56305	−123.19859
26	37.52001	−123.12879
27	37.50819	−123.09617
28	37.49418	−123.00770
29	37.50948	−122.90614
30	37.52988	−122.85988
31	37.57147	−122.80399
32	37.61622	−122.76937
33	37.66641	−122.75105
34*	37.88225	−122.62753
35*	38.35045	−123.06711
36*	38.35665	−123.06724
37*	38.44575	−123.12602
38*	38.45531	−123.13469
39*	38.76231	−123.52957
40*	38.76941	−123.53541

Point ID No.	Latitude	Longitude
41*	38.91136	−123.71061
42*	38.91766	−123.72568
43*	38.95404	−123.73405
44*	38.95944	−123.71820
45*	39.00000	−123.69710
46	39.00000	−124.33350

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

Appendix B to Subpart H of Part 922—No-Anchoring Seagrass Protection Zones in Tomales Bay

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

(1) No-Anchoring Seagrass Protection Zone 1 encompasses an area of approximately .11 square nautical miles (.15 square miles) offshore south of Millerton Point. The precise boundary coordinates are listed in the table following this description. The eastern boundary is a straight line arc that connects points 1 and 2 listed in the coordinate table below. The southern boundary is a straight line arc that connects points 2 and 3, the western boundary is a straight line arc that connects points 3 and 4 and the northern boundary is a straight line arc that connects point 4 to point 5.

Zone 1 Point ID No.	Latitude	Longitude
1	38.10571	−122.84565
2	38.09888	−122.83603
3	38.09878	−122.84431
4	38.10514	−122.84904
5	38.10571	−122.84565

(2) No-Anchoring Seagrass Protection Zone 2 encompasses an area of approximately .15 square nautical miles (.19 square miles) that begins just south of Marconi and extends approximately 1.6 nautical miles (1.9 miles) south along the eastern shore of Tomales Bay. The precise boundary coordinates are listed in the table following this description. The western boundary is a series of straight line arcs that sequentially connect point 1 to point 5 listed in the coordinate table below. The southern boundary is a straight line arc that extends from point 5 towards point 6 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line north until it intersects the straight line arc that connects point 7 to point 8. From this intersection the northern boundary extends to point 8.

Zone 2 Point ID No.	Latitude	Longitude
1	38.13326	−122.87178
2	38.12724	−122.86488
3	38.12563	−122.86480
4	38.11899	−122.86731
5	38.11386	−122.85851
6*	38.11608	−122.85813
7*	38.14078	−122.87433
8	38.13326	−122.87178

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(3) No-Anchoring Seagrass Protection Zone 3 encompasses an area of approximately .01 square nautical miles (.02 square miles) that begins just south of Marshall and extends approximately .5 nautical miles (.6 miles) south along the eastern shore of Tomales Bay. The precise boundary coordinates are listed in the table following this description. The western boundary is a straight line arc that connects point 1 to point 2 listed in the coordinate table below. The southern boundary is a straight line arc that extends from point 2 towards point 3 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line northward until it intersects the straight line arc that connects point 4 to point 5. From this intersection the northern boundary extends westward along the straight line arc that connects point 4 to point 5.

Zone 3 Point ID No.	Latitude	Longitude
1	38.15956	−122.89573
2	38.15250	−122.89042
3*	38.15292	−122.88984
4*	38.16031	−122.89442
5	38.15956	−122.89573

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(4) No-Anchoring Seagrass Protection Zone 4 is an area of approximately .18 square nautical miles (.21 square miles) that begins just north of Nicks Cove and extends approximately 2.7 nautical miles (3.1 miles) south along the eastern shore of Tomales Bay to just south of Cypress Grove. The precise boundary coordinates are listed in the table following this description. The western boundary is a series of straight line arcs that sequentially connect point 1 to point 8 listed in the coordinate table below. The southern boundary is a straight line arc that extends from point 8 towards point 9 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line north until it intersects the straight line arc that connects point 10 to point 11. From this intersection the northern boundary extends westward along the straight line arc that connects point 10 to point 11.

Zone 4 Point ID No.	Latitude	Longitude
1	38.20004	−122.92315
2	38.18881	−122.91740
3	38.18651	−122.91404
4	38.17919	−122.91021
5	38.17450	−122.90545
6	38.16869	−122.90475
7	38.16535	−122.90308
8	38.16227	−122.89650
9*	38.16266	−122.89620
10*	38.20080	−122.92174
11	38.20004	−122.92315

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(5) No-Anchoring Seagrass Protection Zone 5 encompasses an area of approximately 1.3 square nautical miles (1.6 square miles) that begins east of Lawson's Landing and extends approximately 2.7 nautical miles (3.1 miles) east and south along the eastern shore of Tomales Bay but excludes areas adjacent (approximately .32 nautical miles or .37 miles) to the mouth of Walker Creek. The precise boundary coordinates are listed in the table following this description. The western boundary is a series of straight line arcs that sequentially connect point 1 to point 3 listed in the coordinate table below. From point 3 the southern boundary trends eastward along the straight line arc that connects point 3 to point 4 until it intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line northward until it intersects the straight line arc that connects point 5 to point 6. From this intersection the boundary extends westward along the straight line arc that connects point 5 to point 6. From point 6 the boundary follows the straight line arc that connects point 6 to point 7, and then extends along the straight line arc that connects point 7 to point 8 until it again intersects the Mean High Water Line. From this intersection the boundary follows the Mean High Water Line until it intersects the straight line arc that connects point 9 to point 10. From this intersection the boundary extends to point 10 along the straight line arc that connects point 9 to point 10.

Zone 5 Point ID No.	Latitude	Longitude
1	38.21825	−122.96041
2	38.20666	−122.94397
3	38.19431	−122.93431
4*	38.20080	−122.92174
5*	38.20522	−122.92446
6	38.20366	−122.93246
7	38.20938	−122.94153
8*	38.21599	−122.93742
9*	38.23129	−122.96293
10	38.21825	−122.96041

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(6) No-Anchoring Seagrass Protection Zone 6 encompasses an area of approximately .01 square nautical miles (.02 square miles) in the vicinity of Indian Beach along the western shore of Tomales Bay. The precise boundary coordinates are listed in the table following this description. The eastern boundary is a straight line arc that connects point 1 to point 2 listed in the coordinate table below. The southern boundary extends westward along the straight line arc that connects point 2 to point 3 until it intersects the Mean High Water Line. From this intersection the eastern boundary follows the Mean High Water Line northward until it intersects the straight line arc that connects point 3 to point 4. From this intersection the northern boundary extends eastward along the straight line arc that connects point 4 to point 5.

Zone 6 Point ID No.	Latitude	Longitude
1	38.14103	−122.89537
2	38.13919	−122.89391
3*	38.13804	−122.89610
4*	38.14033	−122.89683
5	38.14103	−122.89537

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(7) No-Anchoring Seagrass Protection Zone 7 encompasses an area of approximately .09 square nautical miles (.12 square miles) that begins just south of Pebble Beach and extends approximately 1.6 nautical miles (1.9 miles) south along the western shore of Tomales Bay. The precise boundary coordinates are listed in the table following this description. The eastern boundary is a series of straight line arcs that sequentially connect point 1 to point 5 listed in the coordinate table below. The southern boundary extends along the straight line arc that connects point 5 to point 6 until it intersects the Mean High Water Line. From this intersection the western boundary extends north along the Mean High Water Line until it intersects the straight line arc that connects point 7 to point 8. From this intersection the northern boundary extends eastward along the straight line arc that connects point 7 to point 8.

Zone 7 Point ID No.	Latitude	Longitude
1	38.13067	−122.88620
2	38.12362	−122.87984
3	38.11916	−122.87491
4	38.11486	−122.86896
5	38.11096	−122.86468
6*	38.11027	−122.86551
7*	38.13001	−122.88749

Zone 7 Point ID No.	Latitude	Longitude
8	38.13067	−122.88620

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

APPENDIX C TO SUBPART H OF PART 922—NORTHERN EXTENT OF TOMALES BAY

For the purpose of §922.82(a)(10)(ii), NOAA is codifying the northern geographical extent of Tomales Bay via a line running from Avalis Beach (Point 1) east to Sand Point (Point 2). Coordinates listed in this Appendix are unprojected (geographic) and based on the North American Datum of 1983.

Point ID No. Tomales Bay Boundary	Latitude	Longitude
1	38.23165	−122.98148
2	38.23165	−122.96955

APPENDIX D TO SUBPART H OF PART 922—SPECIAL WILDLIFE PROTECTION ZONES WITHIN THE SANCTUARY

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

(1) Special Wildlife Protection Zone 1 (SWPZ 1) encompasses an area of approximately 7.9 square nautical miles (10.5 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 1 extends south from Point 1, west of Haven's Neck in Mendocino County, to Point 2, west of Del Mar Point. The boundary then extends east from Point 2 along a straight line arc connecting Point 2 and Point 3 until it intersects the Mean High Water Line at Del Mar Point. The SWPZ 1 boundary then turns north to follow the Mean High Water Line towards Haven's Neck and continues until it intersects a straight line arc connecting Point 4 and Point 5. From this intersection the Sanctuary boundary continues west along its northernmost extent to Point 5.

Zone 1 Point ID No.	Latitude	Longitude
1	38.80865	−123.63227
2	38.74096	−123.54306
3*	38.74096	−123.51051
4*	38.80865	−123.60195
5	38.80865	−123.63227

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(2) Special Wildlife Protection Zone 2 (SWPZ 2) encompasses an area of approximately 16.2 square nautical miles (21.4 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 2 extends south and east from Point 1, south of Windermere Point in Sonoma County, to Point 2 and then to Point 3 in sequence. Point 3 is west of Duncans Point in Sonoma County. The boundary then extends east from Point 3 along a straight line arc connecting Point 3 and Point 4 until it intersects the Mean High Water Line at Duncans Point. The boundary then turns north to follow the Mean High Water Line towards Windermere Point until it intersects a straight line arc connecting Point 5 and Point 6. From this intersection the boundary continues due south along a straight line arc to Point 6.

Zone 2 Point ID No.	Latitude	Longitude
1	38.49854	−123.26804
2	38.45095	−123.18564
3	38.39311	−123.12068
4*	38.39311	−123.09527
5*	38.52487	−123.26804
6	38.49854	−123.26804

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(3) Special Wildlife Protection Zone 3 (SWPZ 3) encompasses an area of approximately 7 square nautical miles (9.3 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 3 extends south and east from Point 1, southwest of the Estero de San Antonio in Sonoma County, to Point 2, south of Tomales Point in Marin County. The boundary then extends north and east from Point 2 along a straight line arc connecting Point 2 and Point 3 until it intersects the boundary of the Point Reyes National Seashore. From this intersection the SWPZ 3 boundary follows the Point Reyes National Seashore boundary around Tomales Point into Tomales Bay and continues until it again intersects the straight line arc that connects Point 2 and Point 3. From this intersection the SWPZ 3 boundary follows the straight line arc north and east toward Point 3 until it intersects the Mean High Water Line at Toms Point in Tomales Bay. The SWPZ 3 boundary then follows the Mean High Water Line northward towards the Estero de San Antonio until it intersects the straight line arc that connects Point 4 and Point 5. From this intersection the Sanctuary boundary continues south and west to Point 5.

Zone 3 Point ID No.	Latitude	Longitude
1	38.24001	−123.02963
2	38.19249	−122.99523

Zone 3 Point ID No.	Latitude	Longitude
3*	38.21544	−122.95286
4*	38.27011	−122.97840
5	38.24001	−123.02963

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(4) Special Wildlife Protection Zone 4 (SWPZ 4) encompasses an area of approximately 10.2 square nautical miles (13.5 square miles). The precise boundary coordinates are list in the table following this description. The western boundary of SWPZ 4 extends south and west from Point 1, west of Point Reyes in Marin County, to Point 2, south and west of Point Reyes Lighthouse. The boundary then follows a straight line arc east and south from Point 2 to Point 3. From Point 3 the boundary follows a straight line arc north to Point 4. From Point 4 the SWPZ 4 boundary proceeds west along the straight line arc that connects Point 4 and Point 5 until it intersects the Point Reyes National Seashore boundary north of Chimney Rock. The SWPZ 4 boundary then follows the Point Reyes National Seashore boundary around Point Reyes until it again intersects the straight line arc that connects Point 4 and Point 5 north of the Point Reyes Lighthouse. From this intersection the SWPZ 4 boundary turns seaward and continues west to Point 5.

Zone 4 Point ID No.	Latitude	Longitude
1	38.01475	−123.05013
2	37.97536	−123.05482
3	37.96521	−122.93771
4	38.00555	−122.93504
5	38.01475	−123.05013

(5) Special Wildlife Protection Zone 5 (SWPZ 5) encompasses an area of approximately 14.8 square nautical miles (19.6 square miles). The precise boundary coordinates are listed in the table following this description. The western boundary of SWPZ 5 extends south and east from Point 1, near Millers Point in Marin County, to Point 2, which is south and west of Bolinas Point. The SWPZ 5 boundary then follows a straight line arc east from Point 2 towards Point 3 until it intersects the Mean High Water Line at Rocky Point. From this intersection, the SWPZ 5 boundary follows the Sanctuary boundary north to Bolinas Point and Millers Point, respectively, including Bolinas Lagoon but not including Seadrift Lagoon, until it intersects the straight line arc that connects Point 4 and Point 5. From this intersection the SWPZ 5 boundary turns seaward and continues west and south along the straight line arc to Point 5.

Zone 5 Point ID No.	Latitude	Longitude
1	37.96579	−122.83284
2	37.88195	−122.73989
3*	37.88195	−122.62873
4*	37.98234	−122.81513
5	37.96579	−122.83284

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(6) Special Wildlife Protection Zone 6 (SWPZ 6) encompasses an area of approximately 6.8 square nautical miles (9 square miles) and extends from the Mean High Water Line seaward to the SWPZ 6 boundary. The precise boundary coordinates are listed in the table following this description. The boundary of SWPZ 6 extends south and west from Point 1, north of Southeast Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 6 Point ID No.	Latitude	Longitude
1	37.72976	−123.00961
2	37.69697	−123.04374
3	37.66944	−123.00176
4	37.70246	−122.96608
5	37.72976	−123.00961

(7) Special Wildlife Protection Zone 7 (SWPZ 7) encompasses an area of approximately 6 square nautical miles (7.9 square miles) and extends from the Mean High Water Line seaward to the SWPZ 7 boundary. The precise boundary coordinates are listed in the table following this description. The boundary of SWPZ 7 extends south and west from Point 1, north of North Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 7 Point ID No.	Latitude	Longitude
1	37.79568	−123.10845
2	37.76746	−123.13869
3	37.73947	−123.09341
4	37.76687	−123.06330
5	37.79568	−123.10845

Appendix E to Subpart H of Part 922—Cargo Vessel Prohibition Zones in the Sanctuary

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

(1) Cargo Vessel Prohibition Zone 1 (CVPZ 1) is an area of approximately 20 square nautical miles (26 square miles) immediately offshore of Anchor Bay. The precise boundary coordinates are listed in the table following this description. The western boundary of extends south and east from Point 1, north and west of Haven's Neck, to Point 2, west and south of Del Mar Point. The CVPZ 1 boundary then extends east from Point 2 along a straight line arc connecting Point 2 and Point 3 until it intersects the Sanctuary boundary. The CVPZ 1 boundary then turns north to follow the Sanctuary boundary past Haven's Neck and continues until it intersects the straight line arc connecting Point 4 and Point 5. From this intersection the CVPZ 1 boundary continues west along its northernmost extent to Point 5.

Zone 1 Point ID No.	Latitude	Longitude
1	38.82485	−123.68420
2	38.72330	−123.55145
3*	38.72330	−123.47658
4*	38.82485	−123.60953
5	38.82485	−123.68420

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(2) Cargo Vessel Prohibition Zone 2 (CVPZ 2) encompasses an area of approximately 30 square nautical miles (40 square miles). The precise boundary coordinates are listed in the table following this description. The western CVPZ 2 boundary extends south and east from Point 1, west of Windermere Point in Sonoma County, to Point 2 and then to Point 3 in sequence. Point 3 is west of Duncans Point in Sonoma County. The CVPZ 2 boundary then extends east from Point 3 along a straight line arc connecting Point 3 and Point 4 until it intersects the Sanctuary boundary south of Duncans Point. The CVPZ 2 boundary then turns north to follow the Sanctuary boundary past Windermere Point until it intersects the straight line arc connecting Point 5 and Point 6. From this intersection the CVPZ 2 boundary continues due south along this straight line arc to Point 6.

Zone 2 Point ID No.	Latitude	Longitude
1	38.48995	−123.28994
2	38.43749	−123.19789
3	38.37614	−123.13153
4*	38.37614	−123.07843
5*	38.54099	−123.28994
6	38.48995	−123.28994

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(3) Cargo Vessel Prohibition Zone 3 (CVPZ 3) encompasses an area of approximately 17 square nautical miles (22 square miles). The precise boundary coordinates are listed in the table following this description. The western CVPZ 3 boundary extends south and east from Point 1, west of the Estero de San Antonio in Sonoma County, to Point 2, south of Tomales Point in Marin County. The CVPZ 3 boundary then extends north and east from Point 2 along a straight line arc connecting Point 2 and Point 3 until it intersects the Sanctuary boundary. From this intersection the CVPZ 3 boundary follows the Sanctuary boundary around Tomales Point into Tomales Bay and continues until it again intersects the straight line arc that connects Point 2 and Point 3. From this intersection the CVPZ 3 boundary follows the straight line arc north and east across Tomales Bay until it intersects the Sanctuary boundary south of Toms Point in Tomales Bay. The CVPZ 3 boundary then follows the Sanctuary boundary northward past the Estero de San Antonio until it intersects the straight line arc that connects Point 4 and Point 5. From this intersection the boundary continues south and west to Point 5.

Zone 3 Point ID No.	Latitude	Longitude
1	38.24496	−123.05698
2	38.16758	−123.00179
3*	38.21170	−122.92566
4*	38.28215	−122.99278
5	38.24496	−123.05698

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(4) Cargo Vessel Prohibition Zone 4 (CVPZ 4) encompasses an area of approximately 28 square nautical miles (37 square miles). The precise boundary coordinates are listed in the table following this description. The western CVPZ 4 boundary extends south and west from Point 1, west and north of Point Reyes in Marin County, to Point 2, south and west of Point Reyes Lighthouse. The CVPZ 4 boundary then follows a straight line arc east and south from Point 2 to Point 3. From Point 3 the CVPZ 4 boundary follows a straight line arc north to Point 4. From Point 4 the CVPZ 4 boundary proceeds west along the straight line arc that connects Point 4 and Point 5 until it intersects the Sanctuary boundary at Drakes Beach. The CVPZ 4 boundary then follows the Sanctuary boundary around Point Reyes until it again intersects the straight line arc that connects Point 4 and Point 5, north of the Point Reyes Lighthouse. From this intersection the CVPZ 4 boundary turns seaward and continues west to Point 5 along this arc.

Zone 4 Point ID No.	Latitude	Longitude
1	38.03311	−123.06923
2	37.96053	−123.07801

Zone 4 Point ID No.	Latitude	Longitude
3	37.94655	−122.91781
4	38.02026	−122.91261
5	38.03311	−123.06923

(5) Cargo Vessel Prohibition Zone 5 (CVPZ 5) encompasses an area of approximately 29 square nautical miles (39 square miles). The precise boundary coordinates are listed in the table following this description. The western CVPZ 5 boundary extends south and east from Point 1, west of Millers Point in Marin County, to Point 2, south and west of Bolinas Point. The CVPZ 5 boundary then follows a straight line arc east from Point 2 towards Point 3 until it intersects the Sanctuary boundary. From this intersection, the CVPZ 5 boundary follows the Sanctuary boundary north towards Rocky Point and continues along the Sanctuary boundary past Bolinas Point and Millers Point, respectively, including Bolinas Lagoon but not including Seadrift Lagoon, until it intersects the straight line arc that connects Point 4 and Point 5. From this intersection the CVPZ 5 boundary turns seaward and continues west and south along the straight line arc to Point 5.

Zone 5 Point ID No.	Latitude	Longitude
1	37.96598	−122.85997
2	37.86532	−122.74797
3*	37.86532	−122.63720
4*	37.99449	−122.82841
5	37.96598	−122.85997

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the zone boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

(6) Cargo Vessel Prohibition Zone 6 (CVPZ 6) encompasses an area of approximately 21 square nautical miles (28 square miles) surrounding Southeast Farallon Island and extends from the Mean High Water Line to the CVPZ 6 boundary. The precise boundary coordinates are listed in the table following this description. The boundary extends south and west from Point 1, north of Southeast Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 6 Point ID No.	Latitude	Longitude
1	37.75264	−123.01175
2	37.69461	−123.07333
3	37.64621	−122.99867
4	37.70538	−122.93567
5	37.75264	−123.01175

(7) Cargo Vessel Prohibition Zone 7 (CVPZ 7) encompasses an area of approximately 20 square nautical miles (26 square miles) surrounding the North Farallon Islands and extends from the Mean High Water Line to the CVPZ 7 boundary. The precise boundary coordinates are listed in the table following this description. The boundary extends south and west from Point 1, north of North Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 7 Point ID No.	Latitude	Longitude
1	37.81914	−123.11155
2	37.76497	−123.16939
3	37.71623	−123.09089
4	37.76872	−123.03359
5	37.81914	−123.11155

Appendix F to Subpart H of Part 922—White Shark Approach Prohibition Zones in the Sanctuary

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

(1) White Shark Approach Prohibition Zone 1 (WSAPZ 1) encompasses an area of approximately 21 square nautical miles (28 square miles) surrounding Southeast Farallon Island and extends from the Mean High Water Line to the WSAPZ 1 boundary. The precise boundary coordinates are listed in the table following this description. The boundary extends south and west from Point 1, north of Southeast Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 1 Point ID No.	Latitude	Longitude
1	37.75264	−123.01175
2	37.69461	−123.07333
3	37.64621	−122.99867
4	37.70538	−122.93567
5	37.75264	−123.01175

(2) White Shark Approach Prohibition Zone 2 (WSAPZ 2) encompasses an area of approximately 20 square nautical miles (26 square miles) surrounding the North Farallon Islands and extends from the Mean High Water Line to the WSAPZ 2 boundary. The precise boundary coordinates are listed in the table following this description. The boundary extends south and west from Point 1, north of North Farallon Island, along a straight line arc to Point 2, then south and east along a straight line arc to Point 3, then north and east along a straight line arc to Point 4, then north and west along a straight line arc to Point 5.

Zone 2 Point ID No.	Latitude	Longitude
1	37.81914	−123.11155
2	37.76497	−123.16939
3	37.71623	−123.09089
4	37.76872	−123.03359
5	37.81914	−123.11155

APPENDIX G TO SUBPART H OF PART 922—DESIGNATED AREA FOR CERTAIN UNITED STATES COAST GUARD DISCHARGES

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

The portion of the Greater Farallones National Marine Sanctuary area [2015 expansion area] where the exception for discharges from United States Coast Guard activities applies is defined as follows. Beginning with Point 1 identified in the coordinate table in this appendix, the boundary extends from Point 1 to Point 2 in a straight line arc, and continues from Point 2 to Point 3 in a straight line arc, and from Point 3 to Point 4 in a straight line arc. From Point 4 the boundary extends east and north along a straight line arc towards Point 5 until it intersects the fixed offshore boundary between the United States and California (approximately 3 NM seaward of the coast as defined in *United States* vs. *California*, 135 S. Ct. 563 (2014)). The boundary then extends northward following the fixed offshore boundary between the United States and California until it intersects the line segment formed between Point 6 and Point 7. From this intersection, the boundary extends west along the northern boundary of Greater Farallones National Marine Sanctuary to Point 7 where it ends.

Point No.	Latitude	Longitude
1	39.00000	−124.33350
2	38.29989	−123.99988
3	38.29989	−123.20005
4	38.26390	−123.18138
5[1]	38.29896	−123.05989
6[1]	39.00000	−123.75777
7	39.00000	−124.33350

[1] These coordinates are not a part of the boundary for the Designated Area for Certain United States Coast Guard Discharges. These coordinates are reference points used to draw line segments that intersect with the fixed offshore boundary between the United States and California.

[83 FR 55966, Nov. 9, 2018]

Subpart I—Gray's Reef National Marine Sanctuary

SOURCE: 71 FR 60063, Oct. 12, 2006, unless otherwise noted.

§ 922.90 Boundary.

The Gray's Reef National Marine Sanctuary (Sanctuary) consists of approximately 16.68 square nautical miles (nmi^2) (22 sq. mi.) of ocean waters and the submerged lands thereunder, off the coast of Georgia. The Sanctuary boundary includes all waters and submerged lands within the geodetic lines connecting the following coordinates beginning at Point 1 and continuing to each subsequent point in numerical order ending at Point 5. (Coordinates listed are unprojected (geographic) and based on the North American Datum of 1983.):

TABLE 1 TO § 922.90

Point	Latitude	Longitude
1	31.36273	−80.92120
2	31.42106	−80.92120
3	31.42106	−80.82814
4	31.36273	−80.82814
5	31.36273	−80.92120

[88 FR 966, Jan. 6, 2023]

§ 922.91 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Handline means fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.

Rod and reel means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually or electrically.

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, partially disassembled, or stowed for transit.

[80 FR 13108, Mar. 12, 2015, as amended at 88 FR 966, Jan. 6, 2023]

§ 922.92 Prohibited or otherwise regulated activities—Sanctuary-wide.

(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 subpart D of this part and § 922.93 and § 922.94, the following activities are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Dredging, drilling into, or otherwise altering in any way the submerged lands of the Sanctuary (including bottom formations).

(2) Constructing any structure other than a navigation aid, or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands of the Sanctuary except weighted marker buoys that are continuously tended and used during otherwise lawful fishing or diving activities and that are not attached to a vessel and not capable of holding a boat at anchor. Weights used with a marker buoy shall not have a combined weight of more than 10 pounds, shall be attached with not greater than one-fourth inch (¼″) line and shall be removed from the Sanctuary within twelve (12) hours of deployment. Any weighted marker buoy that is not continuously tended may be removed by the Assistant Administrator or designee or an authorized officer, without notice.

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

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

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling water.

(4) Operating a watercraft other than in accordance with the Federal rules and regulations that would apply if there were no Sanctuary.

(5)(i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead, within the Sanctuary by any means except by use of rod and reel, and handline gear;

(ii) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the Sanctuary has been collected from the Sanctuary.

(6) Using any fishing gear within the Sanctuary except rod and reel, and handline gear, or for law enforcement purposes.

(7) Using underwater any explosives, or devices that produce electric charges underwater.

(8) Breaking, cutting, damaging, taking, or removing any bottom formation.

(9) Moving, removing, damaging, or possessing, or attempting to move, remove, damage, or possess, any Sanctuary historical resource.

(10) Anchoring, or attempting to anchor, any vessel in the Sanctuary, except as provided in paragraph (d) of this section when responding to an emergency threatening life, property, or the environment.

(11) Possessing or carrying any fishing gear within the Sanctuary except:

(i) Rod and reel, and handline gear;

(ii) Fishing gear other than rod and reel, handline gear, and spearfishing gear, provided that it is stowed on a vessel and not available for immediate use;

(iii) Spearfishing gear provided that it is stowed on a vessel, not available for immediate use, and the vessel is passing through the Sanctuary without interruption; and

(iv) For law enforcement purposes.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section and §922.94. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in this section and in § 922.94 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.93.

(d) The prohibitions in this section and in § 922.94 do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

[76 FR 63832, Oct. 14, 2011, as amended at 79 FR 41881, July 18, 2014; 88 FR 966, Jan. 6, 2023; 88 FR 19826, Apr. 4, 2023]

§ 922.93 Permit procedures and criteria.

(a) A person may conduct an activity otherwise prohibited by § 922.92(a)(1) through (11) and § 922.94 if the activity is specifically authorized by and conducted in accordance within the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

[88 FR 966, Jan. 6, 2023]

§ 922.94 Prohibited or otherwise regulated activities—Research area.

In addition to the prohibitions set out in § 922.92, which apply throughout the Sanctuary, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the research area described in Appendix A to this subpart.

(a)(1) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead.

(2) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the research area has been collected from the research area.

(b) Using any fishing gear, or possessing, or carrying any fishing gear unless such gear is stowed and not available for immediate use while on board a vessel transiting through the research area without interruption or for valid law enforcement purposes.

(c) Diving.

(d) Stopping a vessel in the research area.

[76 FR 63832, Oct. 14, 2011]

Appendix A to Subpart I of Part 922—Boundary Coordinates for the Gray's Reef National Marine Sanctuary Research Area

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

The research area boundary is defined by the coordinates provided in Table 1 and the following textual description. The research area boundary extends from Point 1, the southwest corner of the sanctuary, to Point 2 along a straight line following the western boundary of the Sanctuary. It then extends along a straight line from Point 2 to Point 3, which is on the eastern boundary of GRNMS. The boundary then follows the eastern boundary line of the sanctuary southward until it intersects the line of the southern boundary of GRNMS at Point 4, the southeastern corner of the sanctuary. The last straight line is defined by connecting Point 4 and Point 5, along the southern boundary of the GRNMS.

Table 1—Coordinates for the Research Area

Point ID	Latitude (north, in degrees)	Longitude (west, in degrees)
1	N 31.362732	W 80.921200
2	N 31.384444	W 80.921200
3	N 31.384444	W 80.828145
4	N 31.362732	W 80.828145
5	N 31.362732	W 80.921200

[76 FR 63832, Oct. 14, 2011]

Subpart J—National Marine Sanctuary of American Samoa

Source: 77 FR 43962, July 26, 2012, unless otherwise noted.

§ 922.100 Scope of regulations.

The provisions of this subpart J apply only to the waters of the United States and the Territory of American Samoa that are located within the boundary of the National Marine Sanctuary of American Samoa (Sanctuary). Neither the provisions of this subpart J nor any permit issued under its authority shall be construed to relieve a person from any other requirements imposed by statute or regulation of the Territory of American Samoa or of the United States. In addition, no statute

or regulation of the Territory of American Samoa shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this subpart J.

§ 922.101 Boundary.

The Sanctuary is comprised of six distinct units, forming a network of marine protected areas around the islands of the Territory of American Samoa. Tables containing the exact coordinates of each point described below can be found in Appendix to Subpart J—National Marine Sanctuary of American Samoa Boundary Coordinates. The total areal estimate of the six units combined is 10,255 nmi^2 (13,581 sq. mi.).

(a) *Fagatele Bay Unit.* The Fagatele Bay unit is a coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, Territory of American Samoa, and includes Fagatele Bay in its entirety. The landward boundary is defined by the mean high high water line of Fagatele Bay until the point at which it intersects the seaward boundary of the Sanctuary as defined by a straight line between Fagatele Point (−14.36527, −170.76932) and Steps Point (−14.37291, −170.76056) from the point at which it intersects the mean high high water line seaward.

(b) *Fagalua/Fogama'a Unit.* The landward boundary of the Fagalua/Fogama'a Unit is defined by the mean higher high water line of Fagalua/Fogama'a until the point at which it intersects the seaward boundary of the Fagalua/Fogama'a Unit as defined by a straight line between Steps Point (−14.37307, −170.75852) and Sail Rock Point (−14.36534, −170.74119) from the point at which it intersects the mean higher high water line seaward.

(c) *Aunu'u Unit.* The Aunu'u Unit is comprised of two adjacent zones.

(1) *Zone A.* The Aunu'u Unit boundary for Zone A is defined by the coordinates provided in Table 1 and the following textual description. The Zone A boundary extends from Point 1, the northwest corner of the unit, southward to Point 2 along a straight line following the western boundary of the unit, which is aligned with Taugamalama Point on Tutuila. It then extends northeastward in a multipart line along the deepest seaward edge of Nafanua Bank from Point 2 to Point 3 and then to Point 4, which lies on the southern boundary of Zone B. The boundary then follows a straight line westward towards Point 5 until it intersects the mean higher high water line at the southern tip of Ma'ama'a Cove. The landward boundary of Zone A is defined by the mean higher high water line from this intersection point at the southern tip of Ma'ama'a Cove to the intersection of the mean higher high water line and the straight line between Point 6 and Point 7 at Salevatia Point. From this intersection point at Salevatia Point, the boundary extends straight west to Point 7, which has the exact same coordinates as Point 1.

(2) *Zone B.* The Aunu'u Unit boundary for Zone B is defined by the coordinates provided in Table 2 and the following textual description. The Zone B boundary extends from Point 1, the northeast corner of the unit, southward along a straight line following the eastern boundary of the unit to Point 2, which is on the southern boundary of the unit. The southern boundary then follows a line westward towards Point 3 until it intersects the mean higher high water line at the southern tip of Ma'ama'a Cove Point. The landward boundary of Zone B is defined by the mean higher high water line from this intersection point at the southern tip of Ma'ama'a Cove around the volcanic crater to the intersection of the mean higher high water line and the straight line between Point 4 and Point 5. From here, the boundary extends seaward straight north to Point 5. The northern border, the last straight line, is defined by connecting Point 5 and Point 6, along the northern boundary of the unit, which is aligned with Matuli Point on Tutuila. Point 6 has the exact same coordinates at Point 1.

(d) *Swains Island Unit.* The Swains Island Unit boundary is defined by the coordinates in Table 3 and the following textual description. The seaward boundary of the Swains Island Unit approximates the three nautical mile territorial sea boundary from the mean higher high water line (shoreline) of the island. The seaward boundary begins south of the island at Point 1

and continues initially to the west in sequential order clockwise around the island to Point 33. The landward boundary of the Swains Island Unit is the mean higher high water line and begins on the northern shoreline of the island and follows the shoreline counterclockwise initially to the west until it intersects the line segment between Point 34 and 35. From this intersection the boundary continues offshore to the northwest to Point 35 and then to Point 36 and Point 37. From Point 37 the boundary continues east-northeast towards Point 38 until it intersects the shoreline. From this intersection the boundary follows the shoreline southeast around the southernmost part of the island and then to the northeast until it intersects the line segment between Point 39 and Point 40. From this intersection the boundary continues offshore to the southeast to Point 40 and then to the northeast to Point 41. From Point 41 the boundary continues to the northwest towards Point 42 until it intersects the shoreline. From this intersection the boundary follows the shoreline initially to the northeast around the island counterclockwise and then to the northwest back to where it began on the northern shoreline.

(e) *Muliāva Unit.* The Muliāva Unit boundary is defined by the coordinates provided in Table 4 and the following textual description. The landward boundary of the Muliāva Unit is the extreme low water line, which adjoins the boundary of the Rose Atoll National Wildlife Refuge. The Muliāva Unit seaward boundary extends from Point 1, the southwest corner of the unit, to Point 2 along a straight line northward following the western boundary of the unit. From Point 2, the line extends in a straight line westward to Point 3. It then extends along a straight line northward to Point 4. From Point 4, the line extends in a straight line eastward to Point 5. From Point 5, the line extends along a straight line northward to Point 6. It then extends along a straight line eastward from Point 6 to Point 7, which is on the eastern boundary of the unit. The boundary then follows a straight line southward until it intersects the line of the southern boundary of the unit at Point 8, the southeastern corner of the unit. The last straight line is defined by connecting Point 8 and Point 9, which has the exact same coordinates as Point 1, along the southern boundary of the unit.

(f) *Ta'u Unit.* The Ta'u Unit boundary is defined by the coordinates provided in Table 5 and the following textual description. The Ta'u Unit boundary extends from Point 1, Vaita Point, along the mean higher high water line southward along the western coast to Point 2, Si'ufa'alele Point. From Point 2, the boundary extends offshore 0.25 miles to Point 3 to become conterminous with the offshore boundary of the National Park of American Samoa. From Point 3 the boundary continues to follow the coastline 0.25 miles offshore until it reaches Point 4, which is directly south of Si'u Point. From Point 4, the boundary extends due south to Point 5. From Point 5, the boundary extends due west to Point 6, forming the southern border of the unit. From Point 6, the boundary extends due north until it reaches Point 7, directly west and one mile offshore from Point 8, which is Point 1, also known as Vaita Point.

[77 FR 43962, July 26, 2012, as amended at 80 FR 79683, Dec. 23, 2015; 88 FR 966, Jan. 6, 2023]

§ 922.102 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Live rock means any Coral, basalt rock, or other natural structure with any living organisms growing in or on the Coral, basalt rock, or structure.

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

[77 FR 43962, July 26, 2012, as amended at 88 FR 966, Jan. 6, 2023]

§ 922.103 Prohibited or otherwise regulated activities—Sanctuary-wide.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Introducing or releasing introduced species from within or into the sanctuary.

(2) Anchoring a vessel.

(3) Deserting a vessel aground, adrift, or at anchor.

(4) Leaving harmful matter on an abandoned or deserted vessel or structure.

(5) Operating a vessel at a speed exceeding three knots when closer than 200 feet (60.96 meters) of another vessel displaying a dive flag.

(6) Operating a vessel in a manner which causes the vessel to strike or otherwise cause damage to Sanctuary resources.

(7) Diving, snorkeling, or conducting diving or snorkeling operations from a vessel not in compliance with applicable U.S. Coast Guard navigation rules governing the display of lights and signals, and not flying in a conspicuous manner the international code flag alpha ''A'' or the standard red-and-white U.S. ''diver down'' flag.

(8) Discharging, or depositing from within or into the Sanctuary, any material or other matter, except clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, anchor wash, or vessel engine or generator exhaust.

(9) Discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraph (a)(8) of this section and § 922.105(c).

(10) Sand mining, dredging, filling, dynamiting, or otherwise disturbing or altering the seabed.

(11) Removing, damaging, or tampering with any historical or cultural resource.

(12) Taking any marine mammal, sea turtle, or seabird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(13) Using or discharging explosives or weapons of any description. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers shall not be considered weapons for purposes of this section.

(14) Marking, defacing, or damaging in any way, or displacing or removing or tampering with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, or other boundary markers related to the Sanctuary.

(15) Abandoning a structure, material, or other matter on or in the submerged lands of the Sanctuary.

(b) The prohibitions in paragraphs (a)(1) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity necessary for national defense.

(c) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

(d) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity necessary for valid law enforcement purposes in the Sanctuary.

(e) The prohibitions in paragraphs (a)(2) through (15) of this section and §§ 922.104 and 922.105 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.107.

[77 FR 43962, July 26, 2012, as amended at 88 FR 966, Jan. 6, 2023]

§ 922.104 Prohibited or otherwise regulated activities—Sanctuary-wide except in the Muliāva Unit.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within any unit of the Sanctuary except the Muliāva Unit:

(1) Gathering, taking, breaking, cutting, damaging, destroying, or possessing any giant clam [*Tridacna spp.*], live coral, bottom formation including live rock and crustose coralline algae.

(2) Possessing or using poisons, electrical charges, explosives, or similar environmentally destructive methods of fishing or harvesting.

(3) Possessing or using spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, bang sticks, or any similar taking device while utilizing SCUBA equipment.

(4) Possessing or using a seine, trammel, drift gill net, or any type of fixed net.

(5) Disturbing the benthic community by bottom trawling.

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

§ 922.105 Prohibited or otherwise regulated activities—Unit-specific.

In addition to the prohibitions set forth in § 922.103 and § 922.104, the following regulations apply to activities conducted within specified Sanctuary units described in the appendix to this subpart.

(a) The following activities are prohibited in the Fagatele Bay Unit:

(1) Harvesting, catching, removing, taking, injuring, destroying, collecting, moving, possessing or causing the loss of any Sanctuary resource, including but not limited to fishing, or attempting any of these activities.

(2) Possessing fishing gear unless such gear is stowed and not available for immediate use.

(b) The following activities are prohibited in the Aunu'u Unit:

(1) In Zone A: Fishing from a vessel without providing notification to the Sanctuary Superintendent or his/her designee in the village of Aunu'u prior to each fishing trip.

(2) In Zone B:

(i) Fishing for bottom-dwelling species or otherwise harvesting, catching, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any bottom-dwelling species, or attempting any of these activities. Surface fishing for pelagic species, including trolling, is allowed.

(ii) Disturbing the benthic community.

(iii) Possessing any Sanctuary resource, except legally harvested fish on board a vessel.

(c) In the Muliāva Unit:

(1) The prohibitions in paragraphs (a)(2) through (7) and (a)(9) through (15) of § 922.103 do not apply to scientific exploration or research activities conducted by or for the Department of Commerce or the Department of the Interior.

(2) Notwithstanding the prohibition in § 922.103(a)(8), the following vessels may discharge treated waste from a U.S. Coast Guard approved Type I, II, or III Marine Sanitation device 12 nautical miles seaward of the Rose Atoll National Wildlife Refuge:

(i) Vessels engaged in scientific exploration or research activities conducted by or for the Department of Commerce or the Department of the Interior; or

(ii) All other vessels engaged in scientific exploration or research activities, if authorized under a permit issued in consultation with the U.S. Fish and Wildlife Service and in accordance with § 922.48 and § 922.107.

§ 922.106 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the Sanctuary pursuant to the Act. The American Samoa Department of Commerce (ASDOC) will assist NOAA in the administration of the Sanctuary, and act as the lead territorial agency, in conformance with the terms of designation, these regulations, and the terms and provisions of any grant or cooperative agreement.

§ 922.107 Permit procedures.

(a) Any person in possession of a valid permit issued by the Director, in consultation with the ASDOC, in accordance with this section and subpart D of the part may conduct an activity otherwise prohibited by §§ 922.103, 922.104, and 922.105 in the Sanctuary.

(b) Permit applications shall be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, American

Samoa National Marine Sanctuary, P.O. Box 4318, Pago Pago, AS 96799.

[88 FR 966, Jan. 6, 2023]

APPENDIX TO SUBPART J OF PART 922—AMERICAN SAMOA NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

(a) Fagatele Bay

No coordinates are needed in addition to those described in §922.101(a).

(b) Fagalua/Fogama'a

No coordinates are needed in addition to those described in §922.101(b).

(c) Aunu'u (Zones A, B)

The Aunu'u Unit is comprised of two adjacent zones, described in §922.101(c), for which the point coordinates are provided in following tables 1 and 2.

TABLE 1—COORDINATES FOR THE AUNU'U UNIT, ZONE A

Point ID	Latitude (south)	Longitude (west)
1	−14.286	−170.577
2	−14.304	−170.577
3	−14.302	−170.566
4	−14.286	−170.533
5	−14.286	−170.546
6	−14.286	−170.562
7	−14.286	−170.577

TABLE 2—COORDINATES FOR THE AUNU'U UNIT, ZONE B

Point ID	Latitude (south)	Longitude (west)
1	−14.270	−170.496
2	−14.286	−170.496
3	−14.286	−170.546
4	−14.280	−170.550
5	−14.270	−170.550
6	−14.270	−170.496

(d) Swains Island

The Swains Island Unit boundary is defined by the coordinates provided in Table 3 and the textual description in §922.101(d).

TABLE 3—COORDINATES FOR THE SWAINS ISLAND UNIT

Point ID	Latitude (south)	Longitude (west)
1	−11.11457	−171.06870
2	−11.11565	−171.07980
3	−11.11422	−171.09248
4	−11.11005	−171.10445
5	−11.10388	−171.11445
6	−11.09533	−171.12392
7	−11.08375	−171.13272
8	−11.07268	−171.13775
9	−11.06112	−171.14042
10	−11.04880	−171.14067
11	−11.03618	−171.13800
12	−11.02673	−171.13367
13	−11.01853	−171.12773
14	−11.01010	−171.11828
15	−11.00402	−171.10710
16	−11.00083	−171.09728
17	−10.99817	−171.08305
18	−10.99783	−171.06825
19	−10.99983	−171.05732
20	−11.00373	−171.04790
21	−11.00955	−171.03862
22	−11.01752	−171.02985
23	−11.02703	−171.02290
24	−11.03763	−171.01805
25	−11.04812	−171.01558
26	−11.05860	−171.01527
27	−11.06860	−171.01695
28	−11.07957	−171.02133
29	−11.08850	−171.02727
30	−11.09637	−171.03502
31	−11.10637	−171.04840
32	−11.11122	−171.05753
33	−11.11457	−171.06870
34	−11.05188	−171.08921
35	−11.04856	−171.09269
36	−11.05487	−171.09445
37	−11.06024	−171.09283
38	−11.05848	−171.08824
39	−11.06369	−171.07618
40	−11.06741	−171.07364
41	−11.06217	−171.06622
42	−11.05836	−171.06879

(e) Muliāva

The Muliāva Unit boundary is defined by the coordinates provided in Table 4 and the textual description in §922.101(e).

TABLE 4—COORDINATES FOR THE MULIĀVA UNIT

Point ID	Latitude (south)	Longitude (west)
1	−15.387	−169.012
2	−14.271	−169.012
3	−14.271	−169.121
4	−14.150	−169.121
5	−14.150	−169.012
6	−13.698	−169.012
7	−13.698	−167.283
8	−15.387	−167.283
9	−15.387	−169.012

(f) Ta'u Unit

The Ta'u Unit boundary is defined by the coordinates provided in Table 5 and the textual description in §922.101(f).

TABLE 5—COORDINATES FOR THE TA'U UNIT

Point ID	Latitude (south)	Longitude (west)
1	−14.24889	−169.503056
2	−14.273056	−169.488056
3	−14.277222	−169.488056
4	−14.261111	−169.429167
5	−14.293889	−169.429167
6	−14.293889	−169.519722
7	−14.24889	−169.519722
8	−14.24889	−169.503056

[80 FR 79683, Dec. 23, 2015]

Subpart K—Cordell Bank National Marine Sanctuary

SOURCE: 80 FR 13115, Mar. 12, 2015, unless otherwise noted.

§ 922.110 Boundary.

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 971 square nautical miles (nmi^2) (1,286 sq. mi.) of offshore ocean waters, and submerged lands thereunder, surrounding the submarine plateau known as Cordell Bank along the northern coast of California, approximately 45 nautical miles west-northwest of San Francisco, California. The precise boundary coordinates are listed in appendix A to this subpart. The northern boundary of the Sanctuary is a rhumb line that begins approximately 6 nautical miles (7 miles) west of Bodega Head in Sonoma County, California at Point 1 and extends west approximately 38 nautical miles (44 miles) to Point 2. This line is part of a shared boundary between the Sanctuary and Greater Farallones National Marine Sanctuary (GFNMS). The western boundary of the Sanctuary extends south from Point 2 approximately 34 nautical miles (39 miles) to Point 3. From Point 3 the Sanctuary boundary continues east 15 nautical miles (17 miles) to Point 4 where it intersects the GFNMS boundary again. The line from Point 3 to Point 4 forms the southernmost boundary of the Sanctuary. The eastern boundary of the Sanctuary is a series of straight lines connecting Points 4 through 20 in numerical sequence. The Sanctuary is coterminous with GFNMS along both its (the Sanctuary's) eastern and northern boundaries.

[80 FR 13115, Mar. 12, 2015, as amended at 80 FR 34048, June 15, 2015; 88 FR 966, Jan. 6, 2023]

§ 922.111 [Reserved]

§ 922.112 Prohibited or otherwise regulated activities.

(a) The following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Exploring for, developing, or producing oil, gas, or minerals.

(2)(i) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(A) Fish, fish parts, chumming materials, or bait used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use and generated by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(D) For a vessel less than 300 GRT or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(E) Vessel engine or generator exhaust; or

(F) For a United States Coast Guard vessel without sufficient holding tank capacity and without a Type I or II marine sanitation device, and operating

within the designated area [2015 expansion area] defined in appendix C of this subpart, sewage and non-clean graywater as defined by section 312 of the FWPCA generated incidental to vessel use, and ammunition, pyrotechnics or other materials directly related to search and rescue and live ammunition training activities conducted by United States Coast Guard vessels and aircraft in the designated areas defined in appendix C of this subpart.

(ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(iii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except as listed in paragraphs (a)(2)(i) and (ii) of this section.

(3) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank. This prohibition does not apply to use of bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States). The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart, and the 50-fathom isobath is approximated by connecting these coordinates with straight line arcs in numerical sequence from Point 1 to Point 15. 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.

(4)(i) On or within the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or other matter on or in the submerged lands. This prohibition does not apply to use of bottom contact gear used during fishing activities, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States). The coordinates for the line representing the 50-fathom isobath are listed in appendix B to this subpart, and the 50-fathom isobath is approximated by connecting these coordinates with straight line arcs in numerical sequence from Point 1 to Point 15.

(ii) In the Sanctuary beyond the line representing the 50-fathom isobath surrounding Cordell Bank, drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material or matter on the submerged lands except as incidental and necessary for anchoring any vessel or lawful use of any fishing gear during normal fishing activities. The coordinates for the line representing the 50-fathom isobath are listed in Appendix B to this subpart, and the 50-fathom isobath is approximated by connecting these coordinates with straight line arcs in numerical sequence from Point 1 to Point 15.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(6) Possessing within the Sanctuary (regardless of where taken, moved or removed from), any marine mammal, sea turtle or bird taken, except as authorized by the MMPA, ESA, MBTA, by any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(7) Possessing, moving, removing, or injuring, or attempting to possess, move, remove or injure, a Sanctuary historical resource.

(8) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(9) Interfering with, obstructing, delaying, or preventing an investigation, search, seizure, or disposition of seized

property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with subpart D of this part and § 922.113.

(c) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation or expansion of the Sanctuary 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 or expansion that are necessary for national defense will be exempted by the Director after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in the regulations in this subpart.

(d) 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 subpart D of this part and § 922.113, or a special use permit issued pursuant to subpart D of this part.

(e) 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.

[80 FR 13115, Mar. 12, 2015, as amended at 83 FR 55967, Nov. 9, 2018; 88 FR 967, Jan. 6, 2023; 88 FR 19827, Apr. 4, 2023]

§ 922.113 Permit procedures and issuance criteria.

(a) A person may conduct an activity otherwise prohibited by § 922.112(a)(2) through (7) if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.

[88 FR 19827, Apr. 4, 2023]

APPENDIX A TO SUBPART K OF PART 922—CORDELL BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

SANCTUARY BOUNDARY COORDINATES

Point ID No.	Latitude	Longitude
1	38.29989	−123.20005
2	38.29989	−123.99988
3	37.76687	−123.75143
4	37.76687	−123.42694
5	37.83480	−123.42579
6	37.90464	−123.38958
7	37.95880	−123.32312
8	37.98947	−123.23615
9	37.99227	−123.14137
10	38.05202	−123.12827
11	38.06505	−123.11711
12	38.07898	−123.10924
13	38.09069	−123.10387
14	38.10215	−123.09804
15	38.12829	−123.08742
16	38.14072	−123.08237
17	38.16576	−123.09207
18	38.21001	−123.11913
19	38.26390	−123.18138
20	38.29989	−123.20005

APPENDIX B TO SUBPART K OF PART 922—LINE REPRESENTING THE 50-FATHOM ISOBATH SURROUNDING CORDELL BANK

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

CORDELL BANK FIFTY FATHOM LINE COORDINATES

Point ID No.	Latitude	Longitude
1	37.96034	−123.40371
2	37.96172	−123.42081
3	37.9911	−123.44379
4	38.00406	−123.46443
5	38.01637	−123.46076
6	38.04684	−123.47920
7	38.07106	−123.48754
8	38.07588	−123.47195
9	38.06451	−123.46146
10	38.07123	−123.44467

CORDELL BANK FIFTY FATHOM LINE COORDINATES—Continued

Point ID No.	Latitude	Longitude
11	38.04446	−123.40286
12	38.01442	−123.38588
13	37.98859	−123.37533
14	37.97071	−123.38605
15	37.96034	−123.40371

APPENDIX C TO SUBPART K OF PART 922—DESIGNATED AREA FOR CERTAIN UNITED STATES COAST GUARD DISCHARGES

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

The portion of the Cordell Bank National Marine Sanctuary area [2015 expansion area] where the exception for discharges from United States Coast Guard activities applies is defined as follows. Beginning with Point 1, identified in the coordinate table in this appendix, the boundary extends from Point 1 to Point 2 in a straight line arc and continues in numerical order through each subsequent point to Point 38. From Point 38 the boundary extends west along the northern boundary of Cordell Bank National Marine Sanctuary to Point 39 where it ends.

Point No.	Latitude	Longitude
1	38.29989	−123.99988
2	37.76687	−123.75143
3	37.76716	−123.42758
4	37.77033	−123.43466
5	37.78109	−123.44694
6	37.78383	−123.45466
7	37.79487	−123.46721
8	37.80094	−123.47313
9	37.81026	−123.46897
10	37.81365	−123.47906
11	37.82296	−123.49280
12	37.84988	−123.51749
13	37.86189	−123.52197
14	37.87637	−123.52192
15	37.88541	−123.52967
16	37.90725	−123.53937
17	37.92288	−123.54360
18	37.93858	−123.54701
19	37.94901	−123.54777
20	37.95528	−123.56199
21	37.96683	−123.57859
22	37.97761	−123.58746
23	37.98678	−123.59988
24	37.99847	−123.61331
25	38.01366	−123.62494
26	38.01987	−123.62450
27	38.02286	−123.61531
28	38.02419	−123.59864
29	38.03409	−123.59904
30	38.04614	−123.60611
31	38.05308	−123.60549
32	38.06188	−123.61546
33	38.07451	−123.62162
34	38.08289	−123.62065
35	38.11256	−123.63344
36	38.13219	−123.64265
37	38.26390	−123.18138
38	38.29989	−123.20005
39	38.29989	−123.99988

[83 FR 55967, Nov. 9, 2018]

Subpart L—Flower Garden Banks National Marine Sanctuary

§ 922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (sanctuary) boundary encompasses a total area of approximately 121 square nautical miles (160.35 square miles) of offshore ocean waters, and submerged lands thereunder, along the continental shelf and shelf edge in the northwestern Gulf of America. The entire sanctuary boundary is comprised of 19 unique polygons. The precise boundary coordinates for each polygon are listed in appendix A to this subpart.

[86 FR 4953, Jan. 19, 2021, as amended at 90 FR 38002, Aug. 7, 2025]

§ 922.121 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

As used in this subpart:

Disturb or disturbing a ray or whale shark means to, or attempt to touch, handle, ride, pursue, chase away, hunt, restrain, detain (no matter how temporarily), capture, collect, or conduct any other activity that disrupts or has the potential to disrupt any ray or whale shark in the Sanctuary by any means. Notwithstanding the above, the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers) is exempted from this definition.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed at 40 CFR 302.4 pursuant to 42 U.S.C. 9601(14) of

the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

No-activity zone (applicable only to oil and gas industry activities) means the geographic areas delineated by the Department of the Interior in Topographic Features Stipulations for Outer Continental Shelf (OCS) lease sales as defined by a bathymetric contour (isobath) ranging from 55–85m in depth, with the exception of Stetson Bank (52m) and East and West Flower Garden Banks (100m). The Notice to Lessees (NTL) No. 2009–G39 provides and consolidates guidance for the avoidance and protection of biologically sensitive features and areas (*i.e.* topographic features, pinnacles, live bottoms (low relief features)) and other potentially sensitive biological features (PSBFs) when conducting operations in water depths shallower than 980 feet (300 meters) in the Gulf of America. NTL 2009–G39 remains in effect pursuant to NTL No. 2015–N02. The no-activity zones are based on depth contours as noted for the following Banks: Stetson Bank (52 meters), MacNeil Bank (82 meters), Rankin Banks (including 28 Fathom Bank) (85 meters), Bright Bank (85 meters), Geyer Bank (85 meters), Elvers Bank (85 meters), McGrail Bank (85 meters), Bouma Bank (85 meters), Rezak Bank (85 meters), Sidner Bank (85 meters), Sonnier Bank (55 meters), Alderdice Bank (80 meters), and Parker Bank (85 meters). For East and West Flower Garden Banks, the no-activity zones are based on the ''¼ ¼ ¼'' aliquot 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. The precise aliquot part description of these areas around East and West Flower Garden Banks are provided in appendix A of this subpart.

[77 FR 25068, Apr. 27, 2012, as amended at 86 FR 4953, Jan. 19, 2021; 88 FR 967, Jan. 6, 2023; 90 FR 38002, Aug. 7, 2025]

§ 922.122 Prohibited or otherwise regulated activities.

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

(1) Exploring for, developing, or producing oil, gas, or minerals except outside of all no-activity zones and provided all drilling cuttings and drilling fluids are shunted to the seabed through a downpipe that terminates an appropriate distance, but no more than ten meters, from the seabed.

(2)(i) Anchoring any vessel within the Sanctuary.

(ii) Mooring any vessel within the Sanctuary, except that vessels 100 feet (30.48 meters) or less in registered length may moor to a Sanctuary mooring buoy.

(iii) Mooring a vessel in the Sanctuary without clearly displaying the blue and white International Code flag ''A'' (''alpha'' dive flag) or the red and white ''sports diver'' flag whenever a SCUBA diver from that vessel is in the water and removing the ''alpha'' dive flag or ''sports diver'' flag after all SCUBA divers exit the water and return back on board the vessel, consistent with U.S. Coast Guard guidelines relating to sports diving as contained within ''Special Notice to Mariners'' (00–208) for the Gulf of America.

(3)(i) Discharging or depositing from within or into the Sanctuary any material or other matter except:

(A) Fish, fish parts, chumming materials, or bait used in or resulting from fishing with conventional hook and line gear in the Sanctuary, provided that such discharge or deposit occurs during the conduct of such fishing within the Sanctuary;

(B) Clean effluent generated incidental to vessel use by an operable Type I or Type II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(D) Engine exhaust;

(E) In areas of the Sanctuary outside the no-activity zones, drilling cuttings

and drilling fluids necessarily discharged incidental to the exploration for, development of, or production of oil or gas in those areas and in accordance with the shunting requirements of paragraph (a)(1) of this section unless such discharge injures a Sanctuary resource or quality.

(ii) Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(3)(i)(A) through (D) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(4) Drilling into, dredging, or otherwise altering the seabed of the Sanctuary (except as allowed under paragraph (c) of this section); or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

(5) Injuring or removing, or attempting to injure or remove, any coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota, or carbonate rock within the Sanctuary.

(6) Taking any marine mammal or turtle within the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq*.

(7) Killing, injuring, attracting, touching, or disturbing a ray or whale shark in the Sanctuary. Notwithstanding the above, the incidental and unintentional injury to a ray or whale shark as a result of fishing with conventional hook and line gear is exempted from this prohibition.

(8) Injuring, catching, harvesting, collecting or feeding, or attempting to injure, catch, harvest, collect or feed, any fish within the Sanctuary by use of longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear.

(9) Possessing within the Sanctuary (regardless of where collected, caught, harvested or removed), except for valid law enforcement purposes, any carbonate rock, coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota, or fish (except for fish caught by use of conventional hook and line gear).

(10) Possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear.

(11) Possessing, except for valid law enforcement purposes, or using explosives or releasing electrical charges within the Sanctuary.

(b) [Reserved]

(c) The prohibitions in paragraphs (a)(2)(i), (a)(4), and (a)(11) of this section do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas.

(d) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(e)(1) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to activities being carried out by the Department of Defense as of March 22, 2021, the effective date of the revised terms of sanctuary designation. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources or qualities. The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impact on Sanctuary resources or qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources or qualities. New activities with the potential for significant adverse impact on Sanctuary resources or qualities may be exempted from the prohibitions in paragraphs (a)(2) through (11) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse

impact on Sanctuary resources or 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 specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit or ONMS authorization issued pursuant to subpart D of this part and §922.123 or a special use permit issued pursuant to subpart D of this part.

(g) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 18, 1994, provided that the applicant complies with §922.36, 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 subpart D of this part and §922.123 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 January 18, 1994 shall be invalid.

[77 FR 25069, Apr. 27, 2012, as amended at 86 FR 4954, Jan. 19, 2021; 86 FR 15404, Mar. 23, 2021; 88 FR 967, Jan. 6, 2023; 88 FR 9393, Feb. 14, 2023; 88 FR 19827, Apr. 4, 2023; 90 FR 38002, Aug. 7, 2025]

§922.123 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by §922.122(a)(2) through (11) if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551.

[88 FR 967, Jan. 6, 2023; 88 FR 19827, Apr. 4, 2023]

APPENDIX A TO SUBPART L OF PART 922—FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	1	Stetson Bank	28.15673	−94.29673
2	1	Stetson Bank	28.15661	−94.30312
3	1	Stetson Bank	28.15862	−94.30888
4	1	Stetson Bank	28.16950	−94.30839
5	1	Stetson Bank	28.17386	−94.30257
6	1	Stetson Bank	28.17583	−94.29445
7	1	Stetson Bank	28.17543	−94.29327
8	1	Stetson Bank	28.17284	−94.28952
9	1	Stetson Bank	28.16924	−94.28677
10	1	Stetson Bank	28.16428	−94.28681
11	1	Stetson Bank	28.16274	−94.28756
12	1	Stetson Bank	28.15796	−94.29047

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
13	1	Stetson Bank	28.15673	−94.29673
1	2	West Flower Garden Bank	27.84363	−93.78549
2	2	West Flower Garden Bank	27.81750	−93.81056
3	2	West Flower Garden Bank	27.81752	−93.84752
4	2	West Flower Garden Bank	27.83069	−93.86271
5	2	West Flower Garden Bank	27.81735	−93.87490
6	2	West Flower Garden Bank	27.83220	−93.89185
7	2	West Flower Garden Bank	27.85854	−93.89369
8	2	West Flower Garden Bank	27.87925	−93.87853
9	2	West Flower Garden Bank	27.92626	−93.82011
10	2	West Flower Garden Bank	27.92620	−93.81759
11	2	West Flower Garden Bank	27.91801	−93.80801
12	2	West Flower Garden Bank	27.90969	−93.77939
13	2	West Flower Garden Bank	27.88644	−93.77939
14	2	West Flower Garden Bank	27.84363	−93.78549
1	3	Horseshoe Bank	27.82317	−93.62789
2	3	Horseshoe Bank	27.80927	−93.63578
3	3	Horseshoe Bank	27.80568	−93.65541
4	3	Horseshoe Bank	27.79429	−93.66555
5	3	Horseshoe Bank	27.78357	−93.68846
6	3	Horseshoe Bank	27.79640	−93.70534
7	3	Horseshoe Bank	27.81855	−93.75198
8	3	Horseshoe Bank	27.82742	−93.74743
9	3	Horseshoe Bank	27.81868	−93.68868
10	3	Horseshoe Bank	27.83143	−93.68941
11	3	Horseshoe Bank	27.84699	−93.70079
12	3	Horseshoe Bank	27.87165	−93.73947
13	3	Horseshoe Bank	27.88602	−93.73294
14	3	Horseshoe Bank	27.87252	−93.64648
15	3	Horseshoe Bank	27.85861	−93.63908
16	3	Horseshoe Bank	27.82317	−93.62789
1	4	East Flower Garden Bank	27.89455	−93.57040
2	4	East Flower Garden Bank	27.87999	−93.61309
3	4	East Flower Garden Bank	27.88003	−93.62961
4	4	East Flower Garden Bank	27.89330	−93.64172
5	4	East Flower Garden Bank	27.92101	−93.64747
6	4	East Flower Garden Bank	27.95899	−93.64490
7	4	East Flower Garden Bank	27.97485	−93.63086
8	4	East Flower Garden Bank	27.98177	−93.60996
9	4	East Flower Garden Bank	27.98554	−93.58188
10	4	East Flower Garden Bank	27.95206	−93.57810
11	4	East Flower Garden Bank	27.92151	−93.56880
12	4	East Flower Garden Bank	27.89455	−93.57040
1	5	MacNeil Bank	28.00226	−93.51550
2	5	MacNeil Bank	27.99707	−93.52669
3	5	MacNeil Bank	28.00136	−93.52423
4	5	MacNeil Bank	28.00518	−93.52425
5	5	MacNeil Bank	28.01694	−93.52233
6	5	MacNeil Bank	28.01883	−93.51264
7	5	MacNeil Bank	28.03670	−93.50300
8	5	MacNeil Bank	28.03724	−93.49844
9	5	MacNeil Bank	28.03113	−93.49199
10	5	MacNeil Bank	28.01300	−93.49624
11	5	MacNeil Bank	28.00331	−93.50725
12	5	MacNeil Bank	28.00226	−93.51550
1	6	Rankin Bank & 28—Fathom Bank	27.92554	−93.40593
2	6	Rankin Bank & 28—Fathom Bank	27.92039	−93.41021
3	6	Rankin Bank & 28—Fathom Bank	27.92035	−93.42474
4	6	Rankin Bank & 28—Fathom Bank	27.91387	−93.43165
5	6	Rankin Bank & 28—Fathom Bank	27.90829	−93.42234
6	6	Rankin Bank & 28—Fathom Bank	27.90641	−93.42535
7	6	Rankin Bank & 28—Fathom Bank	27.90489	−93.44219
8	6	Rankin Bank & 28—Fathom Bank	27.89549	−93.44396
9	6	Rankin Bank & 28—Fathom Bank	27.88892	−93.43403
10	6	Rankin Bank & 28—Fathom Bank	27.88072	−93.42805
11	6	Rankin Bank & 28—Fathom Bank	27.87676	−93.42787
12	6	Rankin Bank & 28—Fathom Bank	27.88449	−93.44458
13	6	Rankin Bank & 28—Fathom Bank	27.88803	−93.45159
14	6	Rankin Bank & 28—Fathom Bank	27.88794	−93.45905
15	6	Rankin Bank & 28—Fathom Bank	27.89234	−93.46410
16	6	Rankin Bank & 28—Fathom Bank	27.89971	−93.45571
17	6	Rankin Bank & 28—Fathom Bank	27.90910	−93.45343
18	6	Rankin Bank & 28—Fathom Bank	27.92847	−93.45335
19	6	Rankin Bank & 28—Fathom Bank	27.93407	−93.44743

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
20	6	Rankin Bank & 28—Fathom Bank	27.93599	−93.44215
21	6	Rankin Bank & 28—Fathom Bank	27.92554	−93.40593
1	7	Bright Bank	27.87310	−93.27056
2	7	Bright Bank	27.86549	−93.29462
3	7	Bright Bank	27.87300	−93.31055
4	7	Bright Bank	27.89058	−93.32193
5	7	Bright Bank	27.89839	−93.31987
6	7	Bright Bank	27.90336	−93.30953
7	7	Bright Bank	27.91010	−93.30562
8	7	Bright Bank	27.91634	−93.29292
9	7	Bright Bank	27.91263	−93.28816
10	7	Bright Bank	27.90354	−93.28386
11	7	Bright Bank	27.90253	−93.27238
12	7	Bright Bank	27.89927	−93.26729
13	7	Bright Bank	27.87310	−93.27056
1	8	Geyer Bank	27.78848	−93.07794
2	8	Geyer Bank	27.79458	−93.08448
3	8	Geyer Bank	27.83313	−93.07913
4	8	Geyer Bank	27.85306	−93.08279
5	8	Geyer Bank	27.86328	−93.07885
6	8	Geyer Bank	27.86908	−93.06974
7	8	Geyer Bank	27.86556	−93.05944
8	8	Geyer Bank	27.85211	−93.05391
9	8	Geyer Bank	27.83713	−93.05725
10	8	Geyer Bank	27.82540	−93.04312
11	8	Geyer Bank	27.82490	−93.04276
12	8	Geyer Bank	27.80846	−93.03412
13	8	Geyer Bank	27.78997	−93.04096
14	8	Geyer Bank	27.78602	−93.05384
15	8	Geyer Bank	27.78848	−93.07794
1	9A	Elvers Bank—A	27.82285	−92.88605
2	9A	Elvers Bank—A	27.82087	−92.88600
3	9A	Elvers Bank—A	27.82009	−92.88670
4	9A	Elvers Bank—A	27.81869	−92.89235
5	9A	Elvers Bank—A	27.81690	−92.89404
6	9A	Elvers Bank—A	27.81615	−92.89653
7	9A	Elvers Bank—A	27.80645	−92.90884
8	9A	Elvers Bank—A	27.81221	−92.92082
9	9A	Elvers Bank—A	27.81599	−92.93908
10	9A	Elvers Bank—A	27.81934	−92.93940
11	9A	Elvers Bank—A	27.82250	−92.92465
12	9A	Elvers Bank—A	27.82809	−92.91359
13	9A	Elvers Bank—A	27.83973	−92.89876
14	9A	Elvers Bank—A	27.83972	−92.88038
15	9A	Elvers Bank—A	27.83003	−92.86983
16	9A	Elvers Bank—A	27.82285	−92.88605
1	9B	Elvers Bank—B	27.85645	−92.92310
2	9B	Elvers Bank—B	27.85662	−92.91922
3	9B	Elvers Bank—B	27.85334	−92.91631
4	9B	Elvers Bank—B	27.85076	−92.91727
5	9B	Elvers Bank—B	27.84903	−92.92097
6	9B	Elvers Bank—B	27.85145	−92.92524
7	9B	Elvers Bank—B	27.85645	−92.92310
1	10A	McGrail Bank—A	27.97684	−92.58489
2	10A	McGrail Bank—A	27.97749	−92.57716
3	10A	McGrail Bank—A	27.97475	−92.56753
4	10A	McGrail Bank—A	27.97304	−92.56191
5	10A	McGrail Bank—A	27.95173	−92.53902
6	10A	McGrail Bank—A	27.94849	−92.54254
7	10A	McGrail Bank—A	27.96632	−92.56116
8	10A	McGrail Bank—A	27.96792	−92.58152
9	10A	McGrail Bank—A	27.95989	−92.58187
10	10A	McGrail Bank—A	27.95409	−92.57057
11	10A	McGrail Bank—A	27.94951	−92.57135
12	10A	McGrail Bank—A	27.94920	−92.57994
13	10A	McGrail Bank—A	27.95846	−92.60274
14	10A	McGrail Bank—A	27.97286	−92.61901
15	10A	McGrail Bank—A	27.98096	−92.60158
16	10A	McGrail Bank—A	27.97684	−92.58489
1	10B	McGrail Bank—B	27.94116	−92.54750
2	10B	McGrail Bank—B	27.94180	−92.54543
3	10B	McGrail Bank—B	27.94010	−92.54202
4	10B	McGrail Bank—B	27.93616	−92.54151
5	10B	McGrail Bank—B	27.93481	−92.54398

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
6	10B	McGrail Bank—B	27.93529	−92.54803
7	10B	McGrail Bank—B	27.93859	−92.54901
8	10B	McGrail Bank—B	27.94116	−92.54750
1	11	Bouma Bank	28.07909	−92.47305
2	11	Bouma Bank	28.07370	−92.44900
3	11	Bouma Bank	28.07370	−92.44891
4	11	Bouma Bank	28.06544	−92.43518
5	11	Bouma Bank	28.05162	−92.43380
6	11	Bouma Bank	28.03846	−92.44065
7	11	Bouma Bank	28.03463	−92.45289
8	11	Bouma Bank	28.03114	−92.45537
9	11	Bouma Bank	28.02915	−92.46338
10	11	Bouma Bank	28.03154	−92.47259
11	11	Bouma Bank	28.04166	−92.47229
12	11	Bouma Bank	28.04525	−92.46717
13	11	Bouma Bank	28.04751	−92.47310
14	11	Bouma Bank	28.04676	−92.48308
15	11	Bouma Bank	28.04866	−92.48462
16	11	Bouma Bank	28.05687	−92.48145
17	11	Bouma Bank	28.06388	−92.49262
18	11	Bouma Bank	28.07018	−92.49141
19	11	Bouma Bank	28.06974	−92.48613
20	11	Bouma Bank	28.06594	−92.48098
21	11	Bouma Bank	28.07109	−92.47708
22	11	Bouma Bank	28.07683	−92.48071
23	11	Bouma Bank	28.07909	−92.47305
1	12	Sonnier Bank	28.32652	−92.45356
2	12	Sonnier Bank	28.32495	−92.45647
3	12	Sonnier Bank	28.32501	−92.45965
4	12	Sonnier Bank	28.32796	−92.46626
5	12	Sonnier Bank	28.33523	−92.47536
6	12	Sonnier Bank	28.34453	−92.47511
7	12	Sonnier Bank	28.34840	−92.47439
8	12	Sonnier Bank	28.35256	−92.47181
9	12	Sonnier Bank	28.35416	−92.46784
10	12	Sonnier Bank	28.35456	−92.46135
11	12	Sonnier Bank	28.35351	−92.45729
12	12	Sonnier Bank	28.35174	−92.45107
13	12	Sonnier Bank	28.34852	−92.44564
14	12	Sonnier Bank	28.34303	−92.44045
15	12	Sonnier Bank	28.34048	−92.44024
16	12	Sonnier Bank	28.33584	−92.44669
17	12	Sonnier Bank	28.33068	−92.44985
18	12	Sonnier Bank	28.32652	−92.45356
1	13	Rezak Bank	27.95420	−92.36641
2	13	Rezak Bank	27.95847	−92.37739
3	13	Rezak Bank	27.95629	−92.38599
4	13	Rezak Bank	27.97297	−92.39248
5	13	Rezak Bank	27.97892	−92.39845
6	13	Rezak Bank	27.98869	−92.39964
7	13	Rezak Bank	27.99372	−92.38244
8	13	Rezak Bank	27.98603	−92.36697
9	13	Rezak Bank	27.98022	−92.36429
10	13	Rezak Bank	27.97442	−92.36996
11	13	Rezak Bank	27.96006	−92.36854
12	13	Rezak Bank	27.95420	−92.36641
1	14	Sidner Bank	27.93046	−92.36762
2	14	Sidner Bank	27.91368	−92.37398
3	14	Sidner Bank	27.91462	−92.38530
4	14	Sidner Bank	27.91976	−92.39427
5	14	Sidner Bank	27.92306	−92.38792
6	14	Sidner Bank	27.94525	−92.38305
7	14	Sidner Bank	27.94166	−92.37565
8	14	Sidner Bank	27.94231	−92.37189
9	14	Sidner Bank	27.93046	−92.36762
1	15A	Parker Bank—A	27.95067	−92.00294
2	15A	Parker Bank—A	27.94177	−91.99762
3	15A	Parker Bank—A	27.93547	−91.99568
4	15A	Parker Bank—A	27.92937	−91.99981
5	15A	Parker Bank—A	27.93224	−92.02999
6	15A	Parker Bank—A	27.93401	−92.03946
7	15A	Parker Bank—A	27.93958	−92.05015
8	15A	Parker Bank—A	27.95012	−92.05050
9	15A	Parker Bank—A	27.96214	−92.05407

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
10	15A	Parker Bank—A	27.96630	−92.04745
11	15A	Parker Bank—A	27.96869	−92.04120
12	15A	Parker Bank—A	27.96925	−92.02758
13	15A	Parker Bank—A	27.96678	−92.02175
14	15A	Parker Bank—A	27.95067	−92.00294
1	15B	Parker Bank—B	27.96082	−91.99450
2	15B	Parker Bank—B	27.96432	−91.99285
3	15B	Parker Bank—B	27.96566	−91.99014
4	15B	Parker Bank—B	27.96385	−91.98600
5	15B	Parker Bank—B	27.96149	−91.98639
6	15B	Parker Bank—B	27.95931	−91.98760
7	15B	Parker Bank—B	27.95824	−91.99183
8	15B	Parker Bank—B	27.96082	−91.99450
1	16	Alderdice Bank	28.09726	−91.99328
2	16	Alderdice Bank	28.09474	−91.98619
3	16	Alderdice Bank	28.09569	−91.97526
4	16	Alderdice Bank	28.09184	−91.97361
5	16	Alderdice Bank	28.08410	−91.97273
6	16	Alderdice Bank	28.07506	−91.97457
7	16	Alderdice Bank	28.07053	−91.98465
8	16	Alderdice Bank	28.06959	−91.99347
9	16	Alderdice Bank	28.06819	−92.00512
10	16	Alderdice Bank	28.07026	−92.01321
11	16	Alderdice Bank	28.07562	−92.02032
12	16	Alderdice Bank	28.08058	−92.02436
13	16	Alderdice Bank	28.08463	−92.02577
14	16	Alderdice Bank	28.09024	−92.02296
15	16	Alderdice Bank	28.09487	−92.01231
16	16	Alderdice Bank	28.09627	−92.00735
17	16	Alderdice Bank	28.09507	−92.00008
18	16	Alderdice Bank	28.09726	−91.99328

[86 FR 4954, Jan. 19, 2021]

Subpart M—Monterey Bay National Marine Sanctuary

SOURCE: 73 FR 70535, Nov. 20, 2008, unless otherwise noted.

§ 922.130 Boundary.

The Monterey Bay National Marine Sanctuary (Sanctuary) consists of two separate areas. The combined area of both parts is approximately 4,601 square nautical miles (nmi^2) (6,093 sq. mi.).

(a) The first area consists of an area of approximately 4,016 square nautical miles (nmi^2) (5,318 sq. mi.) of coastal and ocean waters, and submerged lands thereunder, in and surrounding Monterey Bay off the central coast of California. The northern terminus of the Sanctuary boundary is located along the southern boundary of the Greater Farallones National Marine Sanctuary (GFNMS) beginning at Rocky Point just south of Stinson Beach in Marin County. The Sanctuary boundary follows the GFNMS boundary westward to a point approximately 29 nmi offshore from Moss Beach in San Mateo County. The Sanctuary boundary then extends southward in a series of arcs, which generally follow the 500 fathom isobath, to a point approximately 27 nmi offshore of Cambria, in San Luis Obispo County. The Sanctuary boundary then extends eastward towards shore until it intersects the Mean High Water Line (MHWL) along the coast near Cambria. The Sanctuary boundary then follows the MHWL northward to the northern terminus at Rocky Point. The shoreward Sanctuary boundary excludes a small area between Point Bonita and Point San Pedro. Pillar Point Harbor, Santa Cruz Harbor, Monterey Harbor, and Moss Landing Harbor are all excluded from the Sanctuary shoreward from the points listed in appendix A except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge, and west of the tide gate at Elkhorn Road and toward the center channel from the MHWL is included within the Sanctuary, excluding areas within the Elkhorn Slough National Estuarine Research Reserve. Exact coordinates for

the seaward boundary and harbor exclusions are provided in appendix A to this subpart.

(b) The Davidson Seamount Management Zone is also part of the Sanctuary. This area, bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, consists of approximately 585 square nmi (nmi^2) (774 sq. mi.) of ocean waters and the submerged lands thereunder. The shoreward boundary of this portion of the Sanctuary is located approximately 65 nmi off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the Davidson Seamount Management Zone boundary are provided in appendix F to this subpart.

[73 FR 70535, Nov. 20, 2008, as amended at 80 FR 34048, June 15, 2015; 88 FR 967, Jan. 6, 2023; 88 FR 19827, Apr. 4, 2023]

§ 922.131 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Beneficial use of dredged material means the use of dredged material removed from any of the four public harbors adjacent to the sanctuary (Pillar Point, Santa Cruz, Moss Landing, and Monterey) that has been determined by the Director to be suitable as a resource for habitat protection or restoration purposes only. Beneficial use of dredged material is not disposal of dredged material.

Davidson Seamount Management Zone means the area bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, and consists of approximately 585 square nmi of ocean waters and the submerged lands thereunder. The shoreward boundary of this portion of the Sanctuary is located approximately 65 nmi off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the Davidson Seamount Management Zone boundary are provided in appendix F to this subpart.

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Hand tool means a hand-held implement, utilized for the collection of jade pursuant to 15 CFR 922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar, or abalone iron). Pneumatic, mechanical, electrical, hydraulic, or explosive tools are, therefore, examples of what does not meet this definition.

Motorized personal watercraft (MPWC) means any vessel, propelled by machinery, that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the vessel, in contrast to the conventional manner, where the operator stands or sits inside the vessel; any vessel less than 20 feet in length overall as manufactured and propelled by machinery and that has been exempted from compliance with the U.S. Coast Guard's Maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183, except submarines; or any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

[73 FR 70535, Nov. 20, 2008, as amended at 86 FR 62912, Nov. 15, 2021; 88 FR 967, Jan. 6, 2023]

§ 922.132 Prohibited or otherwise regulated activities.

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

(1) Exploring for, developing, or producing oil, gas, or minerals within the Sanctuary, except: Jade may be collected (meaning removed) from the area bounded by the 35.92222 N latitude parallel (coastal reference point: Beach access stairway at south Sand Dollar Beach), the 35.88889 N latitude parallel (coastal reference point: Westernmost tip of Cape San Martin), and from the mean high tide line seaward to the 90-foot isobath (depth line) (the ''authorized area'') provided that:

(i) Only jade already loose from the submerged lands of the Sanctuary may be collected;

(ii) No tool may be used to collect jade except:

(A) A hand tool (as defined at 15 CFR 922.131) to maneuver or lift the jade or scratch the surface of a stone as necessary to determine if it is jade;

(B) A lift bag or multiple lift bags with a combined lift capacity of no more than two hundred pounds; or

(C) A vessel (except for motorized personal watercraft) (see paragraph (a)(7) of this section) to provide access to the authorized area;

(iii) Each person may collect only what that person individually carries; and

(iv) For any loose piece of jade that cannot be collected under paragraphs (a)(1) (ii) and (iii) of this section, any person may apply for a permit to collect such a loose piece by following the procedures in 15 CFR 922.133.

(2)(i) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter, except:

(A) Fish, fish parts, chumming materials, or bait used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activities within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(D) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(E) Vessel engine or generator exhaust; or

(F) Dredged material deposited at disposal sites authorized by the U.S. Environmental Protection Agency (EPA) (in consultation with the U.S. Army Corps of Engineers (COE)) prior to the effective date of Sanctuary designation (January 1, 1993), provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on January 1, 1993. Authorized disposal sites within the Sanctuary are described in appendix C to this subpart.

(ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(iii) Discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraphs (a)(2)(i)(A) through (E) and (a)(2)(ii) of this section and dredged material deposited at the authorized disposal sites described in appendix D to this subpart, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval.

(3) Possessing, moving, removing, or injuring, or attempting to possess, move, remove, or injure, a Sanctuary historical resource. This prohibition does not apply to, moving, removing, or injury resulting incidentally from kelp harvesting, aquaculture, or lawful fishing activities.

(4) Drilling into, dredging, or otherwise altering the submerged lands of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary, except as incidental and necessary to:

(i) Conduct lawful fishing activities;

(ii) Anchor a vessel;

(iii) Conduct aquaculture or kelp harvesting;

(iv) Install an authorized navigational aid;

(v) Conduct harbor maintenance in an area necessarily associated with a Federal Project in existence on January 1, 1993, including dredging of entrance channels and repair, replacement, or rehabilitation of breakwaters and jetties;

(vi) Construct, repair, replace, or rehabilitate a dock or pier; or

(vii) Collect jade pursuant to paragraph (a)(1) of this section, provided that there is no constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary, other than temporary placement of an authorized hand tool as provided in paragraph (a)(1) of this section. The exceptions listed in paragraphs (a)(4)(ii) through (a)(4)(vii) of this section do not apply within the Davidson Seamount Management Zone.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation, as amended, promulgated under the MMPA, ESA, or MBTA.

(6) Disturbing marine mammals or seabirds by flying motorized aircraft, except as necessary for valid law enforcement purposes, at less than 1,000 feet above any of the four zones within the Sanctuary described in Appendix B to this subpart. Failure to maintain a minimum altitude of 1,000 feet above ground level above any such zone is presumed to disturb marine mammals or seabirds.

(7) Operating motorized personal watercraft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in appendix E to this subpart. Zone Five (at Pillar Point) exists only when a High Surf Advisory has been issued by the National Weather Service and is in effect for San Mateo County, and only during December, January, and February.

(8) Possessing within the Sanctuary (regardless of where taken, moved, or removed from), any marine mammal, sea turtle, or bird, except as authorized by the MMPA, ESA, MBTA, by any regulation, as amended, promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(9) Deserting a vessel aground, at anchor, or adrift in the Sanctuary.

(10) Leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(11)(i) Moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take, collect, catch, harvest, disturb, break, cut, or otherwise injure, any Sanctuary resource located more that 3,000 feet below the sea surface within the Davidson Seamount Management Zone. This prohibition does not apply to fishing below 3000 feet within the Davidson Seamount Management Zone, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States).

(ii) Possessing any Sanctuary resource the source of which is more than 3,000 feet below the sea surface within the Davidson Seamount Management Zone. This prohibition does not apply to possession of fish resulting from fishing below 3000 feet within the Davidson Seamount Management Zone, which is prohibited pursuant to 50 CFR part 660 (Fisheries off West Coast States).

(12) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(13) Attracting any white shark within the Sanctuary.

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

(b) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to an activity necessary to respond to an emergency threatening life, property, or the environment.

(c)(1) All Department of Defense activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (11) and (13) 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, 99 Pacific Street, Bldg. 455A, Monterey, California 93940.) For purposes of the Davidson Seamount Management Zone, these activities are listed in the 2008 Final Environmental Impact Statement. New activities may be exempted from the prohibitions in paragraphs (a)(2) through (11) and (13) of this section by the Director after consultation between the Director and the Department of Defense.

(2) In the event of destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an incident, including but not limited to discharges, deposits, and groundings, caused by a Department of Defense activity, the Department of Defense, in coordination with the Director, must promptly prevent and mitigate further damage and must restore or replace the Sanctuary resource or quality in a manner approved by the Director.

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, and paragraphs (a)(2) through (11) and (13) of this section, do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and §922.133 or a special use permit issued pursuant to subpart D of this part.

(e) The prohibitions in paragraphs (a)(2) through (13) of this section do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation (January 1, 1993) and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with §922.36, 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 and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date of Sanctuary designation.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit or ONMS authorization under subpart D of this part authorizing, or otherwise approve, the exploration for, development, or production of oil, gas, or minerals within the Sanctuary, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to §922.10, 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) before January 1, 1993. For the purposes of this subpart, the disposal of dredged material does not include the beneficial use of dredged material as defined by §922.131. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

[73 FR 70535, Nov. 20, 2008, as amended at 75 FR 53571, Sept. 1, 2010; 77 FR 3922, Jan. 26, 2012; 80 FR 8786, Feb. 19, 2015; 86 FR 62912, Nov. 15, 2021; 88 FR 967, Jan. 6, 2023; 88 FR 19827, Apr. 4, 2023]

§922.133 Permit procedures and criteria.

(a) A person may conduct an activity otherwise prohibited by §922.132(a)(1) as it pertains to jade collection in the Sanctuary, §922.132(a)(2) through (11) and (13) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Monterey Bay National Marine Sanctuary, 99 Pacific Street, Bldg. 455A, Monterey, California 93940.

[88 FR 868, Jan. 6, 2023]

§922.134 Review of certain State permits and leases.

(a)(1) NOAA has described in a Memorandum of Agreement (MOA) with the

State of California how NOAA will coordinate review of any introduction of non-invasive introduced species from a proposed shellfish aquaculture project when considering an authorization under §922.132(e).

(2) The MOA specifies how the process of §922.36 in subpart D will be administered within State waters within the sanctuary in coordination with State permit and lease programs as administered by the California Fish and Game Commission, the Department of Fish and Wildlife and the California Coastal Commission.

(b)(1) NOAA has entered into a Memorandum of Agreement (MOA) with the State of California, EPA, and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary.

With regard to permits, the MOA encompasses:

(i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under section 13377 of the California Water Code; and

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

(2) The MOA specifies how the process of §922.36 in subpart D will be administered within State waters within the Sanctuary in coordination with the State permit program.

[73 FR 70535, Nov. 20, 2008, as amended at 80 FR 8787, Feb. 19, 2015; 88 FR 19829, Apr. 4, 2023]

Appendix A to Subpart M of Part 922—Monterey Bay National Marine Sanctuary Boundary Coordinates

Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID No.	Latitude	Longitude
Seaward Boundary		
1	37.88225	−122.62753
2	37.66641	−122.75105
3	37.61622	−122.76937
4	37.57147	−122.80399
5	37.52988	−122.85988
6	37.50948	−122.90614
7	37.49418	−123.00770
8	37.50819	−123.09617
9	37.52001	−123.12879
10	37.45304	−123.14009
11	37.34316	−123.13170
12	37.23062	−123.10431
13	37.13021	−123.02864
14	37.06295	−122.91261
15	37.03509	−122.77639
16	36.92155	−122.80595
17	36.80632	−122.81564
18	36.69192	−122.80539
19	36.57938	−122.77416
20	36.47338	−122.72568
21	36.37242	−122.65789
22	36.27887	−122.57410
23	36.19571	−122.47699
24	36.12414	−122.36527
25	36.06864	−122.24438
26	36.02451	−122.11672
27	35.99596	−121.98232
28	35.98309	−121.84069
29	35.98157	−121.75634
30	35.92933	−121.71119
31	35.83773	−121.71922
32	35.72063	−121.71216
33	35.59497	−121.69030
34	35.55327	−121.63048
35	35.55483	−121.10399
36	37.59421	−122.52001
37	37.61367	−122.61673
38	37.76694	−122.65011
39	37.81777	−122.53008
Harbor Exclusions		
40	37.49414	−122.48483
41	37.49540	−122.48576
42	36.96082	−122.00175
43	36.96143	−122.00112
44	36.80684	−121.79145
45	36.80133	−121.79047
46	36.60837	−121.88970
47	36.60580	−121.88965

[75 FR 53571, Sept. 1, 2010]

Appendix B to Subpart M of Part 922—Zones Within the Sanctuary Where Overflights Below 1000 Feet Are Prohibited

The four zones are:

(1) From mean high water to 3 nautical miles (nmi) offshore between a line extending from Point Santa Cruz on a southwesterly bearing of 220° true and a line extending from 2.0 nmi north of Pescadero Point on a southwesterly bearing of 240° true;

(2) From mean high water to 3 nmi offshore between a line extending from the Carmel River mouth on a westerly bearing of 270° true and a line extending due west along latitude parallel 35.55488 N off of Cambria;

(3) From mean high water and within a 5 nmi seaward arc drawn from a center point of 36.80129 N, 121.79034 W (the end of the Moss Landing ocean pier as it appeared on the most current NOAA nautical charts as of January 1, 1993); and

(4) Over the Sanctuary's jurisdictional waters of Elkhorn Slough east of the Highway One bridge to Elkhorn Road.

[75 FR 53571, Sept. 1, 2010]

APPENDIX C TO SUBPART M OF PART 922—DREDGED MATERIAL DISPOSAL SITES WITHIN THE SANCTUARY

[Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

Point ID No.	Latitude	Longitude
Santa Cruz Harbor/Twin Lakes Dredge Disposal Site		
1	36.9625	−122.00056
2	36.9625	−121.99861
3	36.96139	−121.99833
4	36.96139	−122.00083
SF–12 Dredge Disposal Site		
1	36.80207	−121.79207
2	36.80157	−121.79218
3	36.80172	−121.79325
4	36.80243	−121.79295
SF–14 Dredge Disposal Site		
(circle with 500 yard radius)		
1	36.79799	−121.81907
Monterey Harbor/Wharf II Dredge Disposal Site		
1	36.60297	−121.88942
2	36.60283	−121.88787
3	36.60092	−121.88827
4	36.60120	−121.88978

APPENDIX D TO SUBPART M OF PART 922—DREDGED MATERIAL DISPOSAL SITES ADJACENT TO THE MONTEREY BAY NATIONAL MARINE SANCTUARY

[Coordinates in this appendix are unprojected (Geographic Coordinate System) and are calculated using the North American Datum of 1983]

As of January 1, 1993, the U.S. Army Corps of Engineers operates the following dredged material disposal site adjacent to the Sanctuary off of the Golden Gate:

Point ID No.	Latitude	Longitude
1	37.76458	−122.56900
2	37.74963	−122.62281
3	37.74152	−122.61932
4	37.75677	−122.56482
5	37.76458	−122.56900

APPENDIX E TO SUBPART M OF PART 922—MOTORIZED PERSONAL WATERCRAFT ZONES AND ACCESS ROUTES WITHIN THE SANCTUARY

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

The five zones and access routes are:

(1) The 0.96 mi^2 area off Pillar Point Harbor from harbor launch ramps, through the harbor entrance to the northern boundary of Zone One. The boundary for Zone 1 begins at Point 1 in the coordinate table listed below and continues to each subsequent point in numerical order ending at Point 6.

Point ID No.	Latitude	Longitude
1 (flashing white 5-second breakwater entrance light and horn at the seaward end of the outer west breakwater—mounted on 50-ft high white cylindrical structure).	37.49402	−122.48471
2 (triangular red dayboard with a red reflective border and flashing red 6-second light at the seaward end of the outer east breakwater—mounted on 30-ft high skeleton tower).	37.49534	−122.48568
3 (bend in middle of outer east breakwater, 660 yards west of the harbor entrance).	37.49707	−122.47941
4 (Southeast Reef—southern end green gong buoy "1S" with flashing green 6-second light).	37.46469	−122.46971
5 (red entrance buoy "2" with flashing red 4-second light)	37.47284	−122.48411
6 (flashing white 5-second breakwater entrance light and horn at the seaward end of the outer west breakwater—mounted on 50-ft high white cylindrical structure).	37.49402	−122.48471

(2) The 2.63 mi^2 area off of Santa Cruz Small Craft Harbor from harbor launch ramps, through the harbor entrance, and then along a 100-yard wide access route to the south-southwest along a bearing of approximately 196° true (183° magnetic) toward the red and white whistle buoy at 36.93899 N, 122.009612 W, until crossing between the two yellow can buoys marking, respectively, the northeast and northwest corners of the zone. The boundary for Zone 2 begins at Point 1 in the coordinate table listed below and continues to each subsequent point in numerical order ending at Point 5.

Point ID No.	Latitude	Longitude
1 (red/white striped whistle buoy "SC" with flashing white Morse code "A" light)	36.93899	−122.00961

Point ID No.	Latitude	Longitude
2 (yellow can buoy)	36.95500	−122.00967
3 (yellow can buoy)	36.94167	−121.96667
4 (yellow can buoy)	36.92564	−121.96668
5 (red/white striped whistle buoy "SC" with flashing white Morse code "A" light)	36.93899	−122.00961

(3) The 2.29 mi^2 area off of Moss Landing Harbor from harbor launch ramps, through harbor entrance, and then along a 100-yard wide access route southwest along a bearing of approximately 230° true (217° magnetic) to the red and white bell buoy at 36.79893 N, 121.80157 W. The boundary for Zone 3 begins at Point 1 in the coordinate table listed below and continues to each subsequent point in numerical order ending at Point 5.

Point ID No.	Latitude	Longitude
1 (red/white striped bell buoy "MLA" with flashing white Morse code "A" light)	36.79893	−121.80157
2 (yellow can buoy)	36.77833	−121.81667
3 (yellow can buoy)	36.83333	−121.82167
4 (yellow can buoy)	36.81500	−121.80333
5 (red/white striped bell buoy "MLA" with flashing white Morse code "A" light)	36.79893	−121.80157

(4) The 3.10 mi^2 area off of Monterey Harbor from harbor launch ramps to a point midway between the seaward end of the U.S. Coast Guard Pier and the seaward end of Wharf 2, and then along a 100-yard wide access route to the northeast along a bearing of approximately 67° true (54° magnetic) to the yellow can buoy marking the southeast corner of the zone. The boundary for Zone 4 begins at Point 1 in the coordinate table listed below and continues to each subsequent point in numerical order ending at Point 6.

Point ID No.	Latitude	Longitude
1 (yellow can buoy)	36.61146	−121.87696
2 (red bell buoy "4" with flashing red 4-second light)	36.62459	−121.89594
3 (yellow can buoy)	36.65168	−121.87416
4 (yellow can buoy)	36.63833	−121.85500
6 (yellow can buoy)	36.61146	−121.87696

(5) The 0.13 mi^2 area near Pillar Point from the Pillar Point Harbor entrance along a 100-yard wide access route to the south along a bearing of approximately 174° true (161° magnetic) to the green bell buoy (identified as ''Buoy 3'') at 37.48154 N, 122.48156 W and then along a 100-yard wide access route northwest along a bearing of approximately 284° true (271° magnetic) to the green gong buoy (identified as ''Buoy 1'') at 37.48625 N, 122.50603 W, the southwest boundary of Zone Five. Zone Five exists only when a High Surf Advisory has been issued by the National Weather Service and is in effect for San Mateo County and only during December, January, and February. The boundary for Zone 5 begins at Point 1 in the coordinate table listed below and continues to each subsequent point in numerical order ending at Point 5.

Point ID No.	Latitude	Longitude
1 (green gong buoy "1" with flashing green 2.5-second light)	37.48625	−122.50603
2 (intersection of sight lines due north of green gong buoy "1" and due west of Sail Rock).	37.49305	−122.50603
3 (Sail Rock)	37.49305	−122.50105
4 (intersection of sight lines due east of green gong buoy "1" and due south of Sail Rock).	37.48625	−122.50105
5 (green gong buoy "1" with flashing green 2.5-second light)	37.48625	−122.50603

[86 FR 62913, Nov. 15, 2021]

Appendix F to Subpart M of Part 922—Davidson Seamount Management Zone

[Coordinates in this appendix are unprojected (Geographic Coordinate System)

and are calculated using the North American Datum of 1983]

Point ID No.	Latitude	Longitude
1	35.90000	−123.00000
2	35.90000	−122.50000
3	35.50000	−122.50000
4	35.50000	−123.00000

Subpart N—Stellwagen Bank National Marine Sanctuary

§ 922.140 Boundary.

(a) The Stellwagen Bank National Marine Sanctuary (Sanctuary) consists of an area of approximately 639 square nautical miles (nmi²) (846 sq. mi.) 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: 42.76672 −70.21664 (NE); 42.09330 −70.03506 (SE); 42.12924 −70.47043 (SW); 42.54830 −70.59737 (WNW); and 42.65123 −70.50262 (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 42.11526 −70.27800. 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.

[60 FR 66877, Dec. 27, 1995, as amended at 88 FR 968, Jan. 6, 2023]

§ 922.141 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Industrial material means mineral, as defined in § 922.11.

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

[60 FR 66877, Dec. 27, 1995, as amended at 88 FR 968, Jan. 6, 2023]

§ 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 specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.143 or a special use permit issued pursuant to subpart D of this part.

(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 subpart D of this part 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 § 922.10, 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.

[60 FR 66877, Dec. 27, 1995, as amended at 88 FR 968, Jan. 6, 2023; 88 FR 19828, Apr. 4, 2023]

§ 922.143 Permit procedures.

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

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066.

[88 FR 968, Jan. 6, 2023]

Appendix A to Subpart N of Part 922—Stellwagen Bank National Marine Sanctuary Boundary Coordinates

Coordinates listed in this appendix are unprojected (geographic) and based on the North American Datum of 1983.

Pt.	Latitude	Longitude
E1	42.76672	−70.21664
E2	42.09330	−70.03506
E3	42.10239	−70.05434
E4	42.10081	−70.06707
E5	42.11752	−70.08658
E6	42.12038	−70.10607
E7	42.12675	−70.12388
E8	42.12853	−70.14005
E9	42.13342	−70.15497
E10	42.13481	−70.17292
E11	42.13210	−70.19605
E12	42.13339	−70.21707
E13	42.12970	−70.23889
E14	42.12435	−70.25585
E15	42.11526	−70.27800
E16	42.12924	−70.47043
E17	42.54830	−70.59737
E18	42.55850	−70.58697
E19	42.56347	−70.58388
E20	42.57522	−70.57254
E21	42.58075	−70.55558
E22	42.58790	−70.54179
E23	42.59504	−70.52843
E24	42.60651	−70.51587
E25	42.62107	−70.50588
E26	42.63312	−70.50132
E27	42.64245	−70.50130
E28	42.65123	−70.50262

[88 FR 969, Jan. 6, 2023]

Subpart O—Olympic Coast National Marine Sanctuary

§ 922.150 Boundary.

(a) The Olympic Coast National Marine Sanctuary (Sanctuary) consists of an area of approximately 2,408 square nautical miles (nmi²) (3,188 sq. mi.) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

(b) The Sanctuary boundary extends from Koitlah Point due north to the United States/Canada international boundary. The Sanctuary boundary then follows the U.S./Canada international boundary seaward to the 100 fathom isobath. The seaward boundary of the Sanctuary approximates the 100 fathom isobath in a southerly direction from the U.S./Canada international boundary to a point due west of the mouth of the Copalis River cutting across the heads of Nitnat, Juan de Fuca and Quinault Canyons. The coastal boundary of the Sanctuary is the mean higher high water line when adjacent to Federally managed lands cutting across the mouths of all rivers and streams, except where adjacent to Indian reservations, State and county owned lands; in such case, the coastal boundary is the mean lower low water line. La Push harbor is excluded from the Sanctuary boundary shoreward of the International Collision at Sea regulation (Colreg.) demarcation lines. The boundary coordinates are listed in appendix A to this subpart.

[60 FR 66877, Dec. 27, 1995, as amended at 76 FR 67360, Nov. 1, 2011; 88 FR 969, Jan.6, 2023]

§ 922.151 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Indian reservation means a tract of land set aside by the Federal Government for use by a federally recognized American Indian tribe and includes, but is not limited to, the Makah, Quileute, Hoh, and Quinault Reservations.

Lawful fishing means fishing authorized by a tribal, State or Federal entity with jurisdiction over the activity.

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

[76 FR 67360, Nov. 1, 2011, as amended at 88 FR 969, Jan. 6, 2023]

§ 922.152 Prohibited or otherwise regulated activities.

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

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.

(2)(i) Discharging or depositing, from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

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

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

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

(D) Engine exhaust; or

(E) Dredge spoil in connection with beach nourishment projects related to the Quillayute River Navigation Project.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(2)(i)(A) through (E) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(3) Discharging or depositing, from within or into the Sanctuary, any materials or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, engine exhaust, or anchor wash.

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

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

(i) Anchoring vessels;

(ii) Lawful fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with the Quillayute River Navigation Project, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties, and related beach nourishment;

(v) Construction, repair, replacement or rehabilitation of boat launches, docks or piers, and associated breakwaters and jetties; or

(vi) Beach nourishment projects related to harbor maintenance activities.

(6) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or pursuant to any Indian treaty with an Indian tribe to which the United States is a party, provided that the Indian treaty right is exercised in accordance with the MMPA, ESA, and MBTA, to the extent that they apply.

(7) Disturbing marine mammals or seabirds by flying motorized aircraft at less than 2,000 feet over the waters within one nautical mile of the Flattery Rocks, Quillayute Needles, or

Copalis National Wildlife Refuges or within one nautical mile seaward from the coastal boundary of the Sanctuary, except for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian tribe. Failure to maintain a minimum altitude of 2,000 feet above ground level over any such waters is presumed to disturb marine mammals or seabirds.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from) any historical resource, or any marine mammal, sea turtle, or seabird taken in violation of the MMPA, ESA, or MBTA, to the extent that they apply.

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

(b) The prohibitions in paragraph (a)(2) through (5), (7), and (8) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(c) The prohibitions in paragraphs (a)(2) through (5), (7), and (8) of this section do not apply to activities necessary for valid law enforcement purposes.

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

(i) Except as provided in paragraph (d)(2) of this section, the prohibitions in paragraphs (a)(2) through (8) of this section do not apply to the following military activities performed by the Department of Defense in W–237A, W–237B, and Military Operating Areas Olympic A and B in the Sanctuary:

(A) Hull integrity tests and other deep water tests;

(B) Live firing of guns, missiles, torpedoes, and chaff;

(C) Activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and

(D) Anti-submarine warfare operations.

(ii) New activities may be exempted from the prohibitions in paragraphs (a)(2) through (8) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out such activity shall be carried out in a manner that avoids to the maximum extent 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 (8) of this section do not apply to any activity specifically authorized by and conducted under and in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit or an ONMS authorization issued pursuant to subpart D of this part and § 922.153 or a special use permit issued pursuant to subpart D of this part.

(f) Members of a federally recognized Indian tribe may exercise aboriginal and treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this part. The Director may consult with the governing body of a tribe regarding ways the tribe may exercise such rights consistent with the purposes of the Sanctuary.

(g) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity authorized by any lease, permit, license, or other authorization issued after July 22, 1994,

and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with §922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit or ONMS authorization under subpart D of this part 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 §922.10, 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 the Quillayute River Navigation Project; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after July 22, 1994 for any of these activities within the Sanctuary shall be invalid.

[76 FR 67360, Nov. 1, 2011, as amended at 77 FR 3922, Jan. 26, 2012; 88 FR 969, Jan. 6, 2023; 88 FR 19828, Apr. 4, 2023]

§922.153 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by §922.152(a)(2) through (8) if conducted in accordance with the scope, purpose, terms and conditions of a permit or ONMS authorization issued under this section and subpart D of this part.

(b) Applications for such permits or ONMS authorizations should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Olympic Coast National Marine Sanctuary, 115 E Railroad Ave., Suite 301, Port Angeles, WA 98362.

(c) 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.

(d) 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.

(e) Where the issuance or denial of a permit is requested by the governing body of a Washington Coast treaty 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.

[88 FR 969, Jan. 6, 2023]

§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

Coordinates listed in this appendix are unprojected (geographic) and based on the North American Datum of 1983.

Point	Latitude	Longitude
1	47.12917	−124.18389
2	47.12917	−124.97000
3	47.58472	−125.00000
4	47.66806	−125.07889
5	47.83361	−125.09500
6	47.95361	−125.48694
7	48.12583	−125.63889
8	48.25000	−125.68167
9	48.30589	−125.50081
10	48.33756	−125.38136
11	48.44617	−125.15469
12	48.45256	−125.14164
13	48.46894	−125.09775
14	48.49533	−125.00303
15	48.49894	−124.98886
16	48.50367	−124.91581
17	48.50589	−124.84053
18	48.50283	−124.78831
19	48.49344	−124.72725
20	48.46889	−124.63694
21	48.38806	−124.63694

[88 FR 969, Jan. 6, 2023]

Subpart P—Florida Keys National Marine Sanctuary

SOURCE: 62 FR 32161, June 12, 1997, unless otherwise noted.

EFFECTIVE DATE NOTE: At 90 FR 6136, Jan. 17, 2025, subpart P to part 922 was revised, with an effective date to be determined.

§ 922.160 Purpose.

(a) The purpose of the regulations in this subpart is to implement the comprehensive management plan for the Florida Keys National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary is designated, in order to protect, preserve and manage the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area. In particular, the regulations in this part are intended to protect, restore, and enhance the living resources of the Sanctuary, to contribute to the maintenance of natural assemblages of living resources for future generations, to provide places for species dependent on such living resources to survive and propagate, to facilitate to the extent compatible with the primary objective of resource protection all public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities, to reduce conflicts between such compatible uses, and to achieve the other policies and purposes of the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act.

(b) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the regulations in their entirety with any proposed changes thereto, including those regulations in subparts A and E of this part that apply to the Sanctuary. The Governor of the State of Florida will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary.

§ 922.161 Boundary.

The sanctuary consists of an area of approximately 2,872 square nautical miles (nmi^2) (3,803 sq. mi.) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. Appendix I to this subpart sets forth the precise Sanctuary boundary.

[88 FR 969, Jan. 6, 2023]

§ 922.162 Definitions.

(a) The following definitions apply to the Florida Keys National Marine Sanctuary regulations. To the extent that a term appears in § 922.11 and this section, the definition in this section governs.

Acts means the Florida Keys National Marine Sanctuary and Protection Act, as amended, (FKNMSPA) (Pub. L. 101–605), and the National Marine Sanctuaries Act (NMSA), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, (MPRSA) (16 U.S.C. 1431 *et seq.*).

Adverse effect means any factor, force, or action that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms any Sanctuary resource, as defined in section 302(8) of the NMSA (16 U.S.C. 1432(8)) and in this section, or any of

the qualities, values, or purposes for which the Sanctuary is designated.

Airboat means a vessel operated by means of a motor driven propeller that pushes air for momentum.

Areas To Be Avoided means the areas in which vessel operations are prohibited pursuant to section 6(a)(1) of the FKNMSPA (see § 922.164(a)). Appendix VII to this subpart sets forth the geographic coordinates of these areas, including any modifications thereto made in accordance with section 6(a)(3) of the FKNMSPA.

Closed means all entry or use is prohibited.

Coral means but is not limited to the corals of the Class Hydrozoa (stinging and hydrocorals); Class Anthozoa, Subclass Hexacorallia, Order Scleractinia (stony corals); Class Anthozoa, Subclass Ceriantipatharia, Order Antipatharia (black corals); and Class Anthozoa, Subclass Ocotocorallia, Order Gorgonacea, species *Gorgonia ventalina* and *Gorgonia flabellum* (sea fans).

Coral area means marine habitat where coral growth abounds including patch reefs, outer bank reefs, deep-water banks, and hardbottoms.

Coral reefs means the hard bottoms, deep-water banks, patch reefs, and outer bank reefs.

Ecological Reserve means an area of the Sanctuary consisting of contiguous, diverse habitats, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary. Appendix IV to this subpart sets forth the geographic coordinates of these areas.

Existing Management Area means an area of the Sanctuary that is within or is a resource management area established by NOAA or by another Federal authority of competent jurisdiction as of the effective date of these regulations where protections above and beyond those provided by Sanctuary-wide prohibitions and restrictions are needed to adequately protect resources. Appendix II to this subpart sets forth the geographic coordinates of these areas.

Exotic species means a species of plant, invertebrate, fish, amphibian, reptile or mammal whose natural zoogeographic range would not have included the waters of the Atlantic Ocean, Caribbean, or Gulf of America without passive or active introduction to such area through anthropogenic means.

Fishing means:

(1) The catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or any operation at sea in support of, or in preparation for, any activity described in this subparagraph (1).

(2) Such term does not include any scientific research activity which is conducted by a scientific research vessel.

Hardbottom means a submerged marine community comprised of organisms attached to exposed solid rock substrate. Hardbottom is the substrate to which corals may attach but does not include the corals themselves.

Idle speed only/no-wake means a speed at which a boat is operated that is no greater than 4 knots or does not produce a wake.

Idle speed only/no-wake zone means a portion of the Sanctuary where the speed at which a boat is operated may be no greater than 4 knots or may not produce a wake.

Length overall (LOA) or *length* means, as used in § 922.167 with respect to a vessel, the horizontal distance, rounded to the nearest foot (with 0.5 ft and above rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.

Live rock means any living marine organism or an assemblage thereof attached to a hard substrate, including dead coral or rock but not individual mollusk shells (e.g., scallops, clams, oysters). Living marine organisms associated with hard bottoms, banks,

reefs, and live rock may include, but are not limited to: sea anemones (Phylum Cnidaria: Class Anthozoa: Order Actinaria); sponges (Phylum Porifera); tube worms (Phylum Annelida), including fan worms, feather duster worms, and Christmas tree worms; bryozoans (Phylum Bryzoa); sea squirts (Phylum Chordata); and marine algae, including Mermaid's fan and cups (Udotea spp.), corraline algae, green feather, green grape algae (Caulerpa spp.) and watercress (Halimeda spp.).

Marine life species means any species of fish, invertebrate, or plant included in sections (2), (3), or (4) of Rule 46–42.001, Florida Administrative Code, reprinted in appendix VIII to this subpart.

Military activity means an activity conducted by the Department of Defense with or without participation by foreign forces, other than civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers.

No-access buffer zone means a portion of the Sanctuary where vessels are prohibited from entering regardless of the method of propulsion.

No motor zone means an area of the Sanctuary where the use of internal combustion motors is prohibited. A vessel with an internal combustion motor may access a no motor zone only through the use of a push pole, paddle, sail, electric motor or similar means of operation but is prohibited from using it's internal combustion motor.

Not available for immediate use means not readily accessible for immediate use, e.g., by being stowed unbaited in a cabin, locker, rod holder, or similar storage area, or by being securely covered and lashed to a deck or bulkhead.

Officially marked channel means a channel marked by Federal, State of Florida, or Monroe County officials of competent jurisdiction with navigational aids except for channels marked idle speed only/no wake.

Personal watercraft means any jet or air-powered watercraft operated by standing, sitting, or kneeling on or behind the vessel, in contrast to a conventional boat, where the operator stands or sits inside the vessel, and that uses an inboard engine to power a water jet pump for propulsion, instead of a propeller as in a conventional boat.

Prop dredging means the use of a vessel's propulsion wash to dredge or otherwise alter the seabed of the Sanctuary. Prop dredging includes, but is not limited to, the use of propulsion wash deflectors or similar means of dredging or otherwise altering the seabed of the Sanctuary. Prop dredging does not include the disturbance to bottom sediments resulting from normal vessel propulsion.

Prop scarring means the injury to seagrasses or other immobile organisms attached to the seabed of the Sanctuary caused by operation of a vessel in a manner that allows its propeller or other running gear, or any part thereof, to cause such injury (e.g., cutting seagrass rhizomes). Prop scarring does not include minor disturbances to bottom sediments or seagrass blades resulting from normal vessel propulsion.

Residential shoreline means any man-made or natural:

(1) Shoreline,

(2) Canal mouth,

(3) Basin, or

(4) Cove adjacent to any residential land use district, including improved subdivision, suburban residential or suburban residential limited, sparsely settled, urban residential, and urban residential mobile home under the Monroe County land development regulations.

Sanctuary means the Florida Keys National Marine Sanctuary.

Sanctuary Preservation Area means an area of the Sanctuary that encompasses a discrete, biologically important area, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Appendix V to this subpart sets forth the geographic coordinates of these areas.

Sanctuary wildlife means any species of fauna, including avifauna, that occupy or utilize the submerged resources of the Sanctuary as nursery areas, feeding grounds, nesting sites, shelter, or other habitat during any portion of their life cycles.

Special-use Area means an area of the Sanctuary set aside for scientific research and educational purposes, recovery or restoration of Sanctuary resources, monitoring, to prevent use or user conflicts, to facilitate access and use, or to promote public use and understanding of Sanctuary resources. Appendix VI to this subpart sets forth the geographic coordinates of these areas.

Stem means the foremost part of a vessel, consisting of a section of timber or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end.

Stern means the aftermost part of the vessel.

Tank vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(1) Is a United States flag vessel;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States [46 U.S.C. 2101].

Traditional fishing means those commercial or recreational fishing activities that were customarily conducted within the Sanctuary prior to its designation as identified in the Environmental Impact Statement and Management Plan for this Sanctuary.

Tropical fish means any species included in section (2) of Rule 46–42.001, Florida Administrative Code, reproduced in appendix VIII to this subpart, or any part thereof.

Wildlife Management Area means an area of the Sanctuary established for the management, protection, and preservation of Sanctuary wildlife resources, including such an area established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted to minimize disturbances to Sanctuary wildlife; to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. Appendix III to this subpart lists these areas and their access restrictions.

(b) Other terms appearing in the regulations in this part are defined at § 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 *et seq*. and 16 U.S.C. 1431 *et seq*.

[62 FR 32161, June 12, 1997, as amended at 66 FR 4369, Jan. 17, 2001; 74 FR 38094, July 31, 2009; 88 FR 970, Jan. 6, 2023; 88 FR 19828, Apr. 4, 2023; 90 FR 38002, Aug. 7, 2025]

§ 922.163 Prohibited activities—Sanctuary-wide.

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

(1) *Mineral and hydrocarbon exploration, development and production.* Exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary.

(2) *Removal of, injury to, or possession of coral or live rock.* (i) Moving, removing, taking, harvesting, damaging, disturbing, touching, breaking, cutting, or otherwise injuring, or possessing (regardless of where taken from) any living or dead coral, or coral formation, or attempting any of these activities, except as permitted under 50 CFR part 622.

(ii) Harvesting, or attempting to harvest, any live rock from the Sanctuary, or possessing (regardless of where taken from) any live rock within the Sanctuary, except as authorized by a permit for the possession or harvest from aquaculture operations in the Exclusive Economic Zone, issued by the National Marine Fisheries Service pursuant to applicable regulations under the appropriate Fishery Management Plan, or as authorized by the applicable State authority of competent jurisdiction within the Sanctuary for live rock cultured on State submerged lands leased from the State of Florida,

pursuant to applicable State law. *See* § 370.027, Florida Statutes and implementing regulations.

(3) *Alteration of, or construction on, the seabed.* Drilling into, dredging, or otherwise altering the seabed of the Sanctuary, or engaging in prop-dredging; or constructing, placing or abandoning any structure, material, or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels in a manner not otherwise prohibited by this part (see §§ 922.163(a)(5)(ii) and 922.164(d)(1)(v));

(ii) Traditional fishing activities not otherwise prohibited by this part;

(iii) Installation and maintenance of navigational aids by, or pursuant to valid authorization by, any Federal, State, or local authority of competent jurisdiction;

(iv) Harbor maintenance in areas necessarily associated with Federal water resource development projects in existence on July 1, 1997, including maintenance dredging of entrance channels and repair, replacement, or rehabilitation of breakwaters or jetties;

(v) Construction, repair, replacement, or rehabilitation of docks, seawalls, breakwaters, piers, or marinas with less than ten slips authorized by any valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(4) *Discharge or deposit of materials or other matter.* (i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except:

(A) Fish, fish parts, chumming materials, or bait used or produced incidental to and while conducting a traditional fishing activity in the Sanctuary;

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

(C) Cooling water from vessels or engine exhaust;

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except:

(A) Those listed in paragraph (a)(4)(i)(A) through (a)(4)(i)(C) of this section;

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

(C) Those authorized under Monroe County land use permits; or

(D) Those authorized under State permits.

(5) *Operation of vessels.* (i) Operating a vessel in such a manner as to strike or otherwise injure coral, seagrass, or any other immobile organism attached to the seabed, including, but not limited to, operating a vessel in such a manner as to cause prop-scarring.

(ii) Having a vessel anchored on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen.

(iii) Except in officially marked channels, operating a vessel at a speed greater than 4 knots or in manner which creates a wake:

(A) Within an area designated idle speed only/no wake;

(B) Within 100 yards of navigational aids indicating emergent or shallow reefs (international diamond warning symbol);

(C) Within 100 yards of the red and white ''divers down'' flag (or the blue and white ''alpha'' flag in Federal waters);

(D) Within 100 yards of residential shorelines; or

(E) Within 100 yards of stationary vessels.

(iv) Operating a vessel in such a manner as to injure or take wading, roosting, or nesting birds or marine mammals.

(v) Operating a vessel in a manner which endangers life, limb, marine resources, or property.

(vi) Having a marine sanitation device that is not secured in a manner that prevents discharges or deposits of treated and untreated sewage. Acceptable methods include, but are not limited to, all methods that have been approved by the U.S. Coast Guard (at 33 CFR 159.7(b) and (c)).

(6) *Conduct of diving/snorkeling without flag*. Diving or snorkeling without flying in a conspicuous manner the red and white ''divers down'' flag (or the blue and white ''alpha'' flag in Federal waters).

(7) *Release of exotic species*. Introducing or releasing an exotic species of plant, invertebrate, fish, amphibian, or mammals into the Sanctuary.

(8) *Damage or removal of markers*. Marking, defacing, or damaging in any way or displacing, removing, or tampering with any official signs, notices, or placards, whether temporary or permanent, or with any navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment.

(9) *Movement of, removal of, injury to, or possession of Sanctuary historical resources*. Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess, a Sanctuary historical resource.

(10) *Take or possession of protected wildlife*. Taking any marine mammal, sea turtle, or seabird in or above the Sanctuary, *except* as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA) 16 U.S.C. 703 *et seq*.

(11) *Possession or use of explosives or electrical charges*. Possessing, or using explosives, except powerheads, or releasing electrical charges within the Sanctuary.

(12) *Harvest or possession of marine life species*. Harvesting, possessing, or landing any marine life species, or part thereof, within the Sanctuary, except in accordance with rules 68B–42 of the Florida Administrative Code, and such rules shall apply mutatis mutandis (with necessary editorial changes) to all Federal and State waters within the Sanctuary.

(13) *Interference with law enforcement*. Interfering with, obstructing, delaying or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Acts or any regulation or permit issued under the Acts.

(b) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to § 922.166 and subpart D of this part.

(c) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of these regulations, provided that the applicant complies with § 922.36, 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 reasonably necessary to protect Sanctuary resources and qualities. Amendments of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.

(d)(1) All military activities shall be carried out in a manner that avoids to the maximum extent practical any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraph (a) of this section and § 922.164 do not apply to existing classes of military activities which were conducted prior to the effective date of these regulations, as identified in the Environmental Impact Statement and Management Plan for the Sanctuary. New military activities in the Sanctuary are allowed and may be exempted from the prohibitions in paragraph (a) of this section and in § 922.164 by the Director after consultation between the Director and the Department of Defense pursuant to section 304(d) of the NMSA. When a military activity is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA, or it is likely to destroy, cause the loss of,

or injure a Sanctuary resource or quality not previously considered in a previous consultation under section 304(d) of the NMSA, the activity is considered a new activity for purposes of this paragraph. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practical any adverse impact on Sanctuary resources and qualities.

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

(e) The following prohibitions do not apply to Federal, State and local officers while performing enforcement duties in their official capacities or responding to emergencies that threaten life, property, or the environment:

(1) Those contained in paragraph (a)(4) of this section only as it pertains to discharges of sewage incidental to vessel use and generated by a marine sanitation device approved in accordance with section 312 of the Federal Water Pollution Control Act (FWPCA), as amended, 33 U.S.C. 1322 *et seq.;* and

(2) Those contained in paragraph (a)(5) of this section.

(f) In no event may the Director issue a certification, authorization, or permit under §§ 922.10, 922.163(c), and 922.166 and subpart D of this part, respectively, authorizing, or otherwise approving, the exploration for, leasing, development, or production of minerals or hydrocarbons within the Sanctuary, the disposal of dredged material within the Sanctuary other than in connection with beach renourishment or Sanctuary restoration projects, or the discharge of untreated or primary treated sewage, and any purported authorizations issued by other authorities for any of these activities within the Sanctuary shall be invalid.

(g) Any amendment to these regulations shall not take effect in Florida State waters until approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. Any fishery regulations in the Sanctuary shall not take effect in Florida State waters until established by the Florida Marine Fisheries Commission.

[62 FR 32161, June 12, 1997, as amended at 74 FR 38094, July 31, 2009; 75 FR 72659, Nov. 26, 2010; 88 FR 970, Jan. 6, 2023]

§ 922.164 Additional activity regulations by Sanctuary area.

In addition to the prohibitions set forth in § 922.163, which apply throughout the Sanctuary, the following regulations apply with respect to activities conducted within the Sanctuary areas described in this section and in Appendix (II) through (VII) to this subpart. Activities located within two or more overlapping Sanctuary areas are concurrently subject to the regulations applicable to each overlapping area.

(a) *Areas to be avoided.* Operating a tank vessel or a vessel greater than 50 meters in registered length is prohibited in all areas to be avoided, except if such vessel is a public vessel and its operation is essential for national defense, law enforcement, or responses to emergencies that threaten life, property, or the environment. Appendix VII to this subpart sets forth the geographic coordinates of these areas.

(b) *Existing management areas*—(1) *Key Largo and Looe Key Management Areas.* The following activities are prohibited within the Key Largo and Looe Key Management Areas (also known as the Key Largo and Looe Key National Marine Sanctuaries) described in appendix II to this subpart:

(i) Removing, taking, damaging, harmfully disturbing, breaking, cutting, spearing or similarly injuring any coral or other marine invertebrate, or any plant, soil, rock, or other material, except commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand or by hand gear which is consistent with these regulations and the applicable regulations implementing the applicable Fishery Management Plan.

(ii) Taking any tropical fish.

(iii) Fishing with wire fish traps, bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or nets.

(iv) Fishing with, carrying or possessing, except while passing through without interruption or for law enforcement purposes: pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring-loaded guns or similar devices known as spearguns.

(2) *Great White Heron and Key West National Wildlife Refuge Management Areas.* Operating a personal watercraft, operating an airboat, or water skiing except within Township 66 South, Range 29 East, Sections 5, 11, 12 and 14; Township 66 South, Range 28 East, Section 2; Township 67 South, Range 26 East, Sections 16 and 20, all Tallahassee Meridian, are prohibited within the marine portions of the Great White Heron and Key West National Wildlife Refuge Management Areas described in appendix II to this subpart.

(c) *Wildlife management areas.* (1) Marine portions of the Wildlife Management Areas listed in appendix III to this subpart or portions thereof may be designated ''idle speed only/no-wake,'' ''no-motor'' or ''no-access buffer'' zones or ''closed''. The Director, in cooperation with other Federal, State, or local resource management authorities, as appropriate, shall post signs conspicuously, using mounting posts, buoys, or other means according to location and purpose, at appropriate intervals and locations, clearly delineating an area as an ''idle speed only/no wake'', a ''no-motor'', or a ''no-access buffer'' zone or as ''closed'', and allowing instant, long-range recognition by boaters. Such signs shall display the official logo of the Sanctuary.

(2) The following activities are prohibited within the marine portions of the Wildlife Management Areas listed in appendix III to this subpart:

(i) In those marine portions of any Wildlife Management Area designated an ''idle speed only/no wake'' zone in appendix III to this subpart, operating a vessel at a speed greater that idle speed only/no wake.

(ii) In those marine portions of any Wildlife Management Area designated a ''no-motor'' zone in appendix III to this subpart, using internal combustion motors or engines for any purposes. A vessel with an internal combustion motor or engine may access a ''no-motor'' zone only through the use of a push pole, paddle, sail, electric motor or similar means of propulsion.

(iii) In those marine portions of any Wildlife Management Area designated a ''no-access buffer'' zone in appendix III of this subpart, entering the area by vessel.

(iv) In those marine portions of any Wildlife Management Area designated as closed in appendix III of this subpart, entering or using the area.

(3) The Director shall coordinate with other Federal, State, or local resource management authorities, as appropriate, in the establishment and enforcement of access restrictions described in paragraph (c)(2) (i)–(iv) of this section in the marine portions of Wildlife Management Areas.

(4) The Director may modify the number and location of access restrictions described in paragraph (c)(2) (i)–(iv) of this section within the marine portions of a Wildlife Management Area if the Director finds that such action is reasonably necessary to minimize disturbances to Sanctuary wildlife, or to ensure protection and preservation of Sanctuary wildlife consistent with the purposes of the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. The Director will effect such modification by:

(i) Publishing in the FEDERAL REGISTER, after notice and an opportunity for public comments in accordance, an amendment to the list of such areas set forth in appendix III to this subpart, and a notice regarding the time and place where maps depicting the precise locations of such restrictions will be made available for public inspection, and

(ii) Posting official signs delineating such restrictions in accordance with paragraph (c)(1) of this section.

(d) *Ecological Reserves, Sanctuary Preservation Areas, and Special Use (Research only) Areas.* (1) The following activities are prohibited within the Ecological Reserves described in appendix IV to this subpart, within the Sanctuary

Preservation Areas described in appendix V to this subpart, and within the Special Use (Research only Areas) described in appendix VI to this subpart:

(i) Discharging or depositing any material or other matter except cooling water or engine exhaust.

(ii) Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities. However, fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the Ecological Reserve or Sanctuary Preservation Area, as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through such reserves or areas, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

(iii) Except for catch and release fishing by trolling in the Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key SPAs, fishing by any means. However, gear capable of harvesting fish may be aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such gear is not available for immediate use when entering and during transit through such Ecological Reserve or Sanctuary Preservation Area, and no presumption of fishing activity shall be drawn therefrom.

(iv) Touching living or dead coral, including but not limited to, standing on a living or dead coral formation.

(v) *Anchoring in the Tortugas Ecological Reserve.* In all other Ecological Reserves and Sanctuary Preservation Areas, placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any attached living organism. When anchoring dive boats, the first diver down must inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other attached organism. No further diving shall take place until the anchor is placed in accordance with these requirements.

(vi) Except in the Tortugas Ecological Reserve where mooring buoys must be used, anchoring instead of mooring when a mooring buoy is available or anchoring in other than a designated anchoring area when such areas have been designated and are available.

(vii) Except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section, violating a temporary access restriction imposed by the Director pursuant to paragraph (d)(2) of this section.

(viii) Except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section: entering the Tortugas South area of the Tortugas Ecological Reserve; or entering the Tortugas North area of the Tortugas Ecological Reserve without a valid access permit issued pursuant to § 922.167 or entering or leaving the Tortugas North area with a valid access permit issued pursuant to § 922.167 without notifying FKNMS staff at the Dry Tortugas National Park office by telephone or radio no less than 30 minutes and no more than 6 hours, before entering and upon leaving the Tortugas Ecological Reserve.

(ix) Tying a vessel greater than 100 feet (30.48 meters) LOA, or tying more than one vessel (other than vessels carried on board a vessel) if the combined lengths would exceed 100 feet (30.48 meters) LOA, to a mooring buoy or to a vessel tied to a mooring buoy in the Tortugas Ecological Reserve.

(2) The Director may temporarily restrict access to any portion of any Sanctuary Preservation Area or Ecological Reserve if the Director, on the basis of the best available data, information and studies, determines that a concentration of use appears to be causing or contributing to significant degradation of the living resources of

the area and that such action is reasonably necessary to allow for recovery of the living resources of such area. The Director will provide for continuous monitoring of the area during the pendency of the restriction. The Director will provide public notice of the restriction by publishing a notice in the FEDERAL REGISTER, and by such other means as the Director may deem appropriate. The Director may only restrict access to an area for a period of 60 days, with one additional 60 day renewal. The Director may restrict access to an area for a longer period pursuant to a notice and opportunity for public comment rulemaking under the Administrative Procedure Act. Such restriction will be kept to the minimum amount of area necessary to achieve the purposes thereof.

(e) *Special-use Areas.* (1) The Director may set aside discrete areas of the Sanctuary as Special-use Areas, and, by designation pursuant to this paragraph, impose the access and use restrictions specified in paragraph (e)(3) of this section. Special-use Areas are described in appendix VI to this subpart, in accordance with the following designations and corresponding objectives:

(i) ''Recovery area'' to provide for the recovery of Sanctuary resources from degradation or other injury attributable to human uses;

(ii) ''Restoration area'' to provide for restoration of degraded or otherwise injured Sanctuary resources;

(iii) ''Research-only area'' to provide for scientific research or education relating to protection and management, through the issuance of a Sanctuary General permit for research pursuant to § 922.166 of these regulations; and

(iv) ''Facilitated-use area'' to provide for the prevention of use or user conflicts or the facilitation of access and use, or to promote public use and understanding, of Sanctuary resources through the issuance of special-use permits.

(2) A Special-use Area shall be no larger than the size the Director deems reasonably necessary to accomplish the applicable objective.

(3) Persons conducting activities within any Special-use Area shall comply with the access and use restrictions specified in this paragraph and made applicable to such area by means of its designation as a ''recovery area,'' ''restoration area,'' ''research-only area,'' or ''facilitated-use area.'' Except for passage without interruption through the area or for law enforcement purposes, no person may enter a Special-use Area except to conduct or cause to be conducted the following activities:

(i) In such area designated as a ''recovery area'' or a ''restoration area'', habitat manipulation related to restoration of degraded or otherwise injured Sanctuary resources, or activities reasonably necessary to monitor recovery of degraded or otherwise injured Sanctuary resources;

(ii) In such area designated as a ''research only area'', scientific research or educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a valid National Marine Sanctuary General or Historical Resources permit, or

(iii) In such area designated as a ''facilitated-use area'', activities specified by the Director or specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a valid Special-use permit.

(4)(i) The Director may modify the number of, location of, or designations applicable to, Special-use Areas by publishing in the FEDERAL REGISTER, after notice and an opportunity for public comment in accordance with the Administrative Procedure Act, an amendment to appendix VI to this subpart, except that, with respect to such areas designated as a ''recovery area,'' ''restoration area,'' or ''research only area,'' the Director may modify the number of, location of, or designation applicable to, such areas by publishing a notice of such action in the FEDERAL REGISTER if the Director determines that immediate action is reasonably necessary to:

(A) Prevent significant injury to Sanctuary resources where circumstances create an imminent risk to such resources;

(B) Initiate restoration activity where a delay in time would significantly impair the ability of such restoration activity to succeed;

(C) Initiate research activity where an unforeseen natural event produces an opportunity for scientific research that may be lost if research is not initiated immediately.

(ii) If the Director determines that a notice of modification must be promulgated immediately in accordance with paragraph (e)(4)(i) of this section, the Director will, as part of the same notice, invite public comment and specify that comments will be received for 15 days after the effective date of the notice. As soon as practicable after the end of the comment period, the Director will either rescind, modify or allow the modification to remain unchanged through notice in the FEDERAL REGISTER.

(5) In addition to paragraph (e)(3) of this section no person shall conduct activities listed in paragraph (d) of this section in ''Research-only Areas.''

(f) Additional Wildlife Management Areas, Ecological Reserves, Sanctuary Preservation Areas, or Special-use Areas, and additional restrictions in such areas, shall not take effect in Florida State waters unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

(g) *Anchoring on Tortugas Bank.* Vessels 50 meters or greater in registered length, are prohibited from anchoring on the portion of Tortugas Bank within the Florida Keys National Marine Sanctuary west of the Dry Tortugas National Park that is outside of the Tortugas Ecological Reserve. The boundary of the area closed to anchoring by vessels 50 meters or greater in registered length is formed by connecting in succession the points at the following coordinates (based on the North American Datum of 1983):

(1) 24 deg. 32.00′ N 83 deg. 00.05′ W
(2) 24 deg. 37.00′ N 83 deg. 06.00′ W
(3) 24 deg. 39.00′ N 83 deg. 06.00′ W
(4) 24 deg. 39.00′ N 83 deg. 00.05′ W
(5) 24 deg. 32.00′ N 83 deg. 00.05′ W

[62 FR 32161, June 12, 1997, as amended at 63 FR 43873, Aug. 17, 1998; 66 FR 4369, Jan. 17, 2001; 74 FR 38095, July 31, 2009]

§ 922.165 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Emergency regulations shall not take effect in Florida territorial waters until approved by the Governor of the State of Florida. Any temporary regulation may be in effect for up to 60 days, with one 60-day extension. Additional or extended action will require notice and comment rulemaking under the Administrative Procedure Act, notice in local newspapers, notice to Mariners, and press releases.

§ 922.166 Permits other than for access to the Tortugas Ecological Reserve—application procedures and issuance criteria.

(a) A person may conduct an activity otherwise prohibited by § 922.163 or § 922.164 if the activity is specifically allowed by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040.

(2) For activities proposed to be conducted within any of the areas described in § 922.164 (b) through (e), the Director shall not issue a permit unless he or she further finds that such activities will further and are consistent with the purposes for which such area was established, as described in §§ 922.162 and 922.164 and in the management plan for the Sanctuary.

(3) A person may conduct an activity otherwise prohibited by § 922.163 or § 922.164, if such activity is specifically allowed by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part, and any additional permit issuance criteria and requirements in paragraphs (b), (c), (f), and (i) through (m) of this section.

(b) *National Marine Sanctuary Survey/Inventory of Historical Resources Permit.* (1) A person may conduct an activity prohibited by §§ 922.163 or 922.164 involving the survey/inventory of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Survey/Inventory of Historical Resources permit issued under this paragraph (b). Such permit is not required if such survey/inventory activity does not involve any activity prohibited by §§ 922.163 or 922.164. Thus, survey/inventory activities that are non-intrusive, do not include any excavation, removal, or recovery of historical resources, and do not result in destruction of, loss of, or injury to Sanctuary resources or qualities do not require a permit. However, if a survey/inventory activity will involve test excavations or removal of artifacts or materials for evaluative purposes, a Survey/Inventory of Historical Resources permit is required. Regardless of whether a Survey/Inventory permit is required, a person may request such permit. Persons who have demonstrated their professional abilities under a Survey/Inventory permit will be given preference over other persons in consideration of the issuance of a Research/Recovery permit. While a Survey/Inventory permit does not grant any rights with regards to areas subject to pre-existing rights of access which are still valid, once a permit is issued for an area, other survey/inventory permits will not be issued for the same area during the period for which the permit is valid.

(2) The Director, at his or her discretion, may issue a Survey/Inventory permit under this paragraph (b), subject to such terms and conditions as he or she deems appropriate, if the Director finds that such activity:

(i) Satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) Either will be non-intrusive, not include any excavation, removal, or recovery of historical resources, and not result in destruction of, loss of, or injury to Sanctuary resources or qualities, or if intrusive, will involve no more than the minimum manual alteration of the seabed and/or the removal of artifacts or other material necessary for evaluative purposes and will cause no significant adverse impacts on Sanctuary resources or qualities; and

(iii) That such activity will be conducted in accordance with all requirements of the Programmatic Agreement for the Management of Submerged Cultural Resources in the Florida Keys National Marine Sanctuary among NOAA, the Advisory Council on Historic Preservation, and the State of Florida (hereinafter SCR Agreement), and that such permit issuance is in accordance with such SCR Agreement. Copies of the SCR Agreement may also be examined at, and obtained from, the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910; or from the Florida Keys National Marine Sanctuary Office, P.O. Box 500368, Marathon, FL 33050.

(c) *National Marine Sanctuary Research/Recovery of Sanctuary Historical Resources Permit.* (1) A person may conduct any activity prohibited by §§ 922.163 or 922.164 involving the research/recovery of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Research/Recovery of Historical Resources permit issued under this paragraph (c).

(2) The Director, at his or her discretion, may issue a Research/Recovery of Historical Resources permit, under this paragraph (c), and subject to such terms and conditions as he or she deems appropriate, if the Director finds that:

(i) Such activity satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) The recovery of the resource is in the public interest as described in the SCR Agreement;

(iii) Recovery of the resource is part of research to preserve historic information for public use; and

(iv) Recovery of the resource is necessary or appropriate to protect the resource, preserve historical information, and/or further the policies and

purposes of the NMSA and the FKNMSPA, and that such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(d) *National Marine Sanctuary Special-use Permit.* (1) A person may conduct any commercial or concession-type activity prohibited by §§ 922.163 or 922.164, if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Special-use permit issued under this paragraph (d). A Special-use permit is required for the deaccession/transfer of Sanctuary historical resources.

(2) The Director, at his or her discretion, may issue a Special-use permit in accordance with this paragraph (d), and subject to such terms and conditions as he or she deems appropriate and the mandatory terms and conditions of section 310 of the NMSA, if the Director finds that issuance of such permit is reasonably necessary to: establish conditions of access to and use of any Sanctuary resource; or promote public use and understanding of any Sanctuary resources. No permit may be issued unless the activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure any Sanctuary resource, and if for the deaccession/transfer of Sanctuary Historical Resources, unless such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(3) The Director may assess and collect fees for the conduct of any activity authorized by a Special-use permit issued pursuant to this paragraph (d). No Special-use permit shall be effective until all assessed fees are paid, unless otherwise provided by the Director by a fee schedule set forth as a permit condition. In assessing a fee, the Director shall include:

(i) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:

(A) Number of personnel;

(B) Personnel hours;

(C) Equipment;

(D) Biological assessments;

(E) Copying; and

(F) Overhead directly related to reviewing and processing the permit application;

(ii) All costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the Special-use permit is being issued, including, but not limited to:

(A) The cost of monitoring the conduct both during the activity and after the activity is completed in order to assess the impacts to Sanctuary resources and qualities;

(B) The use of an official NOAA observer, including travel and expenses and personnel hours; and

(C) Overhead costs directly related to the permitted activity; and

(iii) An amount which represents the fair market value of the use of the Sanctuary resource and a reasonable return to the United States Government.

(4) Nothing in this paragraph (d) shall be considered to require a person to obtain a permit under this paragraph for the conduct of any fishing activities within the Sanctuary.

(e) *Applications.* (1) Applications for permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. All applications must include:

(i) A detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed;

(ii) The qualifications and experience of all personnel;

(iii) The financial resources available to the applicant to conduct and complete the proposed activity;

(iv) A statement as to why it is necessary to conduct the activity within the Sanctuary;

(v) The potential impacts of the activity, if any, on Sanctuary resources and qualities;

(vi) The benefit to be derived from the activity; and

(vii) Such other information as the Director may request depending on the

type of activity. Copies of all other required licenses, permits, approvals, or other authorizations must be attached to the application.

(2) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems reasonably necessary to act on the application and may seek the views of any persons. The Director may require a site visit as part of the permit evaluation. Unless otherwise specified, the information requested must be received by the Director within 30 days of the postmark date of the request. Failure to provide such additional information on a timely basis may be deemed by the Director to constitute abandonment or withdrawal of the permit application.

(f) A permit may be issued for a period not exceeding five years. All permits will be reviewed annually to determine the permittee's compliance with permit scope, purpose, terms and conditions and progress toward reaching the stated goals and appropriate action taken under paragraph (g) of this section if warranted. A permittee may request permit renewal pursuant to the same procedures for applying for a new permit. Upon the permittee's request for renewal, the Director shall review all reports submitted by the permittee as required by the permit conditions. In order to renew the permit, the Director must find that the:

(1) Activity will continue to further the purposes for which the Sanctuary was designated in accordance with the criteria applicable to the initial issuance of the permit;

(2) Permittee has at no time violated the permit, or these regulations; and

(3) The activity has not resulted in any unforeseen adverse impacts to Sanctuary resources or qualities.

(g) The Director may amend, suspend, or revoke a permit for good cause. The Director may deny a permit application, in whole or in part, if it is determined that the permittee or applicant has acted in violation of a previous permit, of these regulations, of the NMSA or FKNMSPA, or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in Subpart D of 15 CFR part 904.

(h) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 922.50.

(i) A permit issued pursuant to this section other than a Special-use permit is nontransferable. Special-use permits may be transferred, sold, or assigned with the written approval of the Director. The permittee shall provide the Director with written notice of any proposed transfer, sale, or assignment no less than 30 days prior to its proposed consummation. Transfers, sales, or assignments consummated in violation of this requirement shall be considered a material breach of the Special-use permit, and the permit shall be considered void as of the consummation of any such transfer, sale, or assignment.

(j) The permit or a copy thereof shall be maintained in legible condition on board all vessels or aircraft used in the conduct of the permitted activity and be displayed for inspection upon the request of any authorized officer.

(k) Any permit issued pursuant to this section shall be subject to the following terms and conditions:

(1) All permitted activities shall be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources or qualities, except to the extent that such may be specifically authorized.

(2) The permittee agrees to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

(3) All necessary Federal, State, and local permits from all agencies with jurisdiction over the proposed activities shall be secured before commencing field operations.

(l) In addition to the terms and conditions listed in paragraph (k) of this section, any permit authorizing the research/recovery of historical resources shall be subject to the following terms and conditions:

(1) A professional archaeologist shall be in charge of planning, field recovery operations, and research analysis.

(2) An agreement with a conservation laboratory shall be in place before field recovery operations are begun, and an approved nautical conservator shall be in charge of planning, conducting, and supervising the conservation of any artifacts and other materials recovered.

(3) A curation agreement with a museum or facility for curation, public access and periodic public display, and maintenance of the recovered historical resources shall be in place before commencing field operations (such agreement for the curation and display of recovered historical resources may provide for the release of public artifacts for deaccession/transfer if such deaccession/transfer is consistent with preservation, research, education, or other purposes of the designation and management of the Sanctuary. Deaccession/transfer of historical resources requires a Special-use permit issued pursuant to paragraph (d) and such deaccession/transfer shall be executed in accordance with the requirements of the SCR Agreement).

(4) The site's archaeological information is fully documented, including measured drawings, site maps drawn to professional standards, and photographic records.

(m) In addition to the terms and conditions listed in paragraph (k) and (l) of this section, any permit issued pursuant to this section is subject to such other terms and conditions, including conditions governing access to, or use of, Sanctuary resources, as the Director deems reasonably necessary or appropriate and in furtherance of the purposes for which the Sanctuary is designated. Such terms and conditions may include, but are not limited to:

(1) Any data or information obtained under the permit shall be made available to the public.

(2) A NOAA official shall be allowed to observe any activity conducted under the permit.

(3) The permittee shall submit one or more reports on the status, progress, or results of any activity authorized by the permit.

(4) The permittee shall submit an annual report to the Director not later than December 31 of each year on activities conducted pursuant to the permit. The report shall describe all activities conducted under the permit and all revenues derived from such activities during the year and/or term of the permit.

(5) The permittee shall purchase and maintain general liability insurance or other acceptable security against potential claims for destruction, loss of, or injury to Sanctuary resources arising out of the permitted activities. The amount of insurance or security should be commensurate with an estimated value of the Sanctuary resources in the permitted area. A copy of the insurance policy or security instrument shall be submitted to the Director.

[62 FR 32161, June 12, 1997, as amended at 88 FR 970, Jan. 6, 2023]

§ 922.167 Permits for access to the Tortugas Ecological Reserve.

(a) A person may enter the Tortugas North area of the Tortugas Ecological Reserve other than for passage without interruption through the reserve, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of § 922.164 , if authorized by a valid access permit issued pursuant to § 922.167.

(b)(1) Access permits must be requested at least 72 hours but no longer than one month before the date the permit is desired to be effective. Access permits do not require written applications or the payment of any fee. Permits may be requested via telephone or radio by contacting FKNMS at any of the following numbers:

Key West office: telephone: (305) 292–0311
Marathon office: telephone: (305) 743–2437

(2) The following information must be provided, as applicable:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) Name, address, and telephone number of applicant.

(iv) USCG documentation, state license, or registration number.

(v) Home port.

(vi) Length of vessel and propulsion type (*i.e.*, motor or sail).

(vii) Number of divers.

(viii) Requested effective date and duration of permit (2 weeks, maximum).

(c) The Sanctuary Superintendent will issue a permit to the owner or to the owner's representative for the vessel when all applicable information has been provided. The Sanctuary Superintendent will provide a permit number to the applicant and confirm the effective date and duration period of the permit. Written confirmation of permit issuance will be provided upon request.

[66 FR 4370, Jan. 17, 2001]

§ 922.168 [Reserved]

APPENDIX I TO SUBPART P OF PART 922—FLORIDA KEYS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

(APPENDIX BASED ON NORTH AMERICAN DATUM OF 1983)

(1) The boundary of the Florida Keys National Marine Sanctuary—

(a) Begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 05 minutes west longitude, then runs eastward to the point at 25 degrees 39 minutes north latitude, 80 degrees 04 minutes west longitude; and

(b) Then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 04 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 05 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 07 minutes west longitude;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 08 minutes west longitude;

(c) Then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 07 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 06 minutes west longitude,

(viii) 24 degrees 46 minutes north latitude, 83 degrees 06 minutes west longitude,

(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,

(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) Then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) After Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

(2) The shoreward boundary of the Florida Keys National Marine Sanctuary is the mean high-water mark except around the Dry Tortugas where the boundary is coterminous with that of the Dry Tortugas National Park, formed by connecting in succession the points at the following coordinates:

(a) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(b) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 second west longitude;

(c) 24 degrees 39 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 seconds west longitude;

(d) 24 degrees 43 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(e) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 52 minutes 0 seconds west longitude;

(f) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude;

(g) 24 degrees 42 minutes 0 seconds north latitude, 82 degrees 46 minutes, 0 seconds west longitude;

(h) 24 degrees 40 minutes 0 seconds north latitude, 82 degrees 46 minutes 0 seconds west longitude;

(i) 24 degrees 37 minutes 0 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude; and

(j) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude.

(3) The Florida Keys National Marine Sanctuary also includes the area located within the boundary formed by connecting in succession the points at the following coordinates:

(a) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude,

(b) 24 degrees 33 minutes north latitude, 83 degrees 05 minutes west longitude, and

(c) 24 degrees 18 minutes north latitude, 83 degrees 05 minutes west longitude;

(d) 24 degrees 18 minutes north latitude, 83 degrees 09 minutes west longitude; and
(e) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude.

[66 FR 4370, Jan. 17, 2001]

APPENDIX II TO SUBPART P OF PART 922—EXISTING MANAGEMENT AREAS BOUNDARY COORDINATES

(1) The boundary of each of the Existing Management Areas is formed by connecting in succession the points at the following coordinates:

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

KEY LARGO-MANAGEMENT AREA

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.19′45″ N	80 deg.12′00″ W.
2	25 deg.16′02″ N	80 deg.08′07″ W.
3	25 deg.07′05″ N	80 deg.12′05″ W.
4	24 deg.58′03″ N	80 deg.19′08″ W.
5	25 deg.02′02″ N	80 deg.25′25″ W.
6	25 deg.19′45″ N	80 deg.12′00″ W.

LOOE KEY MANAGEMENT AREA

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.31′62″ N	81 deg.26′00″ W.
2	24 deg.33′57″ N	81 deg.26′00″ W.
3	24 deg.34′15″ N	81 deg.23′00″ W.
4	24 deg.32′20″ N	81 deg.23′00″ W.
5	24 deg.31′62″ N	81 deg.26′00″ W.

UNITED STATES FISH AND WILDLIFE SERVICE

GREAT WHITE HERON NATIONAL WILDLIFE REFUGE

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
1	24 deg.43.8′ N	81 deg.48.6′ W.
2	24 deg.43.8′ N	81 deg.37.2′ W.
3	24 deg.49.2′ N	81 deg.37.2′ W.
4	24 deg.49.2′ N	81 deg.19.8′ W.
5	24 deg.48.0′ N	81 deg.19.8′ W.
6	24 deg.48.0′ N	81 deg.14.4′ W.
7	24 deg.49.2′ N	81 deg.14.4′ W.
8	24 deg.49.2′ N	81 deg.08.4′ W.
9	24 deg.43.8′ N	81 deg.08.4′ W.
10	24 deg.43.8′ N	81 deg.14.4′ W.
11	24 deg.43.2′ N	81 deg.14.4′ W.
12	24 deg.43.2′ N	81 deg.16.2′ W.

GREAT WHITE HERON NATIONAL WILDLIFE REFUGE—Continued

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
13	24 deg.42.6′ N	81 deg.16.2′ W.
14	24 deg.42.6′ N	81 deg.21.0′ W.
15	24 deg.41.4′ N	81 deg.21.0′ W.
16	24 deg.41.4′ N	81 deg.22.2′ W.
17	24 deg.43.2′ N	81 deg.22.2′ W.
18	24 deg.43.2′ N	81 deg.22.8′ W.
19	24 deg.43.8′ N	81 deg.22.8′ W.
20	24 deg.43.8′ N	81 deg.24.0′ W.
21	24 deg.43.2′ N	81 deg.24.0′ W.
22	24 deg.43.2′ N	81 deg.26.4′ W.
23	24 deg.43.8′ N	81 deg.26.4′ W.
24	24 deg.43.8′ N	81 deg.27.0′ W.
25	24 deg.43.2′ N	81 deg.27.0′ W.
26	24 deg.43.2′ N	81 deg.29.4′ W.
27	24 deg.42.6′ N	81 deg.29.4′ W.
28	24 deg.42.6′ N	81 deg.30.6′ W.
29	24 deg.41.4′ N	81 deg.30.6′ W.
30	24 deg.41.4′ N	81 deg.31.2′ W.
31	24 deg.40.8′ N	81 deg.31.2′ W.
32	24 deg.40.8′ N	81 deg.32.4′ W.
33	24 deg.41.4′ N	81 deg.32.4′ W.
34	24 deg.41.4′ N	81 deg.34.2′ W.
35	24 deg.40.8′ N	81 deg.34.2′ W.
36	24 deg.48.0′ N	81 deg.35.4′ W.
37	24 deg.39.6′ N	81 deg.35.4′ W.
38	24 deg.39.6′ N	81 deg.36.0′ W.
39	24 deg.39.0′ N	81 deg.36.0′ W.
40	24 deg.39.0′ N	81 deg.37.2′ W.
41	24 deg.37.8′ N	81 deg.37.2′ W.
42	24 deg.37.8′ N	81 deg.37.8′ W.
43	24 deg.37.2′ N	81 deg.37.8′ W.
44	24 deg.37.2′ N	81 deg.40.2′ W.
45	24 deg.36.0′ N	81 deg.40.2′ W.
46	24 deg.36.0′ N	81 deg.40.8′ W.
47	24 deg.35.4′ N	81 deg.40.8′ W.
48	24 deg.35.4′ N	81 deg.42.0′ W.
49	24 deg.36.0′ N	81 deg.42.0′ W.
50	24 deg.36.0′ N	81 deg.48.6′ W.
51	24 deg.43.8′ N	81 deg.48.6′ W.

KEY WEST NATIONAL WILDLIFE REFUGE

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
1	24 deg.40.0′ N	81 deg.49.0′ W.
2	24 deg.40.0′ N	82 deg.10.0′ W.
3	24 deg.27.0′ N	82 deg.10.0′ W.
4	24 deg.27.0′ N	81 deg.49.0′ W.
5	24 deg.40.0′ N	81 deg.49.0′ W.

(2) When differential Global Positioning Systems data becomes available, these coordinates may be publication in the FEDERAL REGISTER to reflect the increased accuracy of such data.

[66 FR 4371, Jan. 17, 2001]

APPENDIX III TO SUBPART P OF PART 922—WILDLIFE MANAGEMENT AREAS ACCESS RESTRICTIONS

Area	Access restrictions
Bay Keys	No-motor zone (300 feet) around one key; idle speed only/no-wake zones in tidal creeks.

Area	Access restrictions
Boca Grande Key	South one-half of beach closed (beach above mean high water closed by Department of the Interior).
Woman Key	One-half of beach and sand spit on southeast side closed (beach and sand spit above mean high water closed by Department of the Interior).
Cayo Agua Keys	Idle speed only/no-wake zones in all navigable tidal creeks.
Cotton Key	No-motor zone on tidal flat.
Snake Creek	No-motor zone on tidal flat.
Cottrell Key	No-motor zone (300 feet) around entire key.
Little Mullet Key	No-access buffer zone (300 feet) around entire key.
Big Mullet Key	No-motor zone (300 feet) around entire key.
Crocodile Lake	No-access buffer zone (100 feet) along shoreline between March 1 and October 1.
East Harbor Key	No-access buffer zone (300 feet) around northernmost island.
Lower Harbor Keys	Idle speed only/no-wake zones in selected tidal creeks.
Eastern Lake Surprise	Idle speed only/no-wake zone east of highway U.S. 1.
Horseshoe Key	No-access buffer zone (300 feet) around main island (main island closed by Department of the Interior).
Marquesas Keys	(i) No-motor zones (300 feet) around three smallest keys on western side of chain; (ii) no-access buffer zone (300 feet) around one island at western side of chain; (iii) idle speed only/no-wake zone in southwest tidal creek.
Tidal flat south of Marvin Key	No-access buffer zone on tidal flat.
Mud Keys	(i) Idle speed only/no-wake zones in the two main tidal creeks; (ii) two smaller creeks on west side closed.
Pelican Shoal	No-access buffer zone out to 50 meters from shore between April 1 and August 31 (shoal closed by the Florida Game and Freshwater Fish Commission).
Rodriguez Key	No-motor zone on tidal flats.
Dove Key	No-motor zone on tidal flats; area around the two small islands closed.
Tavernier Key	No-motor zone on tidal flats.
Sawyer Keys	Tidal creeks on south side closed.
Snipe Keys	(i) Idle speed only/no-wake zone in main tidal creek; (ii) no-motor zone in all other tidal creeks.
Upper Harbor Key	No-access buffer zone (300 feet) around entire key.
East Content Keys	Idle speed only/no-wake zones in tidal creeks between southwesternmost keys.
West Content Keys	Idle speed only/no-wake zones in selected tidal creeks; no-access buffer zone in one cove.
Little Crane Key	No-access buffer zone (300 feet) around entire key.

APPENDIX IV TO SUBPART P OF PART 922—ECOLOGICAL RESERVES BOUNDARY

Coordinates

(1) The boundary of the Western Sambo Ecological Reserve is formed by connecting in succession the points at the following coordinates:

WESTERN SAMBO

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.33.70′ N	81 deg.40.80′ W.
2	24 deg.28.85′ N	81 deg.41.90′ W.
3	24 deg.28.50′ N	81 deg.43.70′ W.
4	24 deg.33.50′ N	81 deg.43.10′ W.
5	24 deg.33.70′ N	81 deg.40.80′ W.

(2) The Tortugas Ecological Reserve consists of two discrete areas, Tortugas North and Tortugas South.

(3) The boundary of Tortugas North is formed by connecting in succession the points at the following coordinates:

TORTUGAS NORTH

Point	Latitude	Longitude
1	24 deg.46.00′ N	83 deg.06.00′ W.
2	24 deg.46.00′ N	82 deg.54.00′ W.
3	24 deg.45.80′ N	82 deg.48.00′ W.
4	24 deg.43.53′ N	82 deg.48.00′ W.
5	24 deg.43.53′ N	82 deg.52.00′ W.
6	24 deg.43.00′ N	82 deg.54.00′ W.
7	24 deg.39.00′ N	82 deg.58.00′ W.
8	24 deg.39.00′ N	83 deg.06.00′ W.
9	24 deg.46.00′ N	83 deg.06.00′ W.

(4) The boundary of Tortugas South is formed by connecting in succession the points at the following coordinates:

TORTUGAS SOUTH

Point	Latitude	Longitude
1	24 deg.33.00′ N	83 deg.09.00′ W.
2	24 deg.33.00′ N	83 deg.05.00′ W.
3	24 deg.18.00′ N	83 deg.05.00′ W.
4	24 deg.18.00′ N	83 deg.09.00′ W.
5	24 deg.33.00′ N	83 deg.09.00′ W.

[66 FR 4372, Jan. 17, 2001]

APPENDIX V TO SUBPART P OF PART 922—SANCTUARY PRESERVATION AREAS BOUNDARY COORDINATES

The boundary of each of the Sanctuary Preservation Areas (SPAs) is formed by connecting in succession the points at the following coordinates:

ALLIGATOR REEF

[Based on differential Global Positioning Systems data]

Point	Latitute	Longitude
1	24 deg.50.98′ N	80 deg.36.84′ W.
2	24 deg.50.51′ N	80 deg.37.35′ W.
3	24 deg.50.81′ N	80 deg.37.63′ W.
4	24 deg.51.23′ N	80 deg.37.17′ W.
5	24 deg.50.98′ N	80 deg.36.84′ W.

Catch and release fishing by trolling only is allowed in this SPA.

CARYSFORT/SOUTH CARYSFORT REEF

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.13.78′ N	80 deg.12.00′ W.
2	25 deg.12.03′ N	80 deg.12.98′ W.
3	25 deg.12.24′ N	80 deg.13.77′ W.
4	25 deg.14.13′ N	80 deg.12.78′ W.
5	25 deg.13.78′ N	80 deg.12.00′ W.

CHEECA ROCKS

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.54.42′ N	80 deg.36.91′ W.
2	24 deg.54.25′ N	80 deg.36.77′ W.
3	24 deg.54.10′ N	80 deg.37.00′ W.
4	24 deg.54.22′ N	80 deg.37.15′ W.
5	24 deg.54.42′ N	80 deg.36.91′ W.

COFFINS PATCH

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.41.47′ N	80 deg.57.68′ W.
2	24 deg.41.12′ N	80 deg.57.53′ W.
3	24 deg.40.75′ N	80 deg.58.33′ W.
4	24 deg.41.06′ N	80 deg.58.48′ W.
5	24 deg.41.47′ N	80 deg.57.68′ W.

CONCH REEF

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.57.48′ N	80 deg.27.47′ W.
2	24 deg.57.34′ N	80 deg.27.26′ W.
3	24 deg.56.78′ N	80 deg.27.52′ W.
4	24 deg.56.96′ N	80 deg.27.73′ W.
5	24 deg.57.48′ N	80 deg.27.47′ W.

Catch and release fishing by trolling only is allowed in this SPA.

DAVIS REEF

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.55.61′ N	80 deg.30.27′ W.
2	24 deg.55.41′ N	80 deg.30.05′ W.
3	24 deg.55.11′ N	80 deg.30.35′ W.
4	24 deg.55.34′ N	80 deg.30.52′ W.
5	24 deg.55.61′ N	80 deg.30.27′ W.

DRY ROCKS

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.07.59′ N	80 deg.17.91′ W.
2	25 deg.07.41′ N	80 deg.17.70′ W.
3	25 deg.07.25′ N	80 deg.17.82′ W.
4	25 deg.07.41′ N	80 deg.18.09′ W.
5	25 deg.07.59′ N	80 deg.17.91′ W.

GRECIAN ROCKS

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.06.91′ N	80 deg.18.20′ W.
2	25 deg.06.67′ N	80 deg.18.06′ W.
3	25 deg.06.39′ N	80 deg.18.32′ W.
4	25 deg.06.42′ N	80 deg.18.48′ W.
5	25 deg.06.81′ N	80 deg.18.44′ W.
6	25 deg.06.91′ N	80 deg.18.20′ W.

EASTERN DRY ROCKS

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.27.92′ N	81 deg.50.55′ W.
2	24 deg.27.73′ N	81 deg.50.33′ W.
3	24 deg.27.47′ N	81 deg.50.80′ W.
4	24 deg.27.72′ N	81 deg.50.86′ W.
5	24 deg.27.92′ N	81 deg.50.55′ W.

THE ELBOW

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.08.97′ N	80 deg.15.63′ W.
2	25 deg.08.95′ N	80 deg.15.22′ W.
3	25 deg.08.18′ N	80 deg.15.64′ W.
4	25 deg.08.50′ N	80 deg.16.07′ W.
5	25 deg.08.97′ N	80 deg.15.63′ W.

FRENCH REEF

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.02.20′ N	80 deg.20.63′ W.
2	25 deg.01.81′ N	80 deg.21.02′ W.
3	25 deg.02.36′ N	80 deg.21.27′ W.
4	25 deg.02.20′ N	80 deg.20.63′ W.

HEN AND CHICKENS

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.56.38′ N	80 deg.32.86′ W.
2	24 deg.56.21′ N	80 deg.32.63′ W.
3	24 deg.55.86′ N	80 deg.32.95′ W.
4	24 deg.56.04′ N	80 deg.33.19′ W.
5	24 deg.56.38′ N	80 deg.32.86′ W.

LOOE KEY

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.33.24′ N	81 deg.24.03′ W.
2	24 deg.32.70′ N	81 deg.23.85′ W.
3	24 deg.32.52′ N	81 deg.24.70′ W.
4	24 deg.33.12′ N	81 deg.24.81′ W.
5	24 deg.33.24′ N	81 deg.24.03′ W.

MOLASSES REEF

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.01.00′ N	80 deg.22.53′ W.
2	25 deg.01.06′ N	80 deg.21.84′ W.
3	25 deg.00.29′ N	80 deg.22.70′ W.
4	25 deg.00.72′ N	80 deg.22.83′ W.
5	25 deg.01.00′ N	80 deg.22.53′ W.

NEWFOUND HARBOR KEY

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.37.10′ N	81 deg.23.34′ W.
2	24 deg.36.85′ N	81 deg.23.28′ W.
3	24 deg.36.74′ N	81 deg.23.80′ W.
4	24 deg.37.00′ N	81 deg.23.86′ W.
5	24 deg.37.10′ N	81 deg.23.34′ W.

ROCK KEY

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.27.48′ N	81 deg.51.35′ W.
2	24 deg.27.30′ N	81 deg.51.15′ W.
3	24 deg.27.21′ N	81 deg.51.60′ W.
4	24 deg.27.45′ N	81 deg.51.65′ W.
5	24 deg.27.48′ N	81 deg.51.35′ W.

SAND KEY

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.27.58′ N	81 deg.52.29′ W.
2	24 deg.27.01′ N	81 deg.52.32′ W.
3	24 deg.27.02′ N	81 deg.52.95′ W.
4	24 deg.27.61′ N	81 deg.52.94′ W.
5	24 deg.27.58′ N	81 deg.52.29′ W.

Catch and release fishing by trolling only is allowed in this SPA.

SOMBRERO KEY

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.37.91′ N	81 deg.06.78′ W.
2	24 deg.37.50′ N	81 deg.06.19′ W.
3	24 deg.37.25′ N	81 deg.06.89′ W.
4	24 deg.37.91′ N	81 deg.06.78′ W.

Catch and release fishing by trolling only is allowed in this SPA.

[66 FR 4373, Jan. 17, 2001]

APPENDIX VI TO SUBPART P OF PART 922—SPECIAL-USE AREAS BOUNDARY COORDINATES AND USE DESIGNATIONS

The boundary of each of the Special-Use is formed by connecting in succession the points at the following coordinates:

CONCH REEF

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.56.83′ N	80 deg.27.26′ W.
2	24 deg.57.10′ N	80 deg.26.93′ W.
3	24 deg.56.99′ N	80 deg.27.42′ W.
4	24 deg.57.34′ N	80 deg.27.26′ W.
5	24 deg.56.83′ N	80 deg.27.26′ W.

EASTERN SAMBO

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.29.84′ N	81 deg.39.59′ W.
2	24 deg.29.55′ N	81 deg.39.35′ W.
3	24 deg.29.37′ N	81 deg.39.96′ W.
4	24 deg.29.77′ N	81 deg.40.03′ W.
5	24 deg.29.84′ N	81 deg.39.59′ W.

LOOE KEY

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.34.17′ N	81 deg.23.01′ W.
2	24 deg.33.98′ N	81 deg.22.96′ W.
3	24 deg.33.84′ N	81 deg.23.60′ W.
4	24 deg.34.23′ N	81 deg.23.68′ W.
5	24 deg.34.17′ N	81 deg.23.01′ W.

TENNESSEE REEF

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.44.77′ N	80 deg.47.12′ W.
2	24 deg.44.57′ N	80 deg.46.98′ W.
3	24 deg.44.68′ N	80 deg.46.59′ W.
4	24 deg.44.95′ N	80 deg.46.74′ W.

TENNESSEE REEF—Continued

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
5	24 deg.44.77′ N	80 deg.47.12′ W.

[66 FR 4376, Jan. 17, 2001]

APPENDIX VII TO SUBPART P OF PART 922—AREAS TO BE AVOIDED BOUNDARY COORDINATES

IN THE VICINITY OF THE FLORIDA KEYS

[Reference Charts: United States 11466, 27th Edition—September 1, 1990 and United States 11450, 4th Edition—August 11, 1990]

Point	Latitude	Longitude
1	25°45.00′ N	80°06.10′ W
2	25°38.70′ N	80°02.70′ W
3	25°22.00′ N	80°03.00′ W
4	25°06.38′ N	80°10.48′ W
5	24°56.37′ N	80°19.26′ W
6	24°37.90′ N	80°47.30′ W
7	24°29.20′ N	81°17.30′ W
8	24°22.30′ N	81°43.17′ W
9	24°28.00′ N	81°43.17′ W
10	24°28.70′ N	81°43.50′ W
11	24°29.80′ N	81°43.17′ W
12	24°33.10′ N	81°35.15′ W
13	24°33.60′ N	81°26.00′ W
14	24°38.20′ N	81°07.00′ W
15	24°43.20′ N	80°53.20′ W
16	24°46.10′ N	80°46.15′ W
17	24°51.10′ N	80°37.10′ W
18	24°57.50′ N	80°27.50′ W
19	25°09.90′ N	80°16.20′ W
20	25°24.00′ N	80°09.10′ W
21	25°31.50′ N	80°07.00′ W
22	25°39.70′ N	80°06.85′ W
23	25°45.00′ N	80°06.10′ W

IN THE VICINITY OF KEY WEST HARBOR

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
24	24 deg.27.95' N	81 deg.48.65' W.
25	24 deg.23.00' N	81 deg.53.50' W.
26	24 deg.26.60' N	81 deg.58.50' W.
27	24 deg.27.75' N	81 deg.55.70' W.
28	24 deg.29.35' N	81 deg.53.40' W.
29	24 deg.29.35' N	81 deg.50.00' W.
30	24 deg.27.95' N	81 deg.48.65' W.

AREA SURROUNDING THE MARQUESAS KEYS

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
31	24 deg.26.60' N	81 deg.59.55' W.
32	24 deg.23.00' N	82 deg.03.50' W.
33	24 deg.23.60' N	82 deg.27.80' W.
34	24 deg.34.50' N	82 deg.37.50' W.
35	24 deg.43.00' N	82 deg.26.50' W.
36	24 deg.38.31' N	81 deg.54.06' W.
37	24 deg.37.91' N	81 deg.53.40' W.

AREA SURROUNDING THE MARQUESAS KEYS—Continued

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
38	24 deg.36.15' N	81 deg.51.78' W.
39	24 deg.34.40' N	81 deg.50.60' W.
40	24 deg.33.44' N	81 deg.49.73' W.
41	24 deg.31.20' N	81 deg.52.10' W.
42	24 deg.28.70' N	81 deg.56.80' W.
43	24 deg.26.60' N	81 deg.59.55' W.

AREA SURROUNDING THE DRY TORTUGAS ISLANDS

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
44	24 deg.32.00' N	82 deg.53.50' W.
45	24 deg.32.00' N	83 deg.00.05' W.
46	24 deg.39.70' N	83 deg.00.05' W.
47	24 deg.45.60' N	82 deg.54.40' W.
48	24 deg.45.60' N	82 deg.47.02' W.
49	24 deg.42.80' N	82 deg.43.90' W.
50	24 deg.39.50' N	82 deg.43.90' W.
51	24 deg.35.60' N	82 deg.46.40' W.
52	24 deg.32.00' N	82 deg.53.50' W.

[66 FR 4377, Jan. 17, 2001, as amended at 66 FR 34534, June 29, 2001]

Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary

AUTHORITY: 16 U.S.C. 1431 *et seq.* and subtitle C, title II, Pub. L. 102–587, 106 Stat. 5055.

SOURCE: 64 FR 66570, Nov. 29, 1999, unless otherwise noted.

§ 922.180 Purpose.

(a) The purpose of the regulations in this subpart is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. The regulations are intended to supplement and complement existing regulatory authorities; to facilitate to the extent compatible with the primary objective of protecting the humpback whale and its habitat, all public

and private uses of the Sanctuary, including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes, as well as education, research, recreation, commercial and military activities; to reduce conflicts between compatible uses; to maintain, restore, and enhance the humpback whale and its habitat; to contribute to the maintenance of natural assemblages of humpback whales for future generations; to provide a place for humpback whales that are dependent on their Hawaiian Islands wintering habitat for reproductive activities, including breeding, calving, and nursing, and for the long-term survival of their species; and to achieve the other purposes and policies of the HINMSA and NMSA.

(b) These regulations may be modified to fulfill the Secretary's responsibilities for the Sanctuary, including the provision of additional protections for humpback whales and their habitat, if reasonably necessary, and the conservation and management of other marine resources, qualities and ecosystems of the Sanctuary determined to be of national significance. The Secretary shall consult with the Governor of the State of Hawaii on any modification to the regulations contained in this part. For any modification of the regulations contained in this part that would constitute a change in a term of the designation, as contained in the Designation Document for the Sanctuary, the Secretary shall follow the applicable requirements of sections 303 and 304 of the NMSA, and sections 2305 and 2306 of the HINMSA.

(c) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the Sanctuary management plan and regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed management plan and regulations before they take effect and if the Governor certifies any term or terms of such management plan or regulations as unacceptable, the unacceptable term or terms will not take effect in State waters of the Sanctuary.

§ 922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary encompasses approximately 1,032 square nautical miles (nmi^2) (1,366 sq. mi.), and consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams:

(1) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;

(2) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

(3) To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

(4) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

(5) To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

(b) Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

HAWAII (BIG ISLAND)

Kawaihae Boat Harbor & Small Boat Basin

LANAI

Kaumalapau Harbor, Manele Harbor

MAUI

Lahaina Boat Harbor
Maalaea Boat Harbor

MOLOKAI

Hale o Lono Harbor
Kaunakakai Harbor

OAHU

Kuapa Pond (Hawaii Kai)

(c) The coordinates of the lateral extents of each boundary area within the Sanctuary boundary appear in appendix A of this subpart Q.

[64 FR 66570, Nov. 29, 1999, as amended at 88 FR 970, Jan. 6, 2023]

§ 922.182 Definitions.

(a) *Acts* means the Hawaiian Islands National Marine Sanctuary Act (HINMSA; sections 2301–2307 of Pub. L. 102–587), and the National Marine Sanctuaries Act (NMSA; also known as Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 16 U.S.C. 1431 *et seq.*).

Adverse impact means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

Alteration of the seabed means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

Habitat means those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing.

Military activities means those military activities conducted by or under the auspices of the Department of Defense and any combined military activities carried out by the Department of Defense and the military forces of a foreign nation.

Sanctuary means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

Sanctuary resource means any humpback whale, or the humpback whale's habitat within the Sanctuary.

Shoreline means the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

Take or taking a humpback whale means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure a humpback whale, or to attempt to engage in any such conduct. The term includes, but is not limited to, any of the following activities: collecting any dead or injured humpback whale, or any part thereof; restraining or detaining any humpback whale, or any part thereof, no matter how temporarily; tagging any humpback whale; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any humpback whale.

(b) Other terms appearing in the regulations in this subpart are defined at 15 CFR 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

[64 FR 66570, Nov. 29, 1999, as amended at 88 FR 970, Jan. 6, 2023]

§ 922.183 Allowed activities.

(a) All activities except those prohibited by § 922.184 may be undertaken in the Sanctuary subject to any emergency regulations promulgated pursuant to § 922.185, subject to the interagency cooperation provisions of section 304(d) of the NMSA [16 U.S.C. 1434(d)] and § 922.187 of this subpart, and subject to the liability established by section 312 of the NMSA and § 922.46 of this part. All activities are also subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State, or county authority of competent jurisdiction.

(b) Included as activities allowed under the first sentence of paragraph (a) of this § 922.183 are all classes of military activities, internal or external to the Sanctuary, that are being or have been conducted before the effective date of these regulations, as identified in the Final Environmental Impact Statement/Management Plan. Paragraphs (a)(1) through (a)(5) of § 922.184 do not apply to these classes of activities, nor are these activities subject to further consultation under section 304(d) of the NMSA.

(c) Military activities proposed after the effective date of these regulations are also included as allowed activities under the first sentence of paragraph (a) of this § 922.183. Paragraphs (a)(1)

through (a)(5) of § 922.184 apply to these classes of activities unless—

(1) They are not subject to consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or

(2) Upon consultation under section 304(d) of the NMSA and § 922.187 of this subpart, NOAA's findings and recommendations include a statement that paragraphs (a)(1) through (a)(5) of § 922.184 do not apply to the military activity.

(d) If a military activity described in paragraphs (b) or (c)(2) of this § 922.183 is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or if the modified activity is likely to destroy, cause the loss of, or injure any Sanctuary resource not considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, the modified activity will be treated as a new military activity under paragraph (c) of this section.

(e) If a proposed military activity subject to section 304(d) of the NMSA and § 922.187 of this subpart is necessary to respond to an emergency situation and the Secretary of Defense determines in writing that failure to undertake the proposed activity during the period of consultation would impair the national defense, the Secretary of the military department concerned may request the Director that the activity proceed during consultation. If the Director denies such a request, the Secretary of the military department concerned may decide to proceed with the activity. In such case, the Secretary of the military department concerned shall provide the Director with a written statement describing the effects of the activity on Sanctuary resources once the activity is completed.

§ 922.184 Prohibited activities.

(a) The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted.

(1) Approaching, or causing a vessel or other object to approach, within the Sanctuary, by any means, within 100 yards of any humpback whale except as authorized under the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.;*

(2) Operating any aircraft above the Sanctuary within 1,000 feet of any humpback whale except as necessary for takeoff or landing from an airport or runway, or as authorized under the MMPA and the ESA;

(3) Taking any humpback whale in the Sanctuary except as authorized under the MMPA and the ESA;

(4) Possessing within the Sanctuary (regardless of where taken) any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA;

(5) Discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing any material or other matter outside the Sanctuary if the discharge or deposit subsequently enters and injures a humpback whale or humpback whale habitat, provided that such activity:

(i) Requires a Federal or State permit, license, lease, or other authorization; and

(ii) Is conducted:

(A) Without such permit, license, lease, or other authorization, or

(B) not in compliance with the terms or conditions of such permit, license, lease, or other authorization.

(6) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either of the Acts or any regulations issued under either of the Acts.

(b) The prohibitions in paragraphs (a)(1) through (a)(5) of this § 922.184 do not apply to activities necessary to respond to emergencies threatening life, property or the environment; or to activities necessary for valid law enforcement purposes. However, while such activities are not subject to paragraphs (a)(1) through (a)(5) of this § 922.184, this paragraph (b) does not exempt the activity from the underlying prohibition or restriction under other applicable laws and regulations (e.g., MMPA, ESA, and CWA).

(c) Any Sanctuary fishery regulations shall not take effect in Hawaii State waters until established by the State Board of Land and Natural Resources.

§ 922.185 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Before issuance of such regulations the Director shall consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii. Emergency regulations shall not take effect in State waters of the Sanctuary until approved by the Governor of Hawaii.

§ 922.186 Penalties; appeals.

(a) Pursuant to section 307 of the NMSA, each violation of either of the Acts, or any regulation in this subpart is subject to a civil penalty of not more than $100,000. Each such violation is subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the administrative proceedings for assessment of civil penalties for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR Part 904.

(c) A person subject to an action taken for enforcement reasons for violation of these regulations or either of the Acts may appeal pursuant to the applicable procedures in 15 CFR Part 904.

§ 922.187 Interagency Cooperation.

Under section 304(d) of the NMSA, Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Director. The Federal agency proposing an action shall determine whether the activity is likely to destroy, cause the loss of, or injure a Sanctuary resource. To the extent practicable, consultation procedures under section 304(d) of the NMSA may be consolidated with interagency cooperation procedures required by other statutes, such as the ESA. The Director will attempt to provide coordinated review and analysis of all environmental requirements.

Appendix A to Subpart Q of Part 922—Hawaiian Islands Humpback Whale, National Marine Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas.

Appendix A provides a text and pictoral (see Figures 1–3) description of the Sanctuary boundary with specific lateral closure points and exclusion areas. The lateral extents (bounds) of each boundary area are closed by straight lines defined by at least two points. It may be necessary to extend these lines beyond the defining points to intersect the actual 100 fathom contour or the shoreline. Each point corresponds to a bounds number indicated in Figure 2. Digital files of the Sanctuary boundary (available in three common formats, ESRI Shape File, MapInfo Table, and an ASCII Exchange Format) are available from the Sanctuary office in Kihei, Maui, at the address listed above or by calling (808) 879–2818. These digital geographies are the best available representation of the verbal legal delineation and were derived from: the Hawaiian shoreline as supplied by State of Hawaii through the Office of Planning GIS Office, the NOAA and State of Hawaii agreed upon lateral boundary and exclusion areas, and the 100 fathom isobath digitized from the following 1:80,000 scale NOAA nautical charts-19327—West Coast of Hawaii (9th ED, 4/29/89),

19347—Channels between Molokai, Maui, Lanai, and Kahoolawe (17th ED, 12/13/97),

19351—Channels between Oahu, Molokai, and Lanai (8th ED, 7/01/1989),

19357—Island of Oahu (20th ED, 9/21/1996), and

19381—Island of Kauai (8th ED, 7/17/1993)].

For the portion of the Lanai region of the HIHWNMS west of Chart 19351,[157°42.8′ west] the 100 fathom contour was derived from the 1:250,000 chart 19340—Hawaii to Oahu (24th ED, 1/09/1993).

All digital geography data have been referenced to WGS84 (NAD83) and have been converted to geographic (latitude and longitude) coordinates.

SANCTUARY BOUNDARY

A. As defined by the specific lateral boundaries in B, and except for excluded areas described in paragraph C of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams (see Figure 1):

1. To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;

2. To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

3. To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

4. To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

5. To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

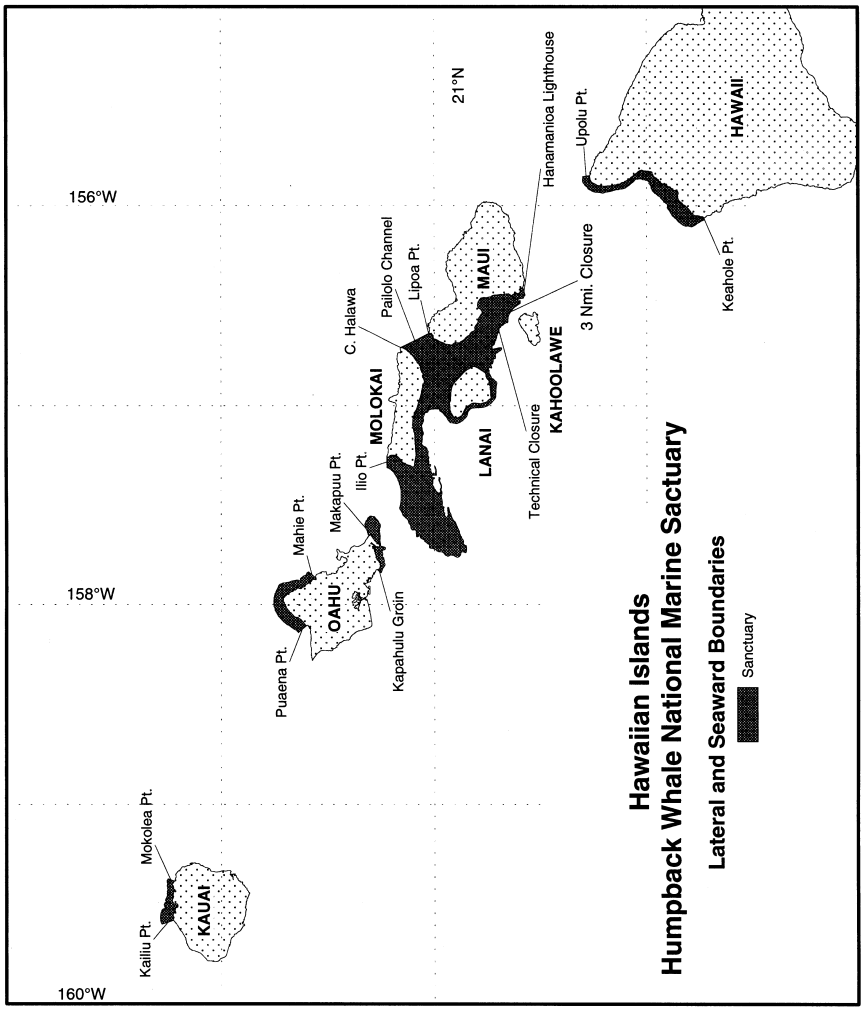


Figure 1

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

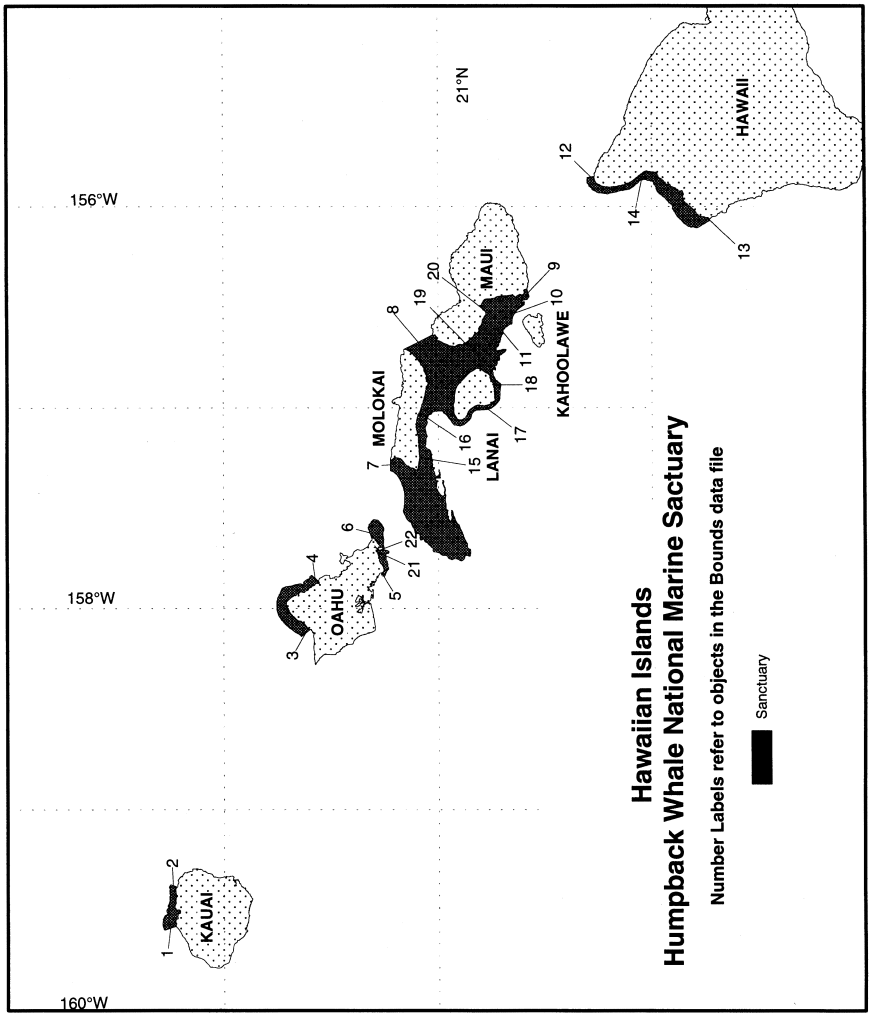


Figure 2

Bound No. (fig. 2)	Geographic name	Number of points	Latitude	Longitude
1a	Kailiu Pt., Kauai	2	22.22353	−159.58117
1b	Kailiu Pt., Kauai		22.27597	−159.59983
2a	Mokolea Pt., Kauai	2	22.22497	−159.38217
2b	Mokolea Pt., Kauai		22.24872	−159.37203
3a	Puaena Pt., N Oahu	2	21.64017	−158.14056
3b	Puaena Pt., N Oahu		21.60233	−158.10681
4a	Mahie Pt., N Oahu	2	21.56036	−157.86442
4b	Mahie Pt., N Oahu		21.59228	−157.83486
5a	Kapahulu Groin, S Oahu	3	21.25158	−157.84097
5b	Kapahulu Groin, S Oahu		21.26836	−157.82381
5c	Kapahulu Groin, S Oahu		21.26839	−157.82328
6a	Makapuu Pt., S Oahu	2	21.31100	−157.64908
6b	Makapuu Pt., S Oahu		21.32908	−157.59614
7a	Ilio Pt., Molokai	2	21.22381	−157.31272
7b	Ilio Pt., Molokai		21.22417	−157.25400
8a	Pailolo Channel, C. Halawa to Lipoa Pt	2	21.02494	−156.63944
8b	Pailolo Channel, C. Halaw to Lipoa Pt		21.15819	−156.71033

Bound No. (fig. 2)	Geographic name	Number of points	Latitude	Longitude
9a	Hanamanoia Lighthouse, Maui	2	20.57272	−156.44753
9b	Hanamanoia Lighthouse, Maui		20.58289	−156.41256
10a	3 Nmi. closure around Kahoolawe	51	20.59947	−156.49222
10b	3 Nmi. closure around Kahoolawe		20.59997	−156.49250
10c	3 Nmi. closure around Kahoolawe		20.60108	−156.49319
10d	3 Nmi. closure around Kahoolawe		20.60183	−156.49358
10e	3 Nmi. closure around Kahoolawe		20.60453	−156.49531
10f	3 Nmi. closure around Kahoolawe		20.60714	−156.49719
10g	3 Nmi. closure around Kahoolawe		20.60961	−156.49925
10h	3 Nmi. closure around Kahoolawe		20.61108	−156.50061
10i	3 Nmi. closure around Kahoolawe		20.61217	−156.50153
10j	3 Nmi. closure around Kahoolawe		20.61411	−156.50336
10k	3 Nmi. closure around Kahoolawe		20.61639	−156.50458
10l	3 Nmi. closure around Kahoolawe		20.63297	−156.50631
10m	3 Nmi. closure around Kahoolawe		20.62169	−156.50819
10n	3 Nmi. closure around Kahoolawe		20.62417	−156.51022
10o	3 Nmi. closure around Kahoolawe		20.62653	−156.51244
10p	3 Nmi. closure around Kahoolawe		20.62872	−156.51483
10q	3 Nmi. closure around Kahoolawe		20.63081	−156.51733
10r	3 Nmi. closure around Kahoolawe		20.63233	−156.51944
10s	3 Nmi. closure around Kahoolawe		20.63306	−156.52033
10t	3 Nmi. closure around Kahoolawe		20.63500	−156.52297
10u	3 Nmi. closure around Kahoolawe		20.63572	−156.52411
10v	3 Nmi. closure around Kahoolawe		20.63633	−156.52497
10w	3 Nmi. closure around Kahoolawe		20.63811	−156.52775
10x	3 Nmi. closure around Kahoolawe		20.63858	−156.52861
10y	3 Nmi. closure around Kahoolawe		20.63983	−156.53011
10z	3 Nmi. closure around Kahoolawe		20.64175	−156.53278
10aa	3 Nmi. closure around Kahoolawe		20.64350	−156.53553
10bb	3 Nmi. closure around Kahoolawe		20.64511	−156.53842
10cc	3 Nmi. closure around Kahoolawe		20.64539	−156.53903
10dd	3 Nmi. closure around Kahoolawe		20.64622	−156.54053
10ee	3 Nmi. closure around Kahoolawe		20.64764	−156.54353
10ff	3 Nmi. closure around Kahoolawe		20.64889	−156.54658
10gg	3 Nmi. closure around Kahoolawe		20.64994	−156.54975
10hh	3 Nmi. closure around Kahoolawe		20.65083	−156.55297
10ii	3 Nmi. closure around Kahoolawe		20.65111	−156.55436
10jj	3 Nmi. closure around Kahoolawe		20.65122	−156.55472
10kk	3 Nmi. closure around Kahoolawe		20.65147	−156.55586
10ll	3 Nmi. closure around Kahoolawe		20.65189	−156.55797
10mm	3 Nmi. closure around Kahoolawe		20.65239	−156.56131
10nn	3 Nmi. closure around Kahoolawe		20.65247	−156.56233
10oo	3 Nmi. closure around Kahoolawe		20.65269	−156.56378
10pp	3 Nmi. closure around Kahoolawe		20.65281	−156.56494
10qq	3 Nmi. closure around Kahoolawe		20.65306	−156.56675
10rr	3 Nmi. closure around Kahoolawe		20.65336	−156.57011
10ss	3 Nmi. closure around Kahoolawe		20.65347	−156.57344
10tt	3 Nmi. closure around Kahoolawe		20.65344	−156.57372
10uu	3 Nmi. closure around Kahoolawe		20.65350	−156.57514
10vv	3 Nmi. closure around Kahoolawe		20.65339	−156.57850
10ww	3 Nmi. closure around Kahoolawe		20.65328	−156.57992
10xx	3 Nmi. closure around Kahoolawe		20.65325	−156.58025
10yy	3 Nmi. closure around Kahoolawe		20.65314	−156.58217
11a	Technical Closure	2	20.69422	−156.61875
11b	Technical Closure		20.69583	−156.63433
12a	Upolu Pt., Hawaii (Big Island)	2	20.26814	−155.85014
12b	Upolu Pt., Hawaii (Big Island)		20.29997	−155.85478
13a	Keahole Pt., Hawaii (Big Island)	2	19.72767	−156.06186
13b	Keahole Pt., Hawaii (Big Island)		19.72819	−156.07069

Bound No. (fig.2)	Geographic name	Number of points	Latitude	Longitude
14a	Kawaihae Harbor, Big Island exclusion	2	20.03731	−155.83403
14b	Kawaihae Harbor, Big Island exclusion		20.04036	−155.83269
15a	Haleolono Harbor, Molokai exclusion	2	21.08431	−157.24961
15b	Haleolono Harbor, Molokai exclusion		21.08467	−157.24867
16a	Kaunakakai Harbor, Molokai exclusion	4	21.08719	−157.02658
16b	Kaunakakai Harbor, Molokai exclusion		21.08033	−157.03286
16c	Kaunakakai Harbor, Molokai exclusion		21.07736	−157.02811
16d	Kaunakakai Harbor, Molokai exclusion		21.08539	−157.02083
17a	Kaumalapau Harbor, Lanai exclusion	2	20.78589	−156.99228
17b	Kaumalapau Harbor, Lanai exclusion		20.78364	−156.99203

Bound No. (fig.2)	Geographic name	Number of points	Latitude	Longitude
18a	Manele Harbor, Lanai exclusion	2	20.74256	−156.88692
18b	Manele Harbor, Lanai exclusion		20.74311	−156.88725
19a	Lahaina Harbor, Maui exclusion	2	20.87175	−156.67917
19b	Lahaina Harbor, Maui exclusion		20.87189	−156.67889
20a	Maalaea Harbor, Maui exclusion	2	20.79225	−156.50972
20b	Maalaea Harbor, Maui exclusion		20.79022	−156.51100
21a	Western closure Kuapa Pond (Hawaii Kai), Oahu	2	21.28528	−157.71881
21b	Western closure Kuapa Pond (Hawaii Kai), Oahu		21.28514	−157.71861
22a	Eastern closure Kuapa Pond (Hawaii Kai), Oahu	2	21.28147	−157.71186
22b	Eastern closure Kuapa Pond (Hawaii Kai), Oahu		21.28108	−157.71119

[64 FR 66570, Nov. 29, 1999, as amended at 88 FR 972, Jan. 6, 2023]

Subpart R—Thunder Bay National Marine Sanctuary and Underwater Preserve

SOURCE: 65 FR 39056, June 22, 2000, unless otherwise noted.

§ 922.190 Boundary.

(a) Except as provided in paragraph (b) of this section, the Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 3,247 square nautical miles (nmi^2) (4,300 sq. mi.) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The eastern boundary of the sanctuary begins at the intersection of the southern Alcona County boundary and the U.S./Canada international boundary (Point 1). The eastern boundary of the sanctuary approximates the international boundary passing through Points 2–5. The boundary continues west through Point 6 and then back to the northeast until it intersects with the 45.83333° N line of latitude at Point 7. The northern boundary follows the line of latitude 45.83333° N westward until it intersects the −84.33333° W line of longitude at Point 8. The western boundary extends south along the −84.33333° W line of longitude towards Point 9 until it intersects the ordinary high water mark at Cordwood Point. From there, the western boundary follows the ordinary high water mark as defined by Part 325, Great Lakes Submerged Lands, of P.A. 451 (1994), as amended, cutting across the mouths of rivers and streams until it intersects the line formed between Point 10 and Point 11 south of Rogers City, MI. From there the boundary moves offshore through Points 11–15 in order until it intersects the ordinary high water mark along the line formed between Point 15 and Point 16. At this intersection the boundary continues to follow the ordinary high water mark south until it intersects with the line formed between Point 17 and Point 18 near Stoneport Harbor Light in Presque Isle, MI.

From there the boundary moves offshore through Points 18–20 in order until it intersects the ordinary high water mark along the line formed between Point 20 and Point 21. At this intersection the boundary continues to follow the ordinary high water mark south until it intersects the line formed between Point 22 and Point 23 near the Lafarge dock in Alpena, MI. At this intersection the boundary moves towards Point 23 until it intersects the ordinary high water mark. At this intersection the boundary follows the ordinary high water mark south until it intersects the southern Alcona County boundary along the lined formed between Point 24 and Point 25 in Greenbush, MI. Finally, at this intersection the boundary moves eastward and offshore until it reaches Point 25.

(b) Excluded from the Sanctuary boundary are the following ports:

(1) Rogers City;

(2) Presque Isle; and

(3) Alpena.

(c) The coordinates of each boundary area appear in appendix A of this subpart.

[79 FR 52971, Sept. 5, 2014; 79 FR 12080, Sept. 5, 2014, as amended at 88 FR 972, Jan. 6, 2023; 88 FR 19828, Apr. 4, 2023]

§ 922.191 Definitions.

(a) The following terms are defined for purposes of Subpart R:

Minor project means any project listed in appendix B to this Subpart.

Programmatic Agreement means the agreement among NOAA, the Federal Advisory Council on Historic Preservation, and the State of Michigan, developed pursuant to the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq*. and section 106 of the National Historic Preservation Act of 1966 as amended, 16 U.S.C. 470 *et seq.*, which, in part, sets forth the procedures for review and approval of State Permits that authorize activities prohibited by the Sanctuary regulations.

State Archaeologist means the State Archaeologist, Michigan Historical Center, Michigan Department of State.

State Permit means any lease, permit, license, approval, or other authorization issued by the State of Michigan for the conduct of activities or projects within the Thunder Bay National Marine Sanctuary and Underwater Preserve that are prohibited by the regulations at § 922.193.

Traditional fishing means those commercial, recreational, and subsistence fishing activities that were customarily conducted within the Sanctuary prior to its designation or expansion, as identified in the relevant Final Environmental Impact Statement and Management Plan for this Sanctuary. Traditional fishing includes tribal fishing rights as provided for in the 1836 Treaty of Washington and subsequent court decisions related to the Treaty.

Treaty fishing rights means those rights reserved in the 1836 Treaty of Washington and in subsequent court decisions related to the Treaty.

Underwater cultural resource means:

(1) Any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sank prior to the effective date of Sanctuary designation; and

(2) Any of the above that sinks on or after the date of Sanctuary designation determined to be an underwater cultural resource by the Director pursuant to § 922.198. Underwater cultural resource also means any historical remnant of docks or piers or associated material, or materials resulting from activities of historic and prehistoric Native Americans.

(b) Other terms appearing in the regulations are defined at 15 CFR part 922 subpart A, and/or in the National Marine Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq*.

[65 FR 39056, June 22, 2000, as amended at 79 FR 52972, Sept. 5, 2014; 79 FR 12080, Sept. 5, 2014]

§ 922.192 Joint Management Committee.

(a) A state/federal Joint Management Committee shall be established to oversee and engage in decision-making authority for the Thunder Bay National Marine Sanctuary and Underwater Preserve.

(b) The Joint Management Committee shall be comprised of one Federal employee named by the NOAA Administrator and one state employee named by the Governor of Michigan. The Federal employee cannot be the sanctuary manager (the individual who exercises day-to-day management over the Sanctuary) and must have a civil service grade higher than that of the sanctuary manager.

(c) The Joint Management Committee shall:

(1) Develop a position description for, recruit prospective candidates for the position of, interview candidates for the position of, and take part in the annual performance evaluation of, the sanctuary manager;

(2) Approve revisions to the Management Plan;

(3) Approve annual work plans;

(4) Approve, on an annual basis, the expenditure of allocated state and federal funds and other sources of revenue for the Thunder Bay National Marine Sanctuary and Underwater Preserve, in accordance with the Management Plan and the annual work plans; and

(5) Make decisions on other key issues related to management of the Thunder Bay National Marine Sanctuary and Underwater Preserve.

(d) The Joint Management Committee shall meet as agreed to by the

members but not less than once annually.

(e) If the Joint Management Committee is unable to reach agreement on an issue, the members shall follow the ''Consultation and Conflict Resolution'' procedures set forth in the Interlocal Agreement between NOAA and the State of Michigan.

(f) The Joint Management Committee may invite affected public parties to participate in selected aspects of Sanctuary management as:

(1) Parties to the Interlocal Agreement pursuant to the Michigan Urban Cooperation Act of 1967, MCL 124.501 *et seq.;* and/or

(2) Pursuant to the NMSA.

§ 922.193 Prohibited or otherwise regulated activities.

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

(1) Recovering, altering, destroying, possessing, or attempting to recover, alter, destroy, or possess an underwater cultural resource.

(2) Drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations; or

(iii) Minor projects (as defined in appendix B of this subpart) that do not adversely affect underwater cultural resources.

(3) Using grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy.

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

(b) Members of a federally-recognized Indian tribe may exercise treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this subpart. The Director may consult with the governing body of a tribe regarding ways the tribe may exercise such rights consistent with the purposes of the Sanctuary, provided that the rights are authorized by the tribe by regulation, license, or permit.

(c) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to valid law enforcement activities, or any activity necessary to respond to an emergency threatening life or the environment.

(d) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to any activity:

(1) Specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued pursuant to § 922.195 or a special use permit issued pursuant to subpart D of this part.

(2) [Reserved]

[65 FR 39056, June 22, 2000, as amended at 88 FR 19829, Apr. 4, 2023]

§ 922.194 [Reserved]

§ 922.195 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.193(a)(1) through (3), if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a State Permit provided that:

(1) The State Archaeologist certifies to NOAA that the activity authorized under the State Permit will be conducted consistent with the Programmatic Agreement, in which case such State Permit shall be deemed to have met the requirements of subpart D of this part; or

(2) In the case where the State Archaeologist does not certify that the activity to be authorized under a State Permit will be conducted consistent with the Programmatic Agreement, the person complies with the requirements of subpart D of this part.

(b) In instances where the conduct of an activity is prohibited by § 922.193(a)(1) through (3) is not addressed under a State or other Federal

lease, license, permit or other authorization, a person may conduct such activity if it is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued pursuant to subpart D of this part and the Programmatic Agreement.

(c) A permit for recovery of an underwater cultural resource may be issued if:

(1) The proposed activity satisfies the requirements for permits described under paragraphs (a) and (b) of this section and section 922.33;

(2) The recovery of the underwater cultural resource is in the public interest;

(3) Recovery of the underwater cultural resource is part of research to preserve historic information for public use; and

(4) Recovery of the underwater cultural resource is necessary or appropriate to protect the resource, preserve historical information, or further the policies of the Sanctuary.

(d) A person shall file an application for a permit with the Michigan Department of Environmental Quality, Land and Water Management Division, P.O. Box 30458, Lansing, MI 48909–7958. The application shall contain all of the following information:

(1) The name and address of the applicant;

(2) Research plan that describes in detail the specific research objectives and previous work done at the site. An archaeological survey must be conducted on a site before an archaeological permit allowing excavation can be issued;

(3) Description of significant previous work in the area of interest, how the proposed effort would enhance or contribute to improving the state of knowledge, why the proposed effort should be performed in the Sanctuary, and its potential benefits to the Sanctuary;

(4) An operational plan that describes the tasks required to accomplish the project's objectives and the professional qualifications of those conducting and supervising those tasks (*see* paragraph (d)(9) of this section). The plan must provide adequate description of methods to be used for excavation, recovery and the storage of artifacts and related materials on site, and describe the rationale for selecting the proposed methods over any alternative methods;

(5) Archaeological recording, including site maps, feature maps, scaled photographs, and field notes;

(6) An excavation plan describing the excavation, recovery and handling of artifacts;

(7)(i) A conservation plan documenting:

(A) The conservation facility's equipment;

(B) Ventilation temperature and humidity control; and

(C) storage space.

(ii) Documentation of intended conservation methods and processes must also be included;

(8) A curation and display plan for the curation of the conserved artifacts to ensure the maintenance and safety of the artifacts in keeping with the Sanctuary's federal stewardship responsibilities under the Federal Archaeology Program (36 CFR part 79, Curation of Federally-Owned and Administered Archaeological Collections); and

(9) Documentation of the professional standards of an archaeologist supervising the archaeological recovery of historical artifacts. The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or closely related field plus:

(i) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(ii) At least four months of supervised field and analytic experience in general North American archaeology;

(iii) Demonstrated ability to carry research to completion; and

(iv) At least one year of full-time professional experience at a supervisory level in the study of archeological resources in the underwater environment.

[88 FR 7357, Jan. 6, 2023]

§ 922.196 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or

injury to an underwater cultural resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of Michigan.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

§ 922.197 Effect on affected federally-recognized Indian tribes.

The exercise of treaty fishing rights is not modified, altered, or in any way affected by the regulations promulgated in this Subpart. The Director shall consult with the governing body of each federally-recognized Indian tribe mentioned in the 1836 Treaty of Washington and in subsequent court decisions related to the Treaty regarding any matter which might affect the ability of the Tribe's members to participate in treaty fishing activities in the Sanctuary.

[79 FR 52972, Sept. 5, 2014; 80 FR 12080, Mar. 6, 2015]

§ 922.198 Procedures for determining watercraft and related items which sink on or after the date of Sanctuary designation to be an underwater cultural resource.

The Director, in consultation with the State of Michigan, appropriate federal agencies, and the governing body of any affected federally-recognized tribe, may determine, after providing 45 days for public comment, that any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sinks on or after the date of Sanctuary designation, to be an underwater cultural resource if such is determined by the Director to be 50 years or older and of special national significance due to architectural significance or association with individuals or events that are significant to local or national history.

Appendix A to Subpart R of Part 922—Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Coordinates

[Based on North American Datum of 1983]

Point ID	Latitude (north)	Longitude (west)
1	44.512834	−82.329519
2	44.858147	−82.408717
3	45.208484	−82.490596
4	45.335902	−82.52064
5	45.771937	−83.483974
6	45.773944	−83.636867
7	45.833333	−83.586892
8	45.833333	−84.333333
9*	45.662858	−84.333333
10*	45.41733	−83.77327
11	45.42103	−83.79487
12	45.42708	−83.79371
13	45.42343	−83.75318
14	45.41748	−83.75333
15	45.41210	−83.76805
16*	45.40738	−83.76785
17*	45.29672	−83.41908
18	45.29682	−83.40965
19	45.29010	−83.40965
20	45.29464	−83.41914
21*	45.29681	−83.42277
22*	45.06632	−83.40715
23*	45.06560	−83.40810
24*	44.511734	−83.320169
25	44.512834	−82.329519

NOTE: The coordinates in the table above marked with an asterisk (*) are not part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline for the purpose of charting the boundary.

[79 FR 52972, Sept. 5, 2014; 80 FR 12080, Mar. 6, 2015, as amended at 80 FR 79684, Dec. 23, 2015]

Appendix B to Subpart R of Part 922—Minor Projects for Purposes of § 922.193(a)(2)(iii)

Pursuant to Michigan State Administrative Rule R 322.1013 of Part 325, Great Lakes Submerged Lands of Public Act 451 (Michigan State Statute), the Michigan Department of Environmental Quality (Department) issues permits for projects that are of a minor nature which are not controversial, which have minimal adverse environmental impact, which will be constructed of clean, non-polluting materials, which do not impair the use of the adjacent bottomlands by the public, and which do not adversely affect riparian interests of adjacent owners. The following projects are minor projects:

(a) Noncommercial single piers, docks, and boat hoists which meet the following design criteria:

(i) are of a length or size not greater than the length or size of similar structures in the vicinity and on the watercourse involved; and

(ii) provide for the free littoral flow of water and drift material.

(b) Spring piles and pile clusters when their design and purpose is usual for such projects in the vicinity and on the watercourse involved.

(c) Seawalls, bulkheads, and other permanent revetment structures which meet all of the following purpose and design criteria:

(i) the proposed structure fulfills an identifiable need for erosion protection, bank stabilization, protection of uplands, or improvements on uplands;

(ii) the structure will be constructed of suitable materials free from pollutants, waste metal products, debris, or organic materials;

(iii) the structure is not more than 300 feet in length and is located in an area on the body of water where other similar structures already exist;

(iv) the placement of backfill or other fill associated with the construction does not exceed an average of 3 cubic yards per running foot along the shoreline and a maximum of 300 cubic yards; and

(v) the structure or any associated fill will not be placed in a wetland area or placed in any manner that impairs surface water flow into or out of any wetland area.

(d) Groins 50 feet or less in length, as measures from the toe to bluff, which meet all of the following criteria:

(i) the groin is low profile, with the lakeward end not more than 1 foot above the existing water level; and

(ii) the groin is placed at least ½ of the groin length from the adjacent property line or closer with written approval of the adjacent riparian.

(e) Filling for restoration of existing permitted fill, fills placed incidental to construction of other structures, and fills that do not exceed 300 cubic yards as a single and complete project, where the fill is of suitable material free from pollutants, waste metal products, debris, or organic materials.

(f) Dredging for the maintenance of previously dredged areas or dredging of not more than 300 cubic yards as a single and complete project when both of the following criteria are met:

(i) No reasonable expectation exists that the materials to be dredged are polluted; and

(ii) All dredging materials will be removed to an upland site exclusive of wetland areas.

(g) Structural repair of man-made structures, except as exempted by Michigan State Administrative Rule R 322.1008(3), when their design and purpose meet both of the following criteria:

(i) The repair does not alter the original use of a recently serviceable structure; and

(ii) The repair will not adversely affect public trust values or interests, including navigation and water quality.

(h) Fish or wildlife habitat structures which meet both of the following criteria:

(i) Are placed so the structures do not impede or create a navigational hazard; and

(ii) Are anchored to the bottomlands.

(i) Scientific structures such as staff gauges, water monitoring devices, water quality testing devices, survey devices, and core sampling devices, if the structures do not impede or create a navigational hazard.

(j) Navigational aids which meet both of the following criteria:

(i) Are approved by the United States Coast Guard; and

(ii) Are approved under Michigan State Act No. 303 of the Public Acts of 1967, as amended, being Section 281.1001 *et seq.* of the Michigan Compiled Laws, and known as the Marine Safety Act.

(k) Extension of a project where work is being performed under a current permit and which will result in no damage to natural resources.

(l) A sand trap wall which meets all of the following criteria:

(i) The wall is 300 feet or less in length along the shoreline;

(ii) The wall does not extend more than 30 feet lakeward of the toe of bluff;

(iii) The wall is low profile, that is, it is not more than 1 foot above the existing water level; and

(iv) The wall is constructed of wood or steel or other non-polluting material.

(m) Physical removal of man-made structures or natural obstructions which meet all of the following criteria:

(i) The debris and spoils shall be removed to an upland site, not in a wetland, in a manner which will not allow erosion into public waters;

(ii) The shoreline and bottom contours shall be restored to an acceptable condition; and

(iii) Upon completion of structure removal, the site does not constitute a safety or navigational hazard. Department staff shall consider fisheries and wildlife resource values when evaluating applications for natural obstruction removal.

Subpart S—Mallows Bay—Potomac River National Marine Sanctuary

SOURCE: 84 FR 32603, July 8, 2019, unless otherwise noted.

§ 922.200 Boundary.

The Mallows Bay-Potomac River National Marine Sanctuary consists of an area of approximately 18 square miles

of waters of the state of Maryland and the submerged lands thereunder, over, around, and under the underwater cultural resources in the Potomac River. The precise boundary coordinates are listed in appendix A to this subpart. The western boundary of the sanctuary approximates the border between the Commonwealth of Virginia and the State of Maryland along the western side of the Potomac River and begins at Point 1 north of the mouth of Aquia Creek in Stafford County, Virginia, near Brent Point. From this point the boundary continues to the north approximating the border between Virginia and Maryland cutting across the mouths of streams and creeks passing through the points in numerical order until it reaches Point 40 north of Tank Creek. From this point the sanctuary boundary continues east across the Potomac River in a straight line towards Point 41 until it intersects the Maryland shoreline just north of Sandy Point in Charles County, Maryland. From this intersection the sanctuary boundary then follows the Maryland shoreline south around Mallows Bay, Blue Banks, and Wades Bay cutting across the mouths of creeks and streams along the eastern shoreline of the Potomac River until it intersects the line formed between Point 42 and Point 43 just south of Smith Point. Finally, from this intersection the sanctuary boundary crosses the Potomac River to the west in a straight line until it reaches Point 43 north of the mouth of Aquia Creek in Stafford County, Virginia, near Brent Point.

§ 922.201 Definitions.

(a) The following terms are defined for purposes of this subpart:

(1) *Sanctuary resource* means any historical resource with the Sanctuary boundaries, as defined in § 922.3. This includes, but is not limited to, any sunken watercraft and any associated rigging, gear, fittings, trappings, and equipment; the personal property of the officers, crew, and passengers, and any cargo; and any submerged or partially submerged prehistoric, historic, cultural remains, such as docks, piers, fishing-related remains (e.g., weirs, fish-traps) or other cultural heritage materials. Sanctuary resource also means any archaeological, historical, and cultural remains associated with or representative of historic or prehistoric American Indians and historic groups or peoples and their activities.

(2) *Traditional fishing* means those commercial, recreational, and subsistence fishing activities that were customarily conducted within the Sanctuary prior to its designation or expansion, as identified in the relevant Final Environmental Impact Statement and Management Plan for this Sanctuary.

(b) All other terms appearing in the regulations in this subpart are defined at § 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

[84 FR 32603, July 8, 2019, as amended at 88 FR 19829, Apr. 4, 2023]

§ 922.202 Joint management.

NOAA has primary responsibility for the management of the Sanctuary pursuant to the Act. However, NOAA shall co-manage the Sanctuary in collaboration with the State of Maryland and Charles County. The Director shall enter into a Memorandum of Agreement regarding this collaboration that shall address, but not be limited to, such aspects as areas of mutual concern, including Sanctuary programs, permitting, activities, development, and threats to Sanctuary resources.

§ 922.203 Prohibited or otherwise regulated activities.

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

(1) Moving, removing, recovering, altering, destroying, possessing, or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a Sanctuary resource, except as an incidental result of traditional fishing. This prohibition does not apply to possessing historical resources removed from the Sanctuary area before the effective date of the Sanctuary designation.

(2) 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, buoys, or other boundary markers related to the Sanctuary.

(3) 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 any permit issued under the Act.

(b) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to any activity necessary to respond to an emergency threatening life, property or the environment; or to activities necessary for valid law enforcement purposes.

(c)(1) All military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on sanctuary resources and qualities.

(2) Any existing military activity conducted by DoD prior to the effective date of the regulations in this subpart and as specifically identified in the Final Environmental Impact Statement and Final Management Plan for the Sanctuary (FEIS/FMP) is allowed to continue in the Sanctuary. The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to those existing military activities or to the following military activities conducted by DoD:

(i) Low-level overflight of military aircraft operated by DoD;

(ii) The designation of new units of special use airspace;

(iii) The use or establishment of military flight training routes;

(iv) Air or ground access to existing or new electronic tracking communications sites associated with special use airspace or military flight training routes; or

(v) Activities to reduce or eliminate a threat to human life or property presented by unexploded ordnances or munitions.

(3) New military activities that do not violate the prohibitions in paragraphs (a)(1) through (3) of this section are allowed. Any new military activity that is likely to violate sanctuary prohibitions may become exempt through consultation between the Director and DoD pursuant to section 304(d) of the NMSA. For purposes of this paragraph (c)(3), the term ''new military activity'' includes but is not limited to, any existing military activity that is modified in any way (including change in location, frequency, duration, or technology used) that is likely to destroy, cause the loss of, or injure a sanctuary resource, or is likely to destroy, cause the loss of, or injure a sanctuary resource in a manner or to an extent that was not considered in a previous consultation under section 304(d) of the NMSA.

(4) In the event of destruction of, loss of, or injury to a sanctuary resource or quality resulting from an incident, including but not limited to spills and groundings caused by DoD, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to prevent, respond to or mitigate the harm and, if possible, restore or replace the sanctuary resource or quality.

§ 922.204 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities, other than DoD activities, are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of Maryland or her/his designee or designated agency.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

§ 922.205 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.203(a)(1) and (2) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Mallows Bay–

Potomac River National Marine Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

[88 FR 973, Feb. 6, 2023]

§ 922.206 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.203(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the effective date of sanctuary designation and within the sanctuary designated area and complies with § 922.10 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

(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) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit, license, or other authorization and the issuing agency and shall set forth reason(s) for the action taken.

(d) Requests for findings or certifications should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, Mallows Bay-Potomac National Marine Sanctuary, 1305 East West Hwy., 11th Floor, Silver Spring, MD 20910. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) For an activity described in paragraph (a) of this section, the holder of the authorization or right may conduct the activity prohibited by § 922.203(a)(1) through (3) provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 180 days of the FEDERAL REGISTER notification announcing of effective date of the Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

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

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(f) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by § 922.203 may conduct the activity without being in violation of applicable provisions of § 922.203, pending final agency action on his or her certification request, provided the holder is otherwise in compliance with this section.

(g) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(h) The Director may amend any certification made under this section whenever additional information becomes available that he/she determines justifies such an amendment.

(i) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(j) The holder may appeal any action conditioning, amending, suspending, or

revoking any certification in accordance with the procedures set forth in § 922.37.

(k) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

[84 FR 32603, July 8, 2019, as amended at 88 FR 973, Jan. 6, 2023]

APPENDIX A TO SUBPART S OF PART 922—MALLOWS BAY-POTOMAC RIVER MARINE SANCTUARY BOUNDARY DESCRIPTION AND COORDINATES OF THE LATERAL BOUNDARY CLOSURES AND EXCLUDED AREAS

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

TABLE 1—COORDINATES FOR SANCTUARY

Point ID	Latitude	Longitude
1	38.39731	−77.31008
2	38.39823	−77.31030
3	38.39856	−77.31059
4	38.39886	−77.31074
5	38.39917	−77.31067
6	38.40014	−77.31074
7	38.40090	−77.31145
8	38.40138	−77.31215
9	38.40197	−77.31236
10	38.40314	−77.31278
11	38.40658	−77.31377
12	38.40984	−77.31465
13	38.41388	−77.31692
14	38.41831	−77.31913
15	38.41974	−77.31930
16	38.42352	−77.31971
17	38.42548	−77.32030
18	38.42737	−77.32081
19	38.43091	−77.32240
20	38.43163	−77.32242
21	38.43350	−77.32263
22	38.43384	−77.32269
23	38.43430	−77.32265
24	38.43461	−77.32229
25	38.43498	−77.32146
26	38.43526	−77.32057
27	38.43522	−77.32040
28	38.47321	−77.31845
29	38.47434	−77.31874
30	38.47560	−77.31752
31	38.47655	−77.31686
32	38.47748	−77.31666
33	38.47821	−77.31604
34	38.47871	−77.31554
35	38.47885	−77.31563
36	38.47905	−77.31559
37	38.47921	−77.31578
38	38.47943	−77.31592
39	38.47985	−77.31592
40	38.48493	−77.31335
41*	38.48554	−77.27298
42*	38.39793	−77.25704
43	38.39731	−77.31008

NOTE 1 TO TABLE 1 OF THIS APPENDIX: The coordinates in the table above marked with an asterisk (*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

APPENDIX B TO SUBPART S OF PART 922—MALLOWS BAY-POTOMAC RIVER MARINE SANCTUARY TERMS OF DESIGNATION

TERMS OF DESIGNATION FOR THE MALLOWS BAY–POTOMAC RIVER NATIONAL MARINE SANCTUARY

Under the authority of the National Marine Sanctuaries Act, as amended (the ''Act'' or ''NMSA''), 16 U.S.C. 1431 *et seq.*, certain waters and submerged lands located off the Nanjemoy Peninsula of Charles County, Maryland, and along the tidal Potomac River and its surrounding waters are hereby designated as a National Marine Sanctuary for the purposes of providing long-term protection and management of the historical resources and recreational, research, educational, and aesthetic qualities of the area.

Article I: Effect of Designation

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the historical resources and recreational, research, and educational qualities of the Mallows Bay-Potomac River National Marine Sanctuary (the ''Sanctuary''). Section 1 of Article IV of this appendix lists those activities that may have to be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing an activity does not necessarily mean that it will be regulated; however, if an activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the same procedures by which the original Sanctuary designation was made.

Article II: Description of the Area

The Mallows Bay-Potomac River National Marine Sanctuary consists of an area of approximately 18 square miles of waters of the State of Maryland and the submerged lands thereunder, over, around, and under the underwater cultural resources in the Potomac River between Stafford County, Virginia, and Charles County, Maryland. The western boundary of the sanctuary approximates the border between the Commonwealth of Virginia and the State of Maryland for roughly 6 miles along the Potomac River, beginning north of the mouth of Aquia Creek in Stafford County, Virginia, near Brent Point and continuing north past Widewater, VA, and Clifton Point to a point north of Tank Creek. From this point the sanctuary boundary crosses the Potomac to the east until it

intersects the Maryland shoreline just north of Sandy Point in Charles County, MD. From this point the eastern boundary of the sanctuary, approximately 8 miles in total length, follows the Maryland shoreline south past Mallows Bay, Blue Banks, and Wades Bay to a point just south of Smith Point. From this location the sanctuary boundary crosses the Potomac River to the west back to its point of origin north of the mouth of Aquia Creek near Brent Point on the Virginia side of the river.

Article III: Special Characteristics of the Area

Mallows Bay-Potomac River National Marine Sanctuary and its surrounding waters contain a diverse collection more than 100 known historic shipwreck vessels dating back to the Civil War and potentially dating back to the Revolutionary War, as well as archaeological artifacts dating back 12,000 years indicating the presence of some of the region's earliest American Indian cultures, including the Piscataway Indian Nation and the Piscataway Conoy Confederacy and Sub-Tribes of Maryland. The area is most renowned for the remains of over 100 wooden steamships, known as the ''Ghost Fleet,'' that were built for the U.S. Emergency Fleet between 1917–1919 as part of U.S. engagement in WWI. Their construction at more than 40 shipyards in 17 states reflects the massive national wartime effort that drove the expansion and economic development of communities and related maritime service industries including the present-day Merchant Marines. The area is contiguous to the Captain John Smith Chesapeake National Historic Trail, the Star Spangled Banner National Historic Trail, the Potomac Heritage National Scenic Trail and the Lower Potomac Water Trail which offer meaningful educational and recreational opportunities centered on the region's culture, heritage and history. Additionally, the structure provided by the vessels and related infrastructure serve as important habitat to thriving populations of recreational fisheries, bald eagles, and other aquatic species. The area's listing on the National Historical Register of Places in 2015 codifies the historical, archaeological and recreational significance of the Ghost Fleet and related maritime cultural heritage sites in and around Mallows Bay-Potomac River National Marine Sanctuary.

Article IV: Scope of Regulations

Section 1. Activities Subject to Regulation. The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the historical resources and recreational, research and educational qualities of the area:

a. Moving, removing, recovering, altering, destroying, possessing, or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a Sanctuary resource, except as an incidental result of traditional fishing (as defined in the regulations).

b. 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, buoys, or other boundary markers related to the Sanctuary.

c. 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 issued under the Act.

Section 2. NOAA will not exercise its authority under the NMSA to regulate fishing in the Sanctuary.

Section 3. Emergencies. Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource; or minimize the imminent risk of such destruction, loss, or injury, any activity, including those not listed in Section 1, is subject to immediate temporary regulation. An emergency regulation shall not take effect without the approval of the Governor of Maryland or her/his designee or designated agency.

Article V: Relation to Other Regulatory Program

Section 1. Fishing Regulations, Licenses, and Permits. Fishing in the Sanctuary shall not be regulated as part of the Sanctuary management regime authorized by the Act. However, fishing in the Sanctuary may be regulated by other Federal, State, Tribal and local authorities of competent jurisdiction, and designation of the Sanctuary shall have no effect on any regulation, permit, or license issued thereunder.

Section 2. Other Regulations, Licenses, and Permits. If any valid regulation issued by any federal, state, Tribal, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director of the Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration, or designee, in consultation with the State of Maryland, to be more protective of Sanctuary resources and qualities shall govern. Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization issued by any federal, state, Tribal, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or designee, as a result of this designation, or as a result of any Sanctuary regulation, if such lease, permit, license, approval, or other authorization, or right of subsistence use or access was issued or in existence as of

the effective date of this designation. However, the Secretary of Commerce or designee, in consultation with the State of Maryland, may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

Section 3. Department of Defense Activities. DoD activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on sanctuary resources and qualities. Any existing military activity conducted by DoD prior to the effective date of the regulations in this subpart and as specifically identified in the Final Environmental Impact Statement and Final Management Plan for the Sanctuary (FEIS/FMP) is allowed to continue in the Sanctuary. The prohibitions in §922.203(a)(1) through (3) do not apply to those existing military activities listed in the FEIS/FMP or the military activities conducted by DoD listed in §922.203(c)(2). New military activities that do not violate the prohibitions in paragraphs (a)(1) through (3) of this section are allowed. Any new military activity that is likely to violate sanctuary prohibitions may become exempt through consultation between the Director and DoD pursuant to section 304(d) of the NMSA. The term ''new military activity'' includes but is not limited to, any existing military activity that is modified in any way (including change in location, frequency, duration, or technology used) that is likely to destroy, cause the loss of, or injure a sanctuary resource, or is likely to destroy, cause the loss of, or injure a sanctuary resource in a manner or to an extent that was not considered in a previous consultation under section 304(d) of the NMSA. In the event of destruction of, loss of, or injury to a sanctuary resource or quality resulting from an incident, including but not limited to spills and groundings caused by DoD, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to prevent, respond to or mitigate the harm and, if possible, restore or replace the sanctuary resource or quality.

Article VI. Alteration of This Designation

The terms of designation may be modified only by the same procedures by which the original designation is made, including public meetings, consultation according to the NMSA.

Subpart T—Wisconsin Shipwreck Coast National Marine Sanctuary

SOURCE: 86 FR 32754, June 23, 2021, unless otherwise noted.

§922.210 Boundary.

Wisconsin Shipwreck Coast National Marine Sanctuary consists of an area of approximately 726 square nautical miles (962 square miles) of Lake Michigan waters within the State of Wisconsin and the submerged lands thereunder, over, around, and under the submerged underwater cultural resources in Lake Michigan. The precise boundary coordinates are listed in Appendix A to this subpart. The eastern boundary of the sanctuary begins approximately 9.3 miles east of the Wisconsin shoreline (as defined by the low water datum) in Lake Michigan at Point 1 north of the border between Manitowoc and Kewaunee County. From Point 1 the boundary continues SSW in a straight line to Point 2 and then SW to Point 3 which is located in Lake Michigan approximately 16.3 miles east of a point on the shoreline roughly equidistant between the borders of northern Mequon, WI and southern Port Washington, WI. From Point 3 the boundary continues west towards Point 4 until it intersects the shoreline at the low water datum approximately 2.5 miles north of the northern border of Mequon, WI. From this intersection the boundary continues north following the shoreline at the low water datum, cutting across the mouths of creeks and streams until it intersects the line segment formed between Point 5 and Point 6 at the end of the southern breakwater at the mouth of Sauk Creek at Port Washington. From this intersection the boundary continues to Point 6 through Point 9 in numerical order. From Point 9 the boundary continues towards Point 10 until it intersects the shoreline at the low water datum at the end of the northern breakwater at the mouth of Sauk Creek. From this intersection the boundary continues north following the shoreline at the low water datum cutting across the mouths of creeks and streams until it intersects the line segment formed between Point 11 and Point 12 at the end of the southern breakwater at the mouth of the Sheboygan River. From this intersection the boundary continues to Point 12 through Point 17 in numerical order.

From Point 17 the boundary continues towards Point 18 until it intersects the shoreline at the low water datum at the end of the northern breakwater at the mouth of the Sheboygan River. From this intersection the boundary continues north along the shoreline at the low water datum cutting across the mouths of creeks and streams until it intersects the line segment formed between Point 19 and Point 20 at the end of the southern breakwater at the mouth of Manitowoc Harbor. From this intersection the boundary continues to Point 20 through Point 23 in numerical order. From Point 23 the boundary continues towards Point 24 until it intersects the shoreline at the low water datum at the end of the northern breakwater at the mouth of the Sheboygan River. From this intersection the boundary continues north following the shoreline at the low water datum cutting across the mouths of creeks and streams until it intersects the line segment formed between Point 25 and Point 26 at the end of the western breakwater at the mouth of East Twin River. From this intersection the boundary continues to Point 27 through Point 31 in numerical order.

From Point 31 the boundary continues towards Point 32 until it intersects the shoreline at the low water datum at the end of the eastern breakwater at the mouth of East Twin River. From this intersection the boundary continues NE following the shoreline at the low water datum cutting across the mouths of creeks and streams around Rawley Point and then continues NNW past the county border between Manitowoc and Kewaunee County until it intersects the line segment formed between Point 33 and Point 34 along the shoreline at the low water datum just south of the mouth of the unnamed stream near the intersection of Sandy Bar Road and Lakeview Road near Carlton, WI. Finally, from this intersection at the shoreline at the low water datum the boundary moves east across Lake Michigan to Point 34.

§ 922.211 Definitions.

(a) The following terms are defined for purposes of this subpart:

(1) *Sanctuary resource* means all prehistoric, historic, archaeological, and cultural sites and artifacts within the sanctuary boundary, including all shipwreck sites.

(2) *Shipwreck site* means any historic sunken watercraft, its components, cargo, contents, and associated debris field.

(b) All other terms appearing in the regulations in this subpart are defined at § 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq*.

§ 922.212 Co-management.

NOAA has primary responsibility for the management of the Sanctuary pursuant to the Act. However, as the Sanctuary is in state waters, NOAA will co-manage the Sanctuary in collaboration with the State of Wisconsin. The Director may enter into a Memorandum of Agreement regarding this collaboration that may address, but not be limited to, such aspects as areas of mutual concern, including Sanctuary resource protection, programs, permitting, activities, development, and threats to Sanctuary resources.

§ 922.213 Prohibited or otherwise regulated activities.

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

(1) Moving, removing, recovering, altering, destroying, possessing, or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a sanctuary resource.

(2) Grappling into or anchoring on shipwreck sites.

(3) 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 any permit issued under the Act.

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

to activities necessary for valid law enforcement purposes.

§ 922.214 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of Wisconsin or her/his designee or designated agency.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

§ 922.215 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.213(a)(1) and (2) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Wisconsin Shipwreck Coast National Marine Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

[88 FR 973, Jan. 6, 2023]

§ 922.216 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.213(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the effective date of sanctuary designation and within the sanctuary designated area and complies with § 922.10 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

(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) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit, license, or other authorization and the issuing agency and shall set forth reason(s) for the action taken.

(d) Requests for findings or certifications should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, Wisconsin Shipwreck Coast National Marine Sanctuary, 1305 East-West Hwy., 11th Floor, Silver Spring, MD 20910. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) For an activity described in paragraph (a) of this section, the holder of the authorization or right may conduct the activity prohibited by § 922.213(a)(1) through (3) provided that:

(1) The holder of such authorization or right notifies the Director, in writing, 180 days of the FEDERAL REGISTER document announcing of effective date of the Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

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

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(f) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by § 922.213 may conduct the activity without being in violation of applicable provisions of § 922.213, pending final agency action on his or her certification request, provided the holder is otherwise in compliance with this section.

(g) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(h) The Director may amend any certification made under this section whenever additional information becomes available that he/she determines justifies such an amendment.

(i) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

(k) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

[86 FR 32754, June 23, 2021, as amended at 88 FR 973, Jan. 6, 2023]

Appendix A to Subpart T of Part 922—Wisconsin Shipwreck Coast Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Table A1—Coordinates for Sanctuary Boundary

Point_ID	Latitude	Longitude
1	44.35279	−87.34387
2	43.45716	−87.48817
3	43.31519	−87.56312
4*	43.31519	−87.88828
5*	43.38447	−87.86079
6	43.38455	−87.86062
7	43.38353	−87.85936
8	43.38588	−87.85801
9	43.38510	−87.85950
10*	43.38523	−87.85963
11*	43.74858	−87.69479
12	43.74858	−87.69457
13	43.74840	−87.69457
14	43.74778	−87.69191
15	43.74949	−87.69161
16	43.74977	−87.69196
17	43.74935	−87.69251
18*	43.74946	−87.69265
19*	44.09135	−87.64377
20	44.09147	−87.64366
21	44.09081	−87.64206
22	44.09319	−87.64202
23	44.09254	−87.64365
24*	44.09262	−87.64373
25*	44.14226	−87.56161
26	44.14214	−87.56151
27	44.14199	−87.56181
28	44.13946	−87.55955
29	44.14021	−87.55795
30	44.14274	−87.56023
31	44.14256	−87.56059
32*	44.14267	−87.56069
33*	44.35279	−87.53255
34	44.35279	−87.34387

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline at the low water datum.

Appendix B to Subpart T of Part 922—Wisconsin Shipwreck Coast National Marine Sanctuary Terms of Designation

Terms of Designation for Wisconsin Shipwreck Coast National Marine Sanctuary Under the authority of the National Marine Sanctuaries Act, as amended (the ''Act'' or ''NMSA''), 16 U.S.C. 1431 *et seq.*, 962 square miles of Lake Michigan off the coast of Wisconsin's coastal counties of Ozaukee, Sheboygan, Manitowoc, and Kewaunee are hereby designated as a National Marine Sanctuary for the purpose of providing long-term protection and management of the historical resources and recreational, research, educational, and aesthetic qualities of the area.

Article I: Effect of Designation

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the historical resources and recreational, research, and educational qualities of Wisconsin Shipwreck Coast National Marine Sanctuary (the ''Sanctuary''). Section 1 of Article IV of this

Designation Document lists those activities that may have to be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing an activity does not necessarily mean that it will be regulated; however, if an activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the same procedures by which the original Sanctuary designation was made.

ARTICLE II: DESCRIPTION OF THE AREA

Wisconsin Shipwreck Coast National Marine Sanctuary consists of an area of approximately 726 square nautical miles (962 square miles) of Lake Michigan waters within the State of Wisconsin and the submerged lands thereunder, over, around, and under the underwater cultural resources in Lake Michigan. The eastern boundary of the sanctuary begins approximately 9.3 miles east of the Wisconsin shoreline in Lake Michigan north of the border between Manitowoc and Kewaunee County. From this point the boundary continues in Lake Michigan roughly to the SSW until it intersects a point in Lake Michigan approximately 16.3 miles east of a point along the shoreline that is approximately equidistant between the borders of Mequon, WI and Port Washington, WI. The southern boundary continues west until it intersects the shoreline at the Low Water Datum at this point between Mequon, WI and Port Washington, WI. The western boundary continues north following the shoreline at the Low Water Datum for approximately 82 miles cutting across the mouths of rivers, creeks, and streams and excluding federally authorized shipping channels; specifically those of Sauk Creek at Port Washington, Sheboygan River at Sheboygan, Manitowoc Harbor as Manitowoc, and East Twin River at Two Rivers. The western boundary ends just north of the border between Manitowoc and Kewaunee County along the shoreline near Carlton, WI. The northern boundary continues from the shoreline at the Low Water Datum at this point east across Lake Michigan just north of the border between these same two counties back to its point of origin approximately 9.3 miles offshore.

ARTICLE III: SPECIAL CHARACTERISTICS OF THE AREA

The area includes a nationally significant collection of maritime heritage resources, including 36 known shipwrecks, about 59 suspected shipwrecks, and other underwater cultural sites. The historic shipwrecks are representative of the vessels that sailed and steamed on Lake Michigan during the nineteenth and twentieth centuries, carrying grain and raw materials east and carrying coal, manufactured goods, and people west. During this period entrepreneurs and shipbuilders on the Great Lakes launched tens of thousands of ships of many different designs. Sailing schooners, grand palace steamers, revolutionary propeller-driven passenger ships, and industrial bulk carriers transported America's business and industry. In the process they brought hundreds of thousands of people to the Midwest and made possible the dramatic growth of the region's farms, cities, and industries. The Midwest, and indeed the American nation, could not have developed with such speed and with such vast economic and social consequences without the Great Lakes. Twenty-one of the 36 shipwreck sites in the sanctuary are listed on the National Register of Historic Places. Many of the shipwrecks retain an unusual degree of architectural integrity, with several vessels nearly intact. Well preserved by Lake Michigan's cold, fresh water, the shipwrecks and related maritime heritage sites in Wisconsin Shipwreck Coast National Marine Sanctuary possess exceptional historical, archaeological and recreational value. Additional underwater cultural resources, such as submerged aircraft, docks, piers, and isolated artifacts also exist, as do the potential for prehistoric sites and artifacts.

ARTICLE IV: SCOPE OF REGULATIONS

Section 1. Activities Subject to Regulation. The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the historical resources and recreational, research and educational qualities of the area:

a. Injuring sanctuary resources.

b. Grappling into or anchoring on a shipwreck sites.

c. 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 issued under the Act.

Section 2. Emergencies. 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 activity, including those not listed in Section 1, is subject to immediate temporary regulation. An emergency regulation shall not take effect without the approval of the Governor of Wisconsin or her/his designee or designated agency.

ARTICLE V: RELATION TO OTHER REGULATORY PROGRAMS

Fishing Regulations, Licenses, and Permits. Fishing in the Sanctuary shall not be

regulated as part of the Sanctuary management regime authorized by the Act. However, fishing in the Sanctuary may be regulated by other Federal, State, Tribal and local authorities of competent jurisdiction, and designation of the Sanctuary shall have no effect on any regulation, permit, or license issued thereunder.

ARTICLE VI. ALTERATION OF THIS DESIGNATION

The terms of designation may be modified only by the same procedures by which the original designation is made, including public meetings, consultation according to the NMSA.

Subpart U—Lake Ontario National Marine Sanctuary

SOURCE: 89 FR 48287, June 6, 2024, unless otherwise noted.

§ 922.220 Boundary.

Lake Ontario National Marine Sanctuary consists of an area of approximately 1,300 square nautical miles (1,722 square miles) of Lake Ontario waters within New York State and the submerged lands thereunder; over, around, and under the submerged underwater cultural and historical resources in Lake Ontario. The precise boundary coordinates are listed in appendix A to this subpart. The western boundary of the sanctuary begins at approximately the border between Wayne County and Monroe County where the shoreline (defined here and throughout the remainder of this boundary description as the low water datum) intersects the line segment formed between Point 1 and Point 2. From this intersection the sanctuary boundary continues north into Lake Ontario to Point 2 and then to each successive point in numerical order to Point 7. From Point 7 the sanctuary boundary continues east to each successive point in numerical order to Point 10. From Point 10 the boundary continues roughly to the northeast to Point 11 and then to Point 12 just southeast of Wolfe Island, ON, Canada and the end of 5th Line Road. From Point 12 the boundary continues roughly southeast towards Point 13 until it intersects the shoreline at the low water datum at Tibbetts Point near the Tibbetts Point Lighthouse southwest of Cape Vincent, New York. From this intersection the boundary follows the shoreline roughly to the southeast around Tibbetts Point and then continues roughly to the southeast around Wilson Point and Dablon Point until it intersects the line segment formed between Point 14 and Point 15 at the Rt. 6 bridge at the upper end of Mud Bay. From this intersection the boundary continues towards Point 15 until it intersects the shoreline at approximately the mouth of Kents Creek. From this intersection the boundary follows the shoreline to the southwest around Baird Point continuing roughly southeast cutting across the mouths of creeks and streams around Point Peninsula and along western and then northern Chaumont Bay until it intersects the line segment formed between Point 16 and Point 17. From this intersection the boundary continues across the Chaumont River towards Point 17 until it intersects the shoreline near the eastern side of the West Main Street bridge. From this intersection the boundary follows the shoreline around eastern Chaumont Bay, Point Salubrious, and Guffin Bay cutting across the mouths of rivers, streams, and creeks and then around Pillar Point and Everleigh Point and up the western side of Black River Bay until it intersects the line segment formed between Point 18 and Point 19 at approximately the mouth of Black River. From this intersection the boundary continues across the Black River towards Point 19 until it intersects the shoreline. From this intersection the boundary follows the shoreline roughly southwest along the eastern side of Black River Bay and then southwest along the eastern side of Henderson Bay continuing around Stony Point and then roughly south cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 20 and Point 21 at the mouth of the Salmon River near Port Ontario. From this intersection the boundary continues to Point 21 and each successive point in numerical order to Point 24. From Point 24 the boundary continues towards Point 25 until it intersects the shoreline. From this intersection the boundary follows the shoreline south

and then west around Mexico Bay cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 26 and Point 27 just east of Oswego Harbor. From this intersection the boundary continues towards Point 27 until it intersects the shoreline at the eastern breakwater of Oswego Harbor. From this intersection the boundary follows the lakeward shoreline northwest along the breakwater until it intersects the line segment formed between Point 28 and Point 29. From this intersection the boundary continues across the mouth of Oswego Harbor to Point 29 and each successive point in numerical order to Point 34. From Point 34 the boundary continues towards Point 35 until it intersects the shoreline at the end of the western breakwater of Oswego Harbor. From this intersection the boundary follows the lakeward shoreline roughly to the southwest cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 36 and Point 37 on the eastern side of the mouth of The Pond. From this intersection the boundary continues across the mouth of The Pond towards Point 37 until it intersects the shoreline on the western side. From this intersection the boundary follows the shoreline west and then north to the intersection of the line segment formed between Point 38 and Pont 39 at the northern end of the eastern breakwater of Little Sodus Bay. From this intersection the boundary continues across the mouth of Little Sodus Bay to Point 39 and each successive point in numerical order to Point 42. From Point 42 the boundary continues towards Point 43 until it intersects the shoreline at the northern end of the western breakwater of Little Sodus Bay. From this intersection the boundary follows the lakeward shoreline roughly west until it intersects the line segment formed between Point 44 and Point 45 on the eastern side of the mouth of Blind Sodus Bay. From this intersection the boundary continues to the intersection of the shoreline and the line segment formed between Point 46 and Point 47 on the western side of the mouth of Blind Sodus Bay. From this intersection the boundary follows the shoreline roughly southwest cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 48 and the intersection of the shoreline and the line segment formed between Point 49 and Point 50 on the eastern side of the mouth of Port Bay. From this intersection on the eastern side of the mouth of Port Bay the boundary continues to the intersection of the shoreline and the line segment formed between Point 49 and 50 on the western side of the mouth of Port Bay. From this intersection the boundary follows the shoreline roughly west until it intersects the line segment formed between Point 51 and the intersection of the shoreline and the line segment formed between Point 52 and Point 53 on the eastern side of the mouth of East Bay. From this intersection on the eastern side of the mouth of East Bay the boundary continues to the intersection of the shoreline and the line segment formed between Point 52 and Point 53 on the western side of the mouth of East Bay. From this intersection the boundary follows the shoreline roughly west until it interests the line segment formed between Point 54 and Point 55 at the northern end of the eastern breakwater of Sodus Bay. From this intersection the boundary continues across the mouth of Sodus Bay to Point 55 and each successive point in numerical order to Point 61. From Point 61 the boundary continues towards Point 62 until it intersects the shoreline at the northern end of the western breakwater of Sodus Bay. From this intersection the boundary follows the shoreline roughly west cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 63 and Point 64 south of the mouth of Salmon Creek near Pultneyville, NY. From this intersection the boundary continues to Point 64 and each successive point in numerical order to Point 69. From Point 69 the boundary continues towards Point 70 until it intersects the shoreline north of the mouth of Salmon Creek. From this intersection the boundary follows the shoreline roughly west until it intersects the line segment formed between Point 71 and Point 72

at the eastern side of the R.E. Ginna Nuclear Power Plant water outfall. From this intersection the boundary continues towards Point 72 until it intersects the shoreline on the western side of the R.E. Ginna Nuclear Power Plant water outfall. From this intersection the boundary follows the shoreline west cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 73 and Point 74 where it ends. The inner landward sanctuary boundary is defined by and follows the shoreline as defined by the low water datum where not already specified in the boundary description above. The Tibbetts Point Anchorage Area is excluded from the sanctuary area described above, and its boundary begins at Point TPAA1 and continues to each successive point in numerical order until ending at Point TPAA7.

§ 922.221 Definitions.

The following terms are defined for purposes of this subpart U:

Sanctuary resource means all historical resources as defined at 15 CFR 922.11, which includes any pre-contact and historic sites, structures, districts, objects, and shipwreck sites within sanctuary boundaries.

Shipwreck site means all archaeological and material remains associated with sunken watercraft or aircraft that are historical resources, including associated components, cargo, contents, artifacts, or debris fields that may be exposed or buried within the lake bed.

Tethered underwater mobile system means remotely operated vehicles and other systems with onboard propulsion systems that utilize a tether connected to a station-holding (e.g.byanchor, dynamic positioning, or manual vessel operation) surface support vessel.

§ 922.222 Co-management.

(a) NOAA has primary responsibility for the management of the Sanctuary pursuant to the Act. However, as the Sanctuary is in State waters, NOAA will co-manage Lake Ontario National Marine Sanctuary in collaboration with New York State. The Director may enter into a Memorandum of Agreement regarding this collaboration that may address, but not be limited to, such aspects as areas of mutual concern, including sanctuary resource protection, programs, permitting, activities, development, and threats to sanctuary resources.

(b) Furthermore, sunken military craft are administered by the respective Secretary concerned pursuant to the Sunken Military Craft Act. The Director will enter into a Memorandum of Agreement regarding collaboration with other federal agencies charged with implementing the Sunken Military Craft Act that may address aspects of managing and protecting sunken military craft. The Director will request approval from the Secretary concerned for any terms and conditions of ONMS authorizations that may involve sunken military craft.

§ 922.223 Prohibited or otherwise regulated activities.

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

(1) Moving, removing, recovering, altering, destroying, possessing or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a sanctuary resource.

(2) Possessing, selling, offering for sale, purchasing, importing, exporting, exchanging, delivering, carrying, transporting, or shipping by any means any sanctuary resource within or outside of the sanctuary.

(3) Grappling into or anchoring on shipwreck sites.

(4) Deploying a tethered underwater mobile system at shipwreck sites.

(5) 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 any permit issued under the Act.

(b) The prohibitions in paragraphs (a)(1) through (5) of this section do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment; or to activities necessary for valid law enforcement purposes.

EFFECTIVE DATE NOTE: At 89 FR 48291, June 6, 2024, in §922.223, paragraph (a)(3) was stayed until July 21, 2026.

§ 922.224 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of New York or her/his designee or designated agency.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

§ 922.225 Permit procedures and review criteria.

(a) A person may conduct an activity otherwise prohibited by §922.223(a)(1) through (4) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Lake Ontario National Marine Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

§ 922.226 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or right to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by §922.223(a)(1) through (4) within the sanctuary if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of sanctuary designation, provided that the holder of the lease, permit, license, or right of subsistence use or of access complies with §922.10 and provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of the sanctuary designation of the existence and location of such authorization or right and requests certification of such authorization or right; and

(2) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the sanctuary was designated.

(b) Requests for certifications shall be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, Lake Ontario National Marine Sanctuary, 1305 East-West Hwy., 10th Floor, Silver Spring, MD 20910 or sent by electronic means as defined in the instructions for the ONMS permit application. A copy of the lease, permit, license, or right of subsistence use or of access must accompany the request.

(c) A certification requester with an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by §922.223(a)(1) through (4) may continue to conduct the activity without being in violation of applicable provisions of §922.223(a)(1) through (4), pending the Director's review of and decision regarding his or her certification request.

(d) The Director may request additional information from the certification requester as the Director deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the sanctuary was designated. The Director must receive the information requested within 45 days of the date of the Director's request for information. Failure to provide the requested information within this time frame may be grounds for denial by the Director of the certification request.

(e) In considering whether to issue a certification, 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 by the Director.

(f) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to

any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(g) The Director may amend, suspend, or revoke any certification issued under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification. Any such action shall be forwarded in writing to both the certification holder and the agency that issued the underlying lease, permit, license, or right of subsistence use or of access, and shall set forth reason(s) for the action taken.

(h) The Director may amend any certification issued under this section whenever additional information becomes available that he or she determines justifies such an amendment.

(i) The certification holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth at §922.37.

(j) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

(k) It is unlawful for any person to violate any terms and conditions in a certification issued under this section.

§922.227 Effect on affected federally recognized Nations and Tribes.

The exercise of treaty rights for federally recognized Nations and Tribes and their citizens is not modified, altered, or in any way affected by the regulations promulgated in this subpart. The Director shall consult with the governing body of each federally-recognized Nation and Tribe protected by the 1794 Treaty of Canandaigua regarding any matter which might affect the ability of the Nation and Tribe's citizens to participate in activities protected by that treaty in the Sanctuary.

Appendix A to Subpart U of Part 922—Lake Ontario National Marine Sanctuary Boundary Description and Coordinates of the Excluded Areas

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

Point ID	Longitude	Latitude
1*	−77.37605	43.27611
2	−77.37595	43.28695
3	−77.37586	43.29671
4	−77.37621	43.34516
5	−77.37720	43.37579
6	−77.38799	43.63154
7	−77.38811	43.63443
8	−77.27009	43.63406
9	−77.03338	43.63283
10	−76.79668	43.63112
11	−76.43893	44.09406
12	−76.39866	44.11289
13*	−76.37053	44.10060
14*	−76.31232	44.08230
15*	−76.31207	44.08198
16*	−76.14042	44.07041
17*	−76.13852	44.06959
18*	−76.06446	43.99626
19*	−76.06179	43.99401
20*	−76.20404	43.57746
21	−76.20447	43.57758
22	−76.20714	43.58113
23	−76.20748	43.58099
24	−76.20503	43.57775
25*	−76.20529	43.57783
26*	−76.50692	43.46890
27*	−76.50783	43.46975
28*	−76.51393	43.47389
29	−76.51426	43.47384
30	−76.51761	43.47726
31	−76.52558	43.47878
32	−76.52597	43.47667
33	−76.51946	43.47543
34	−76.51629	43.47349
35*	−76.51675	43.47341
36*	−76.69906	43.34447
37*	−76.69941	43.34458
38*	−76.70792	43.35032
39	−76.70816	43.35033
40	−76.70883	43.35635
41	−76.70939	43.35632
42	−76.70873	43.35032
43*	−76.70895	43.35029
44*	−76.72070	43.34361
45*	−76.72068	43.34402
46*	−76.72158	43.34399
47*	−76.72161	43.34363
48*	−76.83715	43.30499
49*	−76.83720	43.30583
50*	−76.83817	43.30492
51*	−76.89154	43.29490
52*	−76.89170	43.29537
53*	−76.89215	43.29513
54*	−76.97229	43.27682
55	−76.97277	43.27698
56	−76.97276	43.27705
57	−76.97254	43.27759
58	−76.97227	43.28239
59	−76.97340	43.28243
60	−76.97367	43.27763
61	−76.97356	43.27724
62*	−76.97398	43.27738
63*	−77.18445	43.28297

Point ID	Longitude	Latitude
64	−77.18445	43.28306
65	−77.18304	43.28320
66	−77.18278	43.28414
67	−77.18315	43.28419
68	−77.18334	43.28349
69	−77.18444	43.28324
70*	−77.18444	43.28338
71*	−77.30817	43.27903
72*	−77.30843	43.27902
73*	−77.37605	43.27611
74	−77.37595	43.28695
TPAA1	−76.39049	44.08896
TPAA2	−76.37805	44.08940
TPAA3	−76.38611	44.07613
TPAA4	−76.39271	44.06881
TPAA5	−76.41217	44.07577
TPAA6	−76.39897	44.09566
TPAA7	−76.39049	44.08896

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline at the low water datum.

APPENDIX B TO SUBPART U OF PART 922—LAKE ONTARIO NATIONAL MARINE SANCTUARY TERMS OF DESIGNATION

Under the authority of the National Marine Sanctuaries Act, as amended (the ''Act'' or ''NMSA''), 16 U.S.C. 1431 *et seq.*, 1,300 nmi² (1,722 mi²) of Lake Ontario off the coast of New York's coastal counties of Wayne, Cayuga, Oswego, and Jefferson are hereby designated as a National Marine Sanctuary for the purpose of providing long-term protection and management of the cultural and historical resources and the recreational, research, educational, and aesthetic qualities of the area.

ARTICLE I: EFFECT OF DESIGNATION

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the cultural and historical resources and the recreational, research, and educational qualities of Lake Ontario National Marine Sanctuary (the ''Sanctuary''). Section 1 of Article IV of this Designation Document lists those activities that may have to be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing an activity does not necessarily mean that it will be regulated. However, if an activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the same procedures by which the original Sanctuary designation was made.

ARTICLE II: DESCRIPTION OF THE AREA

Lake Ontario National Marine Sanctuary covers approximately 1,300 nmi² (1,722 mi²) in eastern Lake Ontario. The boundary coordinates are defined by regulation (15 CFR 922.220).

ARTICLE III: SPECIAL CHARACTERISTICS OF THE AREA

Over 1,000 years ago, the Mohawk, Oneida, Onondaga, Cayuga and Seneca Nations were united into the Haudenosaunee Confederacy, under the Gayanashagowa, the Great Law of Peace. The Tuscarora later joined the Haudenosaunee Confederacy. Portions of the original homelands of the Onondaga Nation, Cayuga Nation, Seneca Nation, and Oneida Nation lie within the boundaries of the sanctuary. This area was their homeland and they developed a deep understanding of, and had a strong connection to, the land and to the water.

Eastern Lake Ontario represents a diverse array of important events in our Nation's history, including military conflicts, maritime innovation, and American expansion to the west. This area has been a critical nexus of maritime trade and transportation for centuries, beginning with canoes and boats of early Indigenous peoples. During the colonial period, Lake Ontario was a strategic theater of conflict among European powers and the young American republic. Military actions occurred in the region during the French and Indian War, Revolutionary War, and the War of 1812. Later, this region was critical to the development of the American West and the Nation's industrial core.

Well-preserved by cold, fresh water, the shipwrecks and other underwater cultural and historical resources in the sanctuary possess exceptional historical, archaeological and recreational value. Vessels that historically plied Lake Ontario's waters often met with treacherous conditions, which resulted in numerous wrecking events. The area contains a total of 41 known shipwrecks and one aircraft, including one shipwreck (*St. Peter*) that is listed on the National Register of Historic Places and one wreck (*David Mills)* that is a New York State Submerged Cultural Preserve and Dive Site. This area may also include approximately 19 potential shipwreck sites (shipwrecks that may exist, but additional research is needed to locate and describe these shipwrecks), three aircraft, and several other underwater archaeological sites. Represented in the collection are commercial and military vessels from colonial wars and the War of 1812, as well as submerged battlefields at Oswego and Sackets Harbor. Other shipwrecks represent the earliest maritime commerce on the Great Lakes, including the nearly intact sloop *Washington* built in 1797.

ARTICLE IV: SCOPE OF REGULATIONS

Section 1. Activities Subject to Regulation

The following activities are subject to regulation under the NMSA. Such regulation may include prohibitions to ensure the protection and management of the conservation, recreational, historical, scientific, educational, cultural, archaeological, or aesthetic resources and qualities of the area. Listing an activity in the Terms of Designation does not mean that such activity is being or will be regulated. Listing an activity here means that Secretary of Commerce can regulate the activity, after complying with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b).

Activities Subject to Regulation:

- Injuring or disturbing sanctuary resources;
- Possessing, transporting, or engaging in commerce of any sanctuary resource;
- Grappling into or anchoring on shipwreck sites;
- Deploying tethered underwater mobile systems at shipwreck sites;
- Interfering with an investigation in connection with enforcement of the NMSA.

Section 2. Emergencies

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 activity and all activities, including those not listed in Section 1, are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of New York or her/his designee or designated agency.

ARTICLE V: ALTERATION OF THIS DESIGNATION

The terms of designation, as defined under Section 304(a)(4) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultations with interested Federal, Tribal, State, regional, and local authorities and agencies, review by the appropriate Congressional committees, and approval by the Secretary of Commerce, or his or her designee.

Subpart V—Chumash Heritage National Marine Sanctuary

SOURCE: 89 FR 83594, Oct. 16, 2024, unless otherwise noted.

§ 922.230 Boundary.

Chumash Heritage National Marine Sanctuary covers 4,543 mi^2 (3,431 nmi^2) of coastal and ocean waters and the submerged lands thereunder, spanning 116 miles along the central California coast off the counties of San Luis Obispo and Santa Barbara. The sanctuary spans a maximum distance of 60 miles from shore, and reaches a maximum depth of 11,580 feet below sea level. Describing the boundary in a clockwise fashion, the Final Preferred Alternative starts along the coast approximately two miles southeast of the breakwater for the Diablo Canyon Power Plant marina, then runs south along the mean high water line through San Luis Obispo County and northern and western Santa Barbara County to the eastern end of the Naples Marine Conservation Area on the Gaviota Coast. Along this stretch, the harbor areas at Port San Luis and Vandenberg Space Force Base near Point Arguello are excluded from the sanctuary. Offshore, the boundary extends from the western edge of Channel Islands National Marine Sanctuary, around important features like Rodriguez Seamount, most of Arguello Canyon, and about half of the Santa Lucia Bank and part of its escarpment. At a point approximately 55 miles offshore of the Santa Maria River mouth, the boundary extends east 43 miles, then due north for 12 miles to the point of origin south of the Diablo Canyon Power Plant marina. This narrative boundary description is provided to facilitate public understanding, but please refer to the formal boundary description and the precise boundary coordinates in Appendix A to this subpart.

§ 922.231 Definitions.

In addition to the definitions found in §922.11, the following terms are defined for purposes of this subpart:

Beneficial use of dredged material means the use of dredged material removed from the public harbor adjacent to the Sanctuary (Port San Luis) that is determined by the Director to be suitable as a resource for habitat protection or restoration purposes. Beneficial use of dredged material is not disposal of dredged material.

Rodriguez Seamount Management Zone means the area bounded by geodetic lines connecting a heptagon generally centered on the top of the Rodriguez Seamount, and consists of approximately 570 mi^2 (430 nmi^2) of ocean waters and the submerged lands thereunder. The northeast corner of this zone is located approximately 27 miles southwest of Point Conception off the coast of Santa Barbara County. Exact coordinates for the Rodriguez Seamount Management Zone boundary are provided in appendix B to this subpart.

§ 922.232 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (e) and paragraph (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, except for oil and gas production, which includes well abandonment, pursuant to existing leases or lease units in effect on the effective date of Sanctuary designation (Nov. 30, 2024).

(2)(i) Discharging or depositing from within or into the Sanctuary, other than from a cruise ship, any material or other matter, except:

(A) Fish, fish parts, chumming materials, or bait used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activities within the Sanctuary;

(B) For a vessel less than 300 gross registered tons (GRT), or a vessel 300 GRT or greater without sufficient holding tank capacity to hold sewage while within the Sanctuary, clean effluent generated incidental to vessel use by an operable Type I or II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock all marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(D) For a vessel less than 300 GRT, or a vessel 300 GRT or greater without sufficient holding capacity to hold graywater while within the Sanctuary, clean graywater as defined by section 312 of the FWPCA;

(E) Vessel engine or generator exhaust;

(F) Beyond 3 nautical miles from shore, sewage and non-clean graywater as defined by section 312 of the FWPCA generated incidental to vessel use by a U.S. Coast Guard vessel without sufficient holding tank capacity and without a Type I or II marine sanitation device; and beyond 12 nautical miles from shore, ammunition, pyrotechnics, or other materials directly related to training for search and rescue and live ammunition activities conducted by U.S. Coast Guard vessels and aircraft;

(G) Dredged material deposited at disposal sites within the Sanctuary authorized by the U.S. Environmental Protection Agency (EPA), in consultation with the U.S. Army Corps of Engineers, prior to the effective date of Sanctuary designation (Nov. 30, 2024); or

(H) Discharges incidental and necessary to oil and gas production within or into reservoirs contained within existing leases or lease units in effect on the effective date of Sanctuary designation (Nov. 30, 2024) from Platform Irene or Platform Heritage, including well abandonment.

(ii) Discharging or depositing from within or into the Sanctuary any material or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, vessel engine or generator exhaust, clean bilge water, or anchor wash.

(iii) Discharging or depositing from beyond the boundary of the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except material or other matter listed as exceptions in paragraphs (a)(2)(i)(A) through (F) and (a)(2)(ii) of this section.

(3) Drilling into, dredging, or otherwise altering the submerged lands of

the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on or in the submerged lands of the Sanctuary, except as incidental and necessary to:

(i) Conduct lawful fishing activities or lawful kelp harvesting;

(ii) Anchor a vessel;

(iii) Install or maintain an authorized navigational aid;

(iv) Repair, replace, or rehabilitate an existing dock, pier, breakwater, or jetty;

(v) Conduct maintenance dredging of entrance channels for harbors in existence prior to the effective date of Sanctuary designation (Nov. 30, 2024); or,

(vi) Drill, maintain, or abandon a well necessary for purposes related to oil and gas production pursuant to existing leases or lease units in effect on the effective date of Sanctuary designation (Nov. 30, 2024) from Platform Irene or Platform Heritage.

(vii) The exceptions listed in paragraphs (a)(3)(ii) through (vi) of this section do not apply in the Rodriguez Seamount Management Zone, the boundary of which is defined in appendix B to this subpart.

(4) Moving, removing, or injuring, or attempting to move, remove, or injure, a Sanctuary historical resource; or possessing or attempting to possess a Sanctuary historical resource, except as necessary for valid law enforcement purposes. This prohibition does not apply to, moving, removing, or injury resulting incidentally from lawful kelp harvesting or lawful fishing activities.

(5) Taking any marine mammal, sea turtle, or bird within or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.*, Migratory Bird Treaty Act, as amended (MBTA), 16 U.S.C. 703 *et seq.*, or any regulation promulgated under the MMPA, ESA, or MBTA.

(6) Possessing within the Sanctuary (regardless of where taken, moved, or removed from), any marine mammal, sea turtle, or bird, except as authorized by the MMPA, ESA, MBTA, by any regulation promulgated under the MMPA, ESA, or MBTA, or as necessary for valid law enforcement purposes.

(7) Deserting a vessel aground, at anchor, or adrift in the Sanctuary or leaving harmful matter aboard a grounded or deserted vessel in the Sanctuary.

(8) Attracting any white shark within the Sanctuary.

(9)(i) Moving, removing, taking, collecting, catching, harvesting, disturbing, breaking, cutting, or otherwise injuring, or attempting to move, remove, take, collect, catch, harvest, disturb, break, cut, or otherwise injure, any Sanctuary resource located more than 1,500 ft. below the sea surface within the Rodriguez Seamount Management Zone, as defined in appendix B to this subpart. This prohibition does not apply to lawful fishing, which is regulated pursuant to 50 CFR part 660.

(ii) Possessing any Sanctuary resource, the source of which is more than 1,500 ft. below the sea surface within the Rodriguez Seamount Management Zone, except as necessary for valid law enforcement purposes. This prohibition does not apply to possession of fish resulting from lawful fishing, which is regulated pursuant to 50 CFR part 660.

(10) Introducing or otherwise releasing from within or into the Sanctuary an introduced species, except striped bass (*Morone saxatilis*) released during catch and release fishing activity.

(11) 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 (7) and (9) of this section do not apply to an activity necessary to respond to an emergency threatening life, property, or the environment.

(c)(1) The prohibitions in paragraphs (a)(2) through (7) and (9) and (10) of this section do not apply to existing activities carried out or approved by the Department of Defense that were conducted prior to the effective date of this designation (Nov. 30, 2024), as specifically identified in section 4.9 or appendix I to the final environmental impact statement for Chumash Heritage National Marine Sanctuary (for availability, see *https://sanctuaries.noaa.gov/*

chumash-heritage/). New activities may be exempted from the prohibitions in paragraphs (a)(2) through (7) and (9) and (10) of this section by the Director after consultation between the Director and the Department of Defense. All Department of Defense activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(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 practicable, restore or replace the Sanctuary resource or quality.

(d) The prohibitions in paragraphs (a)(2) through (9) of this section do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary general permit issued pursuant to subpart D of this part and §922.233, or a special use permit issued pursuant to subpart D of this part.

(e) The prohibitions in paragraphs (a)(2) through (9) of this section, and paragraph (a)(10) of this section regarding any introduced species of shellfish that NOAA and the State of California have determined is non-invasive and will not cause significant adverse effects to Sanctuary resources or qualities, and that is cultivated in State waters as part of commercial shellfish aquaculture activities, do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation (Nov. 30, 2024) and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with §922.36, the Director notifies the applicant and authorizing agency that the Director 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 of Sanctuary designation.

(f)(1) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary general permit under subpart D of this part and §922.233, or an ONMS authorization or special use permit under subpart D of this part authorizing, or otherwise approve:

(i) The exploration for, development, or production of oil, gas, or minerals within the Sanctuary;

(ii) The discharge of untreated or primary-treated sewage within the Sanctuary (except by certification, pursuant to §§922.10 and 922.234, of valid authorizations in existence prior to the effective date of designation (Nov. 30, 2024) and issued by other authorities of competent jurisdiction); or

(iii) The disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency prior to the effective date of designation (Nov. 30, 2024). For the purposes of this subpart, the disposal of dredged material does not include the beneficial use of dredged material, as defined at §922.231, related to dredging activity at Port San Luis.

(2) Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

(g) A person may conduct an activity prohibited by paragraphs (a)(2) through (10) of this section within the Sanctuary if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of Sanctuary designation (Nov. 30, 2024) and within the sanctuary designated area and complies with §922.10, provided that the holder of the lease, permit, license, or right of subsistence use or of access complies with the certification procedures for CHNMS as outlined in §922.234.

§922.233 Permit procedures.

(a) A person may conduct an activity prohibited by §922.232(a)(2) through (9),

if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a sanctuary general permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the West Coast Regional Office, Office of National Marine Sanctuaries; ATTN: Superintendent, Chumash Heritage National Marine Sanctuary, 99 Pacific Street, Suite 100F, Monterey, CA 93940.

§ 922.234 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or other rights to conduct a prohibited activity.

(a) To obtain a certification of an activity that is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, other authorization or right of subsistence use or access (hereafter in this subsection ''permit or right'') in existence on the effective date of Sanctuary designation (Nov. 30, 2024) and within the sanctuary designated area, pursuant to §§ 922.10 and 922.232(g), the holder of such permit or right shall:

(1) Notify the Director, in writing, within 120 days of the effective date of Sanctuary designation (Nov. 30, 2024) of the existence and location of such permit or right and requests certification of such permit or right; and

(2) Comply with any terms and conditions on the exercise of such permit or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(3) Address any requests for certifications to: West Coast Regional Office, Office of National Marine Sanctuaries; ATTN: Superintendent, Chumash Heritage National Marine Sanctuary, 99 Pacific Street, Suite 100F, Monterey, CA 93940, or send by electronic means as defined in the instructions for the ONMS permit application. A copy of the permit or right must accompany the request.

(b) A holder requesting certification of a permit or right described in § 922.232(g) may continue to conduct the activity without being in violation of Sanctuary prohibitions pending the Director's review of and decision regarding the holder's certification request, provided the holder is otherwise in compliance with this section.

(c) The Director may request additional information from the holder requesting certification as the Director deems reasonably necessary to condition appropriately the exercise of the certified permit or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the date of the Director's request for information. Failure to provide the requested information within this time frame may be grounds for denial by the Director of the certification request.

(d) In considering whether to impose appropriate conditions when issuing a certification, the Director may seek and consider the views of any other person or entity.

(e) Upon completion of review of the permit or right and information received with respect thereto, the Director shall communicate, in writing, any decision to impose appropriate conditions on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified permit, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(f) The Director may amend, suspend, or revoke any certification issued under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification, or whenever the underlying permit or right on which the certification was issued has been amended, suspended or revoked. Any such action shall be forwarded in writing to both the certification holder and the agency that issued the underlying permit or right, and shall set forth reason(s) for the action taken.

(g) The holder may appeal any action conditioning a certification, or after issuance of a certification, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

(h) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

(i) It is unlawful for any person to violate any terms and conditions in a certification issued under this section.

§ 922.235 Memoranda of Agreement with partner agencies.

(a) *Introduced species aquaculture projects.* (1) NOAA would describe in a Memorandum of Agreement (MOA) with the State of California how NOAA will coordinate review of any proposed introduction of non-invasive introduced species from a proposed commercial shellfish aquaculture activity in State waters when considering an authorization under § 922.232(e).

(2) The MOA would specify how the process of § 922.36 in subpart D will be administered within State waters within the sanctuary in coordination with State permit and lease programs as administered by the California Fish and Game Commission, the Department of Fish and Wildlife and the California Coastal Commission.

(b) *Sunken military craft.* Sunken military craft are administered by the respective Secretary concerned pursuant to the Sunken Military Craft Act. The Director will enter into a MOA regarding collaboration with other Federal agencies charged with implementing the Sunken Military Craft Act that may address aspects of managing and protecting sunken military craft. The Director will request approval from the Secretary concerned for any terms and conditions of ONMS authorizations that may involve sunken military craft.

APPENDIX A TO SUBPART V OF PART 922—CHUMASH HERITAGE NATIONAL MARINE SANCTUARY FORMAL BOUNDARY DESCRIPTION AND COORDINATES

The northern boundary of the sanctuary begins at Point 1 approximately 36 nautical miles (41 statute miles) WSW of Point Buchon. From Point 1 the sanctuary boundary continues east to Point 2 and then north towards Point 3 until it intersects the shoreline as defined by the mean high water (MHW) tidal datum approximately 2 nautical miles (2.3 statute miles) southeast of the entrance to the harbor at the Diablo Canyon Power Plant. From this intersection the sanctuary boundary follows the shoreline southeast past Point San Luis until it intersects the line segment formed between Point 4 and Point 5 on the southern end of the southwest breakwater of Port San Luis in San Luis Obispo Bay. From this intersection the sanctuary boundary continues northeast towards Point 5 until it intersects the shoreline at Fossil Point on the northeast side of Port San Luis. From this intersection the sanctuary boundary follows the shoreline southeast past Pismo Beach and then south past Point Sal and around Point Arguello until it intersects the line segment formed between Point 6 and Point 7 on the eastern end of the breakwater just southeast of the Point Arguello Coast Guard Rescue Station. From this intersection the sanctuary boundary continues east to Point 7 and then north towards Point 8 until it intersects the shoreline. From this intersection the sanctuary boundary continues to follow the shoreline southeast past Point Conception and then east along the Gaviota Coast until it intersects the line segment formed between Point 9 and Point 10 approximately 1.7 nautical miles (2.0 statute miles) east of Dos Pueblos Canyon near the township of Naples in Santa Barbara County. From this intersection the sanctuary boundary continues offshore south to Point 10 and turns west and continues, approximating the 3 nautical mile State Seaward Boundary, passing through each successive point in numerical order to Point 119. From Point 119 the sanctuary boundary continues southwest passing through each successive point in numerical order to Point 129. From Point 129 the sanctuary boundary continues west along its southern extent to Point 130 and then Point 131 passing to the south of Arguello Canyon and Rodriguez Seamount. From Point 131 the sanctuary boundary continues roughly north for approximately 76 nautical miles (87.5 statute miles) along its western extent passing through each successive point in numerical order while passing Santa Lucia Bank to the west until it ends at Point 154.

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID	Latitude	Longitude
1	35.01394	−121.58238
2	35.01394	−120.82173
3*	35.19306	−120.82173
4*	35.15602	−120.74984
5*	35.17425	−120.72509
6*	34.55436	−120.60823
7	34.55436	−120.60643
8*	34.55696	−120.60643
9*	34.43590	−119.93333
10	34.37859	−119.93333
11	34.38126	−119.93822
12	34.38391	−119.94270
13	34.38362	−119.94657
14	34.38354	−119.95046
15	34.38358	−119.95292
16	34.38367	−119.95496
17	34.38381	−119.95698
18	34.38401	−119.95900
19	34.38451	−119.96257
20	34.38575	−119.96946
21	34.38677	−119.97406

Point ID	Latitude	Longitude
22	34.38730	−119.97601
23	34.38794	−119.97815
24	34.38872	−119.98047
25	34.38958	−119.98274
26	34.39053	−119.98497
27	34.39154	−119.98716
28	34.39263	−119.98928
29	34.39379	−119.99136
30	34.39491	−119.99319
31	34.39621	−119.99514
32	34.39713	−119.99731
33	34.39823	−119.99962
34	34.39930	−120.00168
35	34.40055	−120.00386
36	34.40107	−120.00625
37	34.40173	−120.00882
38	34.40261	−120.01178
39	34.40339	−120.01409
40	34.40425	−120.01636
41	34.40527	−120.01878
42	34.40628	−120.02094
43	34.40744	−120.02320
44	34.40752	−120.02641
45	34.40774	−120.02956
46	34.40806	−120.03246
47	34.40855	−120.03569
48	34.40907	−120.03855
49	34.40971	−120.04137
50	34.41040	−120.04394
51	34.41126	−120.04667
52	34.41100	−120.04870
53	34.41077	−120.05096
54	34.41062	−120.05323
55	34.41054	−120.05528
56	34.41052	−120.05733
57	34.41056	−120.05961
58	34.41068	−120.06188
59	34.41084	−120.06392
60	34.41046	−120.06679
61	34.41021	−120.06927
62	34.41004	−120.07175
63	34.40997	−120.07424
64	34.40990	−120.07984
65	34.41002	−120.08369
66	34.40991	−120.08666
67	34.40991	−120.08964
68	34.41011	−120.09353
69	34.41051	−120.09739
70	34.41088	−120.09987
71	34.41138	−120.10255
72	34.41203	−120.10677
73	34.41251	−120.10941
74	34.41331	−120.11288
75	34.41452	−120.11729
76	34.41509	−120.11919
77	34.41571	−120.12107
78	34.41639	−120.12292
79	34.41711	−120.12474
80	34.41802	−120.12733
81	34.41937	−120.13068
82	34.42030	−120.13314
83	34.42183	−120.13678
84	34.42266	−120.14015
85	34.42285	−120.14124
86	34.42227	−120.14365
87	34.42173	−120.14631
88	34.42126	−120.14922
89	34.42091	−120.15216
90	34.42039	−120.15458
91	34.41992	−120.15725
92	34.41942	−120.16108
93	34.41913	−120.16493
94	34.41904	−120.16857
95	34.41913	−120.17221
96	34.41941	−120.17583
97	34.41986	−120.17943
98	34.41968	−120.18174
99	34.41957	−120.18378
100	34.41952	−120.18583
101	34.41952	−120.18788
102	34.41961	−120.19038
103	34.41978	−120.19288
104	34.42001	−120.19513
105	34.42034	−120.19763
106	34.42014	−120.20103
107	34.42010	−120.20468
108	34.42062	−120.21923
109	34.41994	−120.22203
110	34.41933	−120.22509
111	34.41885	−120.22818
112	34.41849	−120.23141
113	34.41819	−120.23501
114	34.41806	−120.23821
115	34.41788	−120.24012
116	34.41768	−120.24279
117	34.41758	−120.24551
118	34.41758	−120.24801
119	34.41735	−120.25140
120	34.38689	−120.26775
121	34.33744	−120.32691
122	34.30480	−120.37560
123	34.27979	−120.41671
124	34.20486	−120.53987
125	34.18182	−120.60041
126	34.10208	−120.64208
127	34.07464	−120.73023
128	33.87643	−120.85081
129	33.82377	−1720.90550
130	33.83184	−121.21320
131	33.85137	−121.34958
132	33.91005	−121.40902
133	34.08467	−121.40925
134	34.16932	−121.49111
135	34.21050	−121.49220
136	34.26897	−121.49681
137	34.32128	−121.50604
138	34.37975	−121.51066
139	34.41821	−121.51681
140	34.45284	−121.52704
141	34.54049	−121.56178
142	34.57950	−121.57941
143	34.59446	−121.59010
144	34.64285	−121.62378
145	34.65978	−121.63763
146	34.67836	−121.65637
147	34.69012	−121.66652
148	34.70722	−121.68042
149	34.72486	−121.69538
150	34.74143	−121.70340
151	34.76227	−121.70500
152	34.78952	−121.69966
153	34.89914	−121.64260
154	35.01394	−121.58238

Note 1 to appendix A: The coordinates in the table marked with an asterisk (*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

APPENDIX B TO SUBPART V OF PART 922—COORDINATES FOR RODRIGUEZ SEAMOUNT MANAGEMENT ZONE WITHIN THE SANCTUARY

Coordinates listed in this table are unprojected (Geographic) and based on the North American Datum of 1983.

Point ID	Longitude	Latitude
1	−120.75816	34.02873
2	−120.85081	33.87643
3	−120.90550	33.82377
4	−121.21320	33.83184
5	−121.25782	33.83812
6	−121.25937	34.13926
7	−120.75892	34.14264
8	−120.75816	34.02873

Subpart W—Papahānaumokuākea National Marine Sanctuary

SOURCE: 90 FR 4891, Jan. 16, 2025, unless otherwise noted.

§ 922.240 Boundary.

Papahānaumokuākea National Marine Sanctuary consists of an area of approximately 582,570 square miles (439,910 square nautical miles) of Pacific Ocean waters surrounding the Northwestern Hawaiian Islands and the submerged lands thereunder. The precise boundary coordinates are listed in appendix A to this subpart. The outer seaward sanctuary boundary begins approximately 200 nautical miles SW of Kure Atoll at Point 1 and continues from this point roughly north to each successive point in numerical order to Point 232 which is approximately 204 nautical miles north of Kure Atoll. From Point 232 the sanctuary boundary continues roughly ESE to each successive point in numerical order to Point 609 which is approximately 200 nautical miles NE of Necker Island. From Point 609 the sanctuary boundary continues south to Point 610 which is approximately 90 nautical miles ENE of Necker Island. From Point 610 the sanctuary boundary continues roughly east and then SE and south to Point 635 which is approximately 50 nautical miles east of Nihoa. From Point 635 the sanctuary boundary continues roughly south and then SW and west to each successive point in numerical order to Point 662 which is approximately 71 nautical miles SW of Nihoa. From Point 662 the sanctuary boundary continues south to Point 663 which is approximately 236 nautical miles SSW of Nihoa. From Point 663 the sanctuary boundary continues roughly NW to each successive point in numerical order to Point 703 which is approximately 200 nautical miles SSE of Necker Island. From Point 703 the boundary continues roughly NW to each successive point in numerical order to Point 1128 where it ends approximately 200 nautical miles SW of Kure Atoll. The inner landward boundary of the sanctuary follows the shoreline as defined by the State of Hawai'i (HAR §13–222).

§ 922.241 Definitions.

In addition to those definitions found at §922.11, the following definitions apply to this subpart. To the extent that a term appears in §922.11 and this section, the definition in this section governs.

Areas to be avoided (ATBA) means the four areas, as adopted by the International Maritime Organization, that should be avoided by vessels that are conducting passage without interruption through the sanctuary. The precise boundary coordinates for the ATBAs are listed in appendix E to this subpart.

Bottomfish species means all species of bottomfish as defined at 50 CFR 665.201.

Categories of hazardous cargoes means goods classified in the International Maritime Dangerous Goods (IMDG) Code; substances classified in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code); oils as defined in MARPOL Annex I; noxious liquid substances as defined in MARPOL Annex II; harmful substances as defined in MARPOL Annex III; and radioactive materials specified in the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Waste on Board Ships (INF Code).

Commercial fishing means, as defined in the Magnuson-Stevens Fishery Conservation and Management Act, fishing

in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade.

Ecological integrity means a condition determined to be characteristic of an ecosystem that has the ability to maintain the function, structure, and abundance of natural biological communities, including rates of change in response to natural environmental variation.

Midway Atoll Special Management Area means the area of the sanctuary surrounding Midway Atoll out to a distance of 12 nautical miles. The coordinates are listed in appendix C to this subpart.

Native Hawaiian practices means cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the noncommercial use of sanctuary resources for direct personal consumption while in the sanctuary.

Non-commercial fishing means fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing.

Office of Law Enforcement (OLE) means NOAA, National Marine Fisheries Service, Office of Law Enforcement.

Outer Sanctuary Zone means the waters and submerged lands extending from approximately 50 nautical miles from all islands and emergent lands of the Northwestern Hawaiian Islands to the extent of the seaward limit of the United States Exclusive Economic Zone (U.S. EEZ) west of 163° West Longitude. The precise boundary coordinates for the Outer Sanctuary Zone are listed in appendix B to this subpart.

Particularly Sensitive Sea Area (PSSA) means an area that needs special protection through action by the International Maritime Organization because of its significance for recognized ecological, socio-economic, or scientific attributes where such attributes may be vulnerable to damage by international shipping activities.

Pelagic species means Western Pacific Pelagic Management Unit Species as defined at 50 CFR 665.800.

Pono means appropriate, correct, and deemed necessary by traditional standards in Hawaiian culture.

Recreational activity means an activity conducted for personal enjoyment that does not result in the extraction of sanctuary resources and that does not involve a fee-for-service transaction. This includes, but is not limited to, wildlife viewing, SCUBA diving, snorkeling, and boating.

Reporting area means the area of the sanctuary that extends outward ten nautical miles from the Particularly Sensitive Sea Area boundary, as designated by the International Maritime Organization, and excludes the Areas to be Avoided that fall within the Particularly Sensitive Sea Area boundary. The precise boundary coordinates for the reporting area are listed in appendix E to this subpart.

Scientific instrument means a device, vehicle, or tool used for scientific purposes and is inclusive of structures, materials, or other matter incidental to proper use of such device, vehicle, or tool.

Special Preservation Area (SPA) means discrete, biologically important areas of the sanctuary within which uses are subject to certain conditions, restrictions, and prohibitions, including but not limited to access restrictions. The coordinates are listed in appendix D to this subpart.

Stowed and not available for immediate use means not readily accessible for immediate use, *e.g.*, by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (*e.g.*, spear shafts being kept separate from spearguns).

Sustenance fishing means fishing for bottomfish or pelagic species in which all catch is consumed within the sanctuary, and that is incidental to an activity permitted under this part.

Vessel monitoring system (VMS) means a mobile transceiver unit as described

in § 922.246 and approved by NOAA's Office of Law Enforcement for use on vessels permitted to access the sanctuary, as required by this part.

§ 922.242 Cooperative management.

(a) NOAA has primary responsibility for the management of the sanctuary pursuant to the National Marine Sanctuaries Act. As the sanctuary includes State waters, NOAA will co-manage Papahānaumokuākea National Marine Sanctuary with the State of Hawai'i.

(b) NOAA will also manage the sanctuary in partnership with the U.S. Fish and Wildlife Service and the Office of Hawaiian Affairs.

(c) Nothing in these regulations or establishment of the national marine sanctuary shall diminish U.S. Fish and Wildlife Service's authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act, as amended, and other U.S. Fish and Wildlife Service authorities. Where Papahānaumokuākea National Marine Sanctuary overlays Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge, NOAA will implement the National Marine Sanctuaries Act to provide supplemental authority to protect resources.

(d) NOAA, in exercising its management authority under National Marine Sanctuaries Act Section 304(d), recognizes U.S. Fish and Wildlife Service's management authority over Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act, as amended.

§ 922.243 Access.

(a) Access to the Sanctuary is prohibited and thus unlawful except:

(1) When conducting emergency response actions, law enforcement activities, and activities and exercises of the Armed Forces in accordance with § 922.244(b) and (c);

(2) Pursuant to a permit issued under § 922.245;

(3) When conducting non-commercial fishing activities in the Outer Sanctuary Zone authorized under the Magnuson-Stevens Fishery Conservation and Management Act in accordance with § 922.244 (d);

(4) When conducting scientific exploration or research activities by or for the Secretary of Commerce or the Secretary of the Interior in the Outer Sanctuary Zone in accordance with § 922.244 (f).

(5) When conducting passage without interruption in accordance with paragraphs (b), (c), and (d) of this section.

(b) A vessel may pass without interruption through the sanctuary without requiring a permit as long as the vessel does not stop or engage in the prohibited activities listed in § 922.244 within the sanctuary.

(c) For areas of the sanctuary that are contained within the reporting area surrounding the Particularly Sensitive Sea Area (PSSA) designated by the International Maritime Organization (IMO), a ship reporting system (CORAL SHIPREP) specified below shall be in effect. The coordinates for the Reporting Area are listed in appendix E to this subpart.

(1) The following vessels, except vessels entitled to sovereign immunity under international law, passing through the reporting area of the sanctuary without interruption, must participate in the ship reporting system as specified in paragraphs (c)(2) through (6) of this section:

(i) Vessels of the United States of any size;

(ii) All other ships 300 gross tonnage or greater that are entering or departing a United States port or place; and

(iii) All other ships of any size entering or departing a United States port or place and experiencing an emergency while transiting through the reporting area.

(2) All vessels passing through the reporting area of the sanctuary without interruption other than those described in paragraph (c)(1) of this section are encouraged to participate in the ship reporting system set forth in paragraphs (c)(2) through (6) of this section.

(3) Immediately upon entering the reporting area, vessels described in paragraph (c)(1) of this section must provide the following information by email sent to *nwhi.notifications@noaa.gov* in the IMO standard reporting format and data

syntax shown in appendix F to this subpart:

(i) Vessel name, call sign or ship station identity, flag, and IMO identification number if applicable, and either Federal documentation or State registration number if applicable;

(ii) Date, time (UTC) and month of entry;

(iii) Position;

(iv) True course;

(v) Speed in knots and tenths;

(vi) Destination and estimated time of arrival;

(vii) Intended route through the reporting area;

(viii) Vessel draft (in meters);

(ix) Categories of hazardous cargoes on board;

(x) Any vessel defects or deficiencies that restrict maneuverability or impair normal navigation;

(xi) Any pollution incident or goods lost overboard within the PSSA, the reporting area, or the U.S. EEZ;

(xii) Contact information for the vessel's agent or owner;

(xiii) Vessel size (length overall, gross tonnage) and type; and

(xiv) Total number of persons on board.

(4) Immediately upon leaving the reporting area, vessels described in paragraph (c)(1) of this section must provide the following information by email sent to *nwhi.notifications@noaa.gov* in the IMO standard reporting format and data syntax shown in appendix F to this subpart:

(i) Vessel name, call sign or ship station identity, flag, and IMO identification number if applicable, and either Federal documentation or State registration number if applicable;

(ii) Date, time (UTC), and month of exit;

(iii) Position; and

(iv) Any pollution incident or goods lost overboard within the PSSA, the reporting area, or the U.S. EEZ.

(5) For vessels that are not equipped with on-board email capability, advanced notice of entrance (as outlined in paragraph (c)(3) of this section) shall be provided at least 72 hours, but not more than one month, prior to entering the reporting area. Notification of departure (as outlined in paragraph (c)(4) of this section) must be provided within 12 hours of leaving the reporting area. Notification under this paragraph may be made by email, telephone, or fax, by contacting:

(i) Email: *nwhi.notifications@noaa.gov;*

(ii) Telephone: 1–808–395–6944 or 1–866–478–6944; or

(iii) Fax: 1–808–455–3093.

(6) Further reports shall be made by the vessels described in paragraph (c)(1) of this section, and are encouraged for the vessels described in paragraph (c)(2) of this section, whenever there is a change in navigation status or circumstances, particularly in relation to the intended route, defects or deficiencies, pollution incidents, or goods lost overboard.

§ 922.244 Prohibited or otherwise regulated activities.

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

(1) Exploring for, developing, or producing oil, gas, or minerals, or any energy development activities;

(2) Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a sanctuary resource;

(3) Introducing or otherwise releasing an introduced species from within or into the sanctuary;

(4) Deserting a vessel;

(5) Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope;

(6) Commercial fishing, or possessing commercial fishing gear except when stowed and not available for immediate use;

(7) Failing to comply with the vessel monitoring system requirements in violation of § 922.246.

(8) Failing to comply with ship reporting requirements in violation of § 922.243.

(9) Non-commercial fishing, or possessing non-commercial fishing gear except when stowed and not available for immediate use;

(10) Drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;

(11) Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource;

(12) Attracting any living sanctuary resource;

(13) Touching coral, living or dead;

(14) Swimming, snorkeling, or closed or open circuit SCUBA diving;

(15) Discharging or depositing any material or other matter into the sanctuary, or discharging or depositing any material or other matter outside of the sanctuary that subsequently enters the sanctuary and injures or has the potential to injure any resources of the sanctuary, except for:

(i) Fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity, provided that such discharge or deposit is during the conduct of lawful fishing activity within the sanctuary;

(ii) Discharge incidental to vessel operations such as approved marine sanitation device effluent, cooling water, and engine exhaust, consistent with Federal statute or regulation; and

(iii) Within Special Preservation Areas or the Midway Atoll Special Management Area, discharging or depositing material or other matter is limited to vessel engine cooling water, weather deck runoff, and vessel engine exhaust, consistent with Federal statute or regulation.

(16) Anchoring a vessel.

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

(c) The prohibitions in paragraph (a) of this section do not apply to activities and exercises of the U.S. Armed Forces (including those carried out by the U.S. Coast Guard). This includes the U.S. Armed Forces' response to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution. All activities and exercises of the U.S. Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on sanctuary resources and qualities. These regulations shall not limit or otherwise affect the U.S. Armed Forces discretion to use, maintain, improve, manage, or control any property under their administrative control or otherwise limit the availability of such property for military mission purposes, including, but not limited to, defensive areas and airspace reservations.

(d) The prohibitions in paragraph (a)(9) through (12), and (a)(14) of this section do not apply to non-commercial fishing activities in the Outer Sanctuary Zone authorized under the Magnuson-Stevens Fishery Conservation and Management Act provided that:

(1) Fish harvested, either in whole or in part, are not intended to enter commerce and shall not enter commerce through sale, barter, or trade, and that the resource is managed sustainably;

(2) Fish harvested, either in whole or in part, are not intended to be sold and shall not be sold for any purposes, including, but not limited to, cost-recovery; and

(3) The activities under paragraph (a)(9) through (12), and (a)(14) are only conducted as incidental to and necessary to conduct lawful non-commercial fishing activity.

(e) The prohibitions in paragraphs (a)(9) through (16) of this section, do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a sanctuary general permit, or special use permit issued pursuant to subpart D of this part. In no event, may the Director issue a National Marine Sanctuary general permit or special use permit authorizing or otherwise approving activities listed in paragraph (a)(10) of this section for anything other than scientific instruments, when the activity occurs within the Outer Sanctuary Zone.

(f) The prohibitions in paragraph (a) of this section shall not restrict scientific exploration or research activities by or for the Secretary of Commerce or the Secretary of the Interior when the activity occurs within the Outer Sanctuary Zone.

§ 922.245 Permit procedures and criteria.

(a) A person may conduct an activity otherwise prohibited by § 922.244(a)(9) through (16), if such activity is specifically allowed by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part, and any additional permit issuance criteria and requirements in paragraphs (a)(1) and (a)(2) of this section.

(1) Native Hawaiian Practices

(i) The activity is non-commercial and will not involve the sale of any organism or material collected;

(ii) The purpose and intent of this activity is appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (pono), and demonstrates an understanding of, and background in, the traditional practice, and its associated values and protocols;

(iii) The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community;

(iv) The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and

(v) Any living sanctuary resource harvested from the sanctuary will be consumed or utilized in the sanctuary.

(2) Recreation permits

(i) The activity is limited to the Midway Atoll Special Management Area.

(ii) The activity is for the purpose of recreational activities as defined in § 922.241;

(iii) The activity is not associated with any for-hire operation;

(iv) The activity does not involve any extractive use; and

(b) Applications for permits should be addressed to the NOAA Inouye Regional Center, Office of National Marine Sanctuaries; ATT: Permit Coordinator, Papahānaumokuākea, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

(c) The Secretary of Commerce may authorize sustenance fishing outside of any Special Preservation Area as a term or condition of any general permit or special use permit issued under this section and subpart D of this part. Sustenance fishing in the Midway Atoll Special Management Area shall not be allowed unless the activity has been determined by the Director of the U.S. Fish and Wildlife Service or their designee to be compatible with the purposes for which the Midway Atoll National Wildlife Refuge was established. Sustenance fishing must be conducted in a manner compatible with this part, including considering the extent to which the conduct of the activity may diminish Sanctuary resources, qualities, and ecological integrity, as well as any indirect, secondary, or cumulative effects of the activity and the duration of such effects. The Secretary of Commerce may develop procedures for systematic reporting of sustenance fishing.

(d) In addition to other applicable permit issuance criteria and requirements, a permit may not be issued under this section unless the applicant's vessel has been outfitted with a VMS unit approved by OLE and the applicant complies with the requirements of § 922.246.

§ 922.246 Requirements for a vessel monitoring system.

(a) *Requirement for use.* An owner or operator of a vessel that has been issued a general permit or special use permit under § 922.245 and subpart D of this part must ensure that such vessel is operating a NOAA OLE type-approved VMS on board when operating within the sanctuary. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and OLE as provided by an OLE-approved communication service provider. As a condition of authorized access to the sanctuary, a vessel owner or operator subject to the requirements for a VMS in this section must allow OLE, the U.S. Coast Guard, and their authorized officers and designees access to the vessel's position

data obtained from the VMS. NOAA may have access to, and use of, collected data for scientific, statistical, and management purposes, and to monitor implementation of this subpart.

(b) *Installing and activating the VMS.* (1) OLE has approval authority over the type of VMS used and the installation and operation of the VMS unit.

(2) The owner or operator of a vessel must coordinate with OLE to install and activate an approved VMS prior to operating within the sanctuary. For the purposes of this section, the following contact information applies:

(i) *OLE.* Address: 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; telephone: 808–725–6100; facsimile: 808–725–6199; email: *pidvms@noaa.gov;* business hours: Monday through Friday, except Federal holidays, 8 a.m. to 4:30 p.m., Hawaii Standard Time.

(ii) *VMS Helpdesk.* Telephone: 888–219–9228; email: *ole.helpdesk@noaa.gov;* business hours: Monday through Friday, except Federal holidays, 7 a.m. to 11 p.m., Eastern Time.

(c) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly within the sanctuary, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by OLE that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating a vessel's location as directed by OLE; or exiting the sanctuary until the VMS is operable.

(d) *Activities Regarding VMS For Vessels Operating in the Sanctuary.* The following activities regarding vessel monitoring systems are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Operating any vessel within the sanctuary without an OLE type-approved VMS;

(2) Failing to install, activate, repair, or replace a VMS prior to entering the sanctuary;

(3) Failing to operate and maintain a VMS on board the vessel;

(4) Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS, or VMS signal, or attempting any of the same;

(5) Failing to contact OLE or follow OLE instructions when automatic position reporting has been interrupted;

(6) Registering a VMS to more than one vessel permitted to operate within the sanctuary at the same time;

(7) Connecting or leaving connected additional equipment to a VMS unit without the prior approval of OLE; and

(8) Making a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit-or communication service provider.

§ 922.247 Sunken military craft.

Sunken military craft are administered by the respective Secretary concerned pursuant to the Sunken Military Craft Act (Pub. L. 108–375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note). The Director will enter into a Memorandum of Agreement regarding collaboration with other Federal agencies charged with implementing the Sunken Military Craft Act that may address aspects of managing and protecting sunken military craft. The Director will request approval from the Secretary concerned for any terms and conditions of ONMS permits that may involve sunken military craft.

Appendix A to Subpart W of Part 922—Papahānaumokuākea National Marine Sanctuary Boundary Description and Coordinates

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

Point No.	Longitude	Latitude
1	180.00000	25.38976
2	179.99985	25.38982
3	179.96681	25.40451
4	179.93392	25.41950
5	179.90119	25.43478
6	179.86863	25.45034
7	179.83622	25.46619
8	179.78793	25.49050
9	179.75595	25.50707
10	179.72415	25.52391
11	179.69252	25.54104
12	179.66108	25.55844
13	179.62981	25.57612
14	179.59874	25.59408
15	179.56786	25.61231
16	179.53716	25.63081
17	179.50667	25.64959
18	179.47637	25.66863

Point No.	Longitude	Latitude
19	179.44627	25.68794
20	179.41638	25.70751
21	179.38670	25.72735
22	179.35722	25.74745
23	179.32796	25.76781
24	179.28448	25.79883
25	179.25576	25.81983
26	179.22255	25.84463
27	179.18175	25.87583
28	179.15383	25.89770
29	179.12613	25.91982
30	179.09868	25.94218
31	179.07146	25.96479
32	179.03108	25.99915
33	179.00447	26.02235
34	178.97810	26.04578
35	178.93902	26.08137
36	178.91329	26.10537
37	178.88781	26.12961
38	178.86259	26.15407
39	178.82525	26.19117
40	178.80068	26.21618
41	178.77639	26.24141
42	178.75236	26.26685
43	178.71683	26.30540
44	178.69349	26.33136
45	178.65901	26.37068
46	178.63637	26.39715
47	178.61378	26.42409
48	178.59171	26.45096
49	178.56993	26.47801
50	178.54844	26.50526
51	178.52725	26.53270
52	178.49601	26.57420
53	178.46544	26.61611
54	178.44544	26.64427
55	178.41601	26.68685
56	178.39677	26.71544
57	178.37784	26.74421
58	178.35922	26.77314
59	178.34092	26.80223
60	178.30653	26.85803
61	178.28885	26.88744
62	178.26294	26.93185
63	178.24606	26.96164
64	178.22951	26.99158
65	178.21329	27.02166
66	178.19632	27.05394
67	178.17402	27.09774
68	178.15895	27.12831
69	178.14422	27.15901
70	178.12274	27.20529
71	178.10884	27.23631
72	178.08864	27.28305
73	178.06920	27.33006
74	178.05667	27.36154
75	178.03853	27.40896
76	178.02687	27.44071
77	178.01003	27.48851
78	177.99924	27.52051
79	177.98881	27.55259
80	177.97873	27.58477
81	177.96901	27.61703
82	177.95509	27.66559
83	177.94198	27.71432
84	177.93368	27.74690
85	177.92568	27.77984
86	177.91811	27.81256
87	177.90744	27.86176
88	177.90079	27.89464
89	177.89149	27.94406
90	177.88574	27.97707
91	177.88037	28.01014
92	177.87300	28.05982
93	177.86647	28.10959
94	177.86258	28.14281
95	177.85744	28.19271
96	177.85447	28.22601
97	177.85073	28.27600
98	177.84871	28.30936
99	177.84706	28.34273
100	177.84529	28.39281
101	177.84436	28.44291
102	177.84422	28.47631
103	177.84445	28.50971
104	177.84551	28.55981
105	177.84670	28.59348
106	177.84844	28.63098
107	177.85148	28.68101
108	177.85399	28.71434
109	177.85761	28.75561
110	177.86197	28.79830
111	177.86786	28.84813
112	177.87226	28.88131
113	177.87543	28.90360
114	177.87967	28.93173
115	177.88514	28.96554
116	177.89133	29.00123
117	177.90063	29.05066
118	177.90735	29.08379
119	177.91806	29.13300
120	177.92567	29.16572
121	177.93780	29.21468
122	177.94636	29.24722
123	177.95989	29.29590
124	177.96959	29.32896
125	177.97946	29.36122
126	177.98970	29.39340
127	178.00575	29.44148
128	178.01692	29.47341
129	178.03438	29.52113
130	178.04647	29.55280
131	178.06531	29.60012
132	178.08497	29.64717
133	178.09853	29.67840
134	178.11268	29.71000
135	178.13426	29.75642
136	178.15665	29.80255
137	178.17203	29.83313
138	178.19577	29.87875
139	178.21216	29.90921
140	178.22879	29.93930
141	178.25439	29.98416
142	178.27525	30.01949
143	178.29311	30.04905
144	178.31861	30.09001
145	178.34009	30.12350
146	178.35931	30.15271
147	178.38857	30.19588
148	178.41018	30.22681
149	178.43934	30.26737
150	178.47063	30.30946
151	178.49239	30.33792
152	178.51400	30.36556
153	178.54703	30.40666
154	178.57973	30.44608
155	178.60482	30.47552
156	178.62805	30.50216
157	178.65341	30.53061
158	178.68811	30.56854
159	178.71589	30.59815
160	178.75298	30.63662
161	178.77809	30.66199
162	178.80351	30.68713
163	178.84220	30.72443
164	178.88157	30.76121
165	178.90818	30.78543
166	178.94864	30.82133

Point No.	Longitude	Latitude
167	178.97598	30.84496
168	179.00360	30.86835
169	179.04556	30.90297
170	179.07393	30.92578
171	179.11693	30.95947
172	179.14594	30.98161
173	179.18995	31.01433
174	179.21963	31.03582
175	179.26463	31.06757
176	179.29516	31.08855
177	179.34112	31.11928
178	179.38763	31.14941
179	179.41894	31.16915
180	179.45050	31.18861
181	179.49827	31.21728
182	179.54657	31.24532
183	179.57905	31.26365
184	179.61792	31.28512
185	179.65085	31.30287
186	179.70065	31.32895
187	179.73411	31.34598
188	179.77707	31.36728
189	179.81095	31.38371
190	179.86214	31.40779
191	179.89652	31.42346
192	179.94844	31.44640
193	179.98329	31.46131
194	−180.00000	31.46823
195	−179.96410	31.48309
196	−179.92880	31.49722
197	−179.89333	31.51105
198	−179.83980	31.53119
199	−179.78591	31.55062
200	−179.74978	31.56318
201	−179.71350	31.57542
202	−179.65880	31.59317
203	−179.62215	31.60460
204	−179.56692	31.62114
205	−179.51138	31.63695
206	−179.47371	31.64721
207	−179.41770	31.66179
208	−179.38021	31.67109
209	−179.33210	31.68252
210	−179.28243	31.69383
211	−179.23675	31.70369
212	−179.19878	31.71149
213	−179.16071	31.71896
214	−179.10344	31.72953
215	−179.06516	31.73615
216	−179.00758	31.74546
217	−178.94983	31.75399
218	−178.90738	31.75980
219	−178.86874	31.76473
220	−178.82975	31.76934
221	−178.79099	31.77358
222	−178.75218	31.77748
223	−178.71332	31.78104
224	−178.67441	31.78425
225	−178.63547	31.78712
226	−178.59650	31.78964
227	−178.55749	31.79182
228	−178.51846	31.79366
229	−178.47941	31.79515
230	−178.43412	31.79649
231	−178.39504	31.79729
232	−178.35596	31.79775
233	−178.32396	31.79786
234	−178.28487	31.79769
235	−178.24553	31.79717
236	−178.20645	31.79631
237	−178.16738	31.79510
238	−178.12834	31.79354
239	−178.08931	31.79165
240	−178.05031	31.78940
241	−178.01134	31.78682
242	−177.97241	31.78389
243	−177.93351	31.78061
244	−177.89466	31.77699
245	−177.85585	31.77303
246	−177.81646	31.76865
247	−177.77776	31.76401
248	−177.73912	31.75902
249	−177.70055	31.75369
250	−177.66205	31.74802
251	−177.62362	31.74202
252	−177.58526	31.73567
253	−177.54140	31.72800
254	−177.50321	31.72097
255	−177.46512	31.71361
256	−177.42712	31.70592
257	−177.38921	31.69789
258	−177.35141	31.68952
259	−177.31372	31.68082
260	−177.27613	31.67179
261	−177.23866	31.66242
262	−177.20131	31.65273
263	−177.16094	31.64185
264	−177.12384	31.63149
265	−177.08687	31.62082
266	−177.04995	31.60978
267	−176.99406	31.60543
268	−176.95227	31.60174
269	−176.91352	31.59795
270	−176.87481	31.59382
271	−176.83616	31.58934
272	−176.79756	31.58453
273	−176.73979	31.57666
274	−176.70136	31.57100
275	−176.66300	31.56499
276	−176.60561	31.55534
277	−176.56718	31.54844
278	−176.52911	31.54125
279	−176.49114	31.53372
280	−176.45325	31.52586
281	−176.41282	31.51708
282	−176.37095	31.50759
283	−176.33338	31.49873
284	−176.29414	31.48910
285	−176.23818	31.47469
286	−176.20102	31.46467
287	−176.14552	31.44902
288	−176.10869	31.43818
289	−176.07199	31.42701
290	−176.03543	31.41553
291	−175.99902	31.40371
292	−175.94468	31.38539
293	−175.90865	31.37278
294	−175.87278	31.35985
295	−175.83644	31.34637
296	−175.80089	31.33281
297	−175.76551	31.31893
298	−175.72777	31.30370
299	−175.67361	31.30264
300	−175.62462	31.30118
301	−175.58577	31.29962
302	−175.56300	31.29856
303	−175.50480	31.29533
304	−175.44667	31.29132
305	−175.38862	31.28654
306	−175.33066	31.28099
307	−175.27281	31.27467
308	−175.21509	31.26757
309	−175.15433	31.25928
310	−175.10019	31.25117
311	−175.05021	31.24316
312	−174.99307	31.23327
313	−174.93613	31.22261
314	−174.87938	31.21120

Point No.	Longitude	Latitude
315	−174.82112	31.19865
316	−174.78357	31.19012
317	−174.74612	31.18126
318	−174.69017	31.16735
319	−174.65301	31.15766
320	−174.61598	31.14764
321	−174.57907	31.13730
322	−174.54229	31.12663
323	−174.48737	31.11001
324	−174.43277	31.09266
325	−174.39656	31.08069
326	−174.36049	31.06840
327	−174.32457	31.05579
328	−174.28881	31.04287
329	−174.25322	31.02962
330	−174.21779	31.01607
331	−174.16782	30.99630
332	−174.12317	30.97807
333	−174.08834	30.96342
334	−174.03646	30.94087
335	−174.00210	30.92545
336	−173.95092	30.90176
337	−173.91394	30.88410
338	−173.88027	30.86763
339	−173.83015	30.84236
340	−173.79699	30.82515
341	−173.74828	30.79912
342	−173.71286	30.77965
343	−173.67333	30.75735
344	−173.63202	30.73339
345	−173.60020	30.71444
346	−173.56860	30.69522
347	−173.52165	30.66586
348	−173.49065	30.64594
349	−173.45306	30.62120
350	−173.40817	30.59091
351	−173.37804	30.57004
352	−173.34479	30.54651
353	−173.30046	30.51431
354	−173.25673	30.48153
355	−173.22791	30.45935
356	−173.19936	30.43692
357	−173.15960	30.40490
358	−173.12000	30.37227
359	−173.09242	30.34897
360	−173.06512	30.32542
361	−173.02470	30.28965
362	−172.98494	30.25335
363	−172.95880	30.22886
364	−172.93295	30.20413
365	−172.89474	30.16662
366	−172.85721	30.12860
367	−172.83096	30.10131
368	−172.79458	30.06247
369	−172.77072	30.03631
370	−172.74717	30.00995
371	−172.71244	29.97001
372	−172.67843	29.92961
373	−172.65616	29.90243
374	−172.62336	29.86129
375	−172.60190	29.83362
376	−172.57892	29.80334
377	−172.55812	29.77530
378	−172.52756	29.73290
379	−172.50760	29.70441
380	−172.48798	29.67574
381	−172.46870	29.64690
382	−172.44976	29.61789
383	−172.42200	29.57406
384	−172.40392	29.54464
385	−172.37746	29.50021
386	−172.35178	29.45544
387	−172.33510	29.42540
388	−172.31074	29.38007
389	−172.29495	29.34967
390	−172.27193	29.30382
391	−172.25703	29.27308
392	−172.23535	29.22673
393	−172.22135	29.19567
394	−172.20103	29.14885
395	−172.18794	29.11749
396	−172.18269	29.10461
397	−172.14425	29.10857
398	−172.10644	29.11211
399	−172.06858	29.11531
400	−172.01172	29.11947
401	−171.95480	29.12286
402	−171.91682	29.12469
403	−171.87882	29.12618
404	−171.82179	29.12776
405	−171.78376	29.12839
406	−171.73360	29.12869
407	−171.67655	29.12830
408	−171.63852	29.12761
409	−171.60049	29.12658
410	−171.54349	29.12439
411	−171.50552	29.12249
412	−171.45928	29.11977
413	−171.42136	29.11719
414	−171.38347	29.11427
415	−171.32671	29.10925
416	−171.28892	29.10547
417	−171.25118	29.10135
418	−171.21350	29.09689
419	−171.17551	29.09204
420	−171.13794	29.08690
421	−171.10043	29.08142
422	−171.04430	29.07256
423	−171.00697	29.06623
424	−170.96972	29.05956
425	−170.93255	29.05256
426	−170.89547	29.04522
427	−170.85848	29.03755
428	−170.82159	29.02954
429	−170.78479	29.02120
430	−170.74809	29.01253
431	−170.69325	28.99890
432	−170.65683	28.98940
433	−170.60242	28.97453
434	−170.56630	28.96421
435	−170.53030	28.95356
436	−170.49444	28.94259
437	−170.44089	28.92552
438	−170.40537	28.91374
439	−170.36999	28.90164
440	−170.33476	28.88922
441	−170.29968	28.87648
442	−170.24735	28.85678
443	−170.21266	28.84325
444	−170.16441	28.82380
445	−170.11868	28.81843
446	−170.06241	28.81110
447	−170.00627	28.80301
448	−169.95029	28.79415
449	−169.89448	28.78454
450	−169.85736	28.77770
451	−169.80186	28.76683
452	−169.74655	28.75519
453	−169.69147	28.74281
454	−169.63661	28.72968
455	−169.60017	28.72051
456	−169.54573	28.70614
457	−169.49155	28.69103
458	−169.45559	28.68055
459	−169.40188	28.66422
460	−169.34847	28.64716
461	−169.29538	28.62937
462	−169.24262	28.61087

Point No.	Longitude	Latitude
463	−169.19019	28.59165
464	−169.13811	28.57172
465	−169.08640	28.55108
466	−169.03506	28.52974
467	−169.00106	28.51513
468	−168.95037	28.49263
469	−168.90010	28.46945
470	−168.85025	28.44559
471	−168.81726	28.42931
472	−168.76813	28.40432
473	−168.71946	28.37867
474	−168.67125	28.35237
475	−168.62352	28.32541
476	−168.58344	28.30203
477	−168.53902	28.30813
478	−168.48296	28.31510
479	−168.42677	28.32131
480	−168.37049	28.32675
481	−168.33291	28.32995
482	−168.27648	28.33411
483	−168.21998	28.33750
484	−168.16342	28.34011
485	−168.10683	28.34195
486	−168.05021	28.34302
487	−168.00043	28.34332
488	−167.94380	28.34293
489	−167.88718	28.34177
490	−167.83059	28.33983
491	−167.77404	28.33713
492	−167.73621	28.33488
493	−167.67976	28.33089
494	−167.62339	28.32613
495	−167.56712	28.32059
496	−167.51095	28.31429
497	−167.45490	28.30722
498	−167.39898	28.29939
499	−167.34321	28.29079
500	−167.30612	28.28464
501	−167.25063	28.27477
502	−167.21374	28.26778
503	−167.15856	28.25665
504	−167.10359	28.24478
505	−167.04884	28.23215
506	−166.99432	28.21878
507	−166.94004	28.20466
508	−166.88603	28.18981
509	−166.85017	28.17950
510	−166.81444	28.16886
511	−166.79269	28.16220
512	−166.76001	28.15196
513	−166.72461	28.14051
514	−166.68934	28.12874
515	−166.65422	28.11665
516	−166.61924	28.10424
517	−166.58441	28.09152
518	−166.54974	28.07847
519	−166.51522	28.06511
520	−166.48086	28.05144
521	−166.42964	28.03034
522	−166.39570	28.01589
523	−166.36193	28.00113
524	−166.31162	27.97842
525	−166.27830	27.96290
526	−166.24517	27.94707
527	−166.21223	27.93095
528	−166.17948	27.91452
529	−166.14693	27.89780
530	−166.11458	27.88078
531	−166.06622	27.85459
532	−166.03438	27.83684
533	−166.00275	27.81881
534	−165.97134	27.80048
535	−165.94014	27.78187
536	−165.90917	27.76298
537	−165.87842	27.74381
538	−165.83251	27.71439
539	−165.80234	27.69452
540	−165.77240	27.67438
541	−165.74243	27.65378
542	−165.71297	27.63310
543	−165.68375	27.61215
544	−165.65478	27.59094
545	−165.62607	27.56946
546	−165.59760	27.54773
547	−165.56939	27.52573
548	−165.54144	27.50348
549	−165.50001	27.46963
550	−165.47272	27.44675
551	−165.44570	27.42363
552	−165.41895	27.40026
553	−165.39248	27.37664
554	−165.36628	27.35279
555	−165.34036	27.32870
556	−165.30201	27.29213
557	−165.27680	27.26746
558	−165.25188	27.24256
559	−165.21504	27.20478
560	−165.19085	27.17932
561	−165.16695	27.15365
562	−165.14335	27.12775
563	−165.12006	27.10164
564	−165.09707	27.07533
565	−165.07732	27.05226
566	−165.03132	27.03829
567	−164.99614	27.02718
568	−164.96109	27.01574
569	−164.90877	26.99799
570	−164.85677	26.97951
571	−164.82201	26.96670
572	−164.70700	26.92271
573	−164.68299	26.92268
574	−164.64572	26.92233
575	−164.58983	26.92117
576	−164.55259	26.91997
577	−164.51536	26.91843
578	−164.45955	26.91547
579	−164.40380	26.91174
580	−164.34813	26.90724
581	−164.29254	26.90197
582	−164.25554	26.89803
583	−164.21858	26.89375
584	−164.16325	26.88669
585	−164.10804	26.87887
586	−164.05299	26.87029
587	−164.01637	26.86414
588	−163.97983	26.85766
589	−163.92516	26.84731
590	−163.87068	26.83620
591	−163.81641	26.82434
592	−163.78034	26.81602
593	−163.74438	26.80737
594	−163.69063	26.79377
595	−163.63712	26.77943
596	−163.58387	26.76435
597	−163.54853	26.75389
598	−163.51331	26.74310
599	−163.46071	26.72632
600	−163.40842	26.70881
601	−163.35645	26.69058
602	−163.30480	26.67164
603	−163.27056	26.65861
604	−163.21948	26.63848
605	−163.16876	26.61765
606	−163.13516	26.60337
607	−163.08506	26.58138
608	−163.03536	26.55870
609	−163.00000	26.54202
610	−163.00000	24.11409

Point No.	Longitude	Latitude
611	−161.74242	23.88042
612	−161.68679	23.86839
613	−161.63210	23.85316
614	−161.57857	23.83478
615	−161.52642	23.81332
616	−161.47586	23.78888
617	−161.42708	23.76155
618	−161.38029	23.73144
619	−161.33566	23.69868
620	−161.29337	23.66338
621	−161.25360	23.62570
622	−161.21650	23.58578
623	−161.18221	23.54379
624	−161.15087	23.49989
625	−161.12260	23.45425
626	−161.09751	23.40707
627	−161.07569	23.35851
628	−161.05724	23.30879
629	−161.04221	23.25809
630	−161.03067	23.20662
631	−161.02266	23.15458
632	−161.01820	23.10217
633	−161.01730	23.04961
634	−161.01998	22.99711
635	−161.02620	22.94485
636	−161.03595	22.89307
637	−161.04919	22.84195
638	−161.06584	22.79170
639	−161.08586	22.74252
640	−161.10915	22.69460
641	−161.13562	22.64812
642	−161.16516	22.60327
643	−161.19766	22.56023
644	−161.23298	22.51916
645	−161.27099	22.48022
646	−161.31153	22.44356
647	−161.35444	22.40934
648	−161.39956	22.37767
649	−161.44671	22.34869
650	−161.49571	22.32250
651	−161.54635	22.29922
652	−161.59846	22.27892
653	−161.65181	22.26168
654	−161.70621	22.24758
655	−161.76145	22.23667
656	−161.81730	22.22899
657	−161.87356	22.22458
658	−161.93000	22.22343
659	−161.98641	22.22557
660	−162.04257	22.23099
661	−162.09826	22.23966
662	−163.00000	22.40727
663	−163.00000	19.23458
664	−163.02954	19.26137
665	−163.05474	19.28472
666	−163.07971	19.30831
667	−163.10443	19.33213
668	−163.12891	19.35619
669	−163.15314	19.38047
670	−163.18902	19.41731
671	−163.21262	19.44214
672	−163.23597	19.46720
673	−163.25906	19.49248
674	−163.28189	19.51796
675	−163.31564	19.55659
676	−163.33781	19.58261
677	−163.35971	19.60883
678	−163.38134	19.63525
679	−163.41328	19.67526
680	−163.43423	19.70218
681	−163.45490	19.72929
682	−163.47678	19.75859
683	−163.49689	19.78608
684	−163.51671	19.81376
685	−163.54591	19.85562
686	−163.56501	19.88376
687	−163.58383	19.91207
688	−163.60235	19.94056
689	−163.62957	19.98361
690	−163.64735	20.01252
691	−163.66483	20.04159
692	−163.68201	20.07083
693	−163.69888	20.10022
694	−163.71545	20.12977
695	−163.73841	20.17192
696	−163.75664	20.18197
697	−163.78708	20.19906
698	−163.81734	20.21644
699	−163.84743	20.23409
700	−163.87734	20.25202
701	−163.90706	20.27022
702	−163.93659	20.28870
703	−163.95588	20.30099
704	−163.98535	20.29532
705	−164.02014	20.28893
706	−164.07244	20.27996
707	−164.12487	20.27171
708	−164.17742	20.26419
709	−164.23008	20.25739
710	−164.28284	20.25133
711	−164.33569	20.24599
712	−164.38861	20.24139
713	−164.44159	20.23752
714	−164.49463	20.23438
715	−164.54771	20.23197
716	−164.58106	20.23084
717	−164.60571	20.23016
718	−164.65884	20.22922
719	−164.71217	20.22902
720	−164.74760	20.22929
721	−164.78302	20.22990
722	−164.83614	20.23141
723	−164.88922	20.23366
724	−164.92459	20.23557
725	−164.97761	20.23904
726	−165.01292	20.24176
727	−165.04914	20.24489
728	−165.10201	20.25007
729	−165.13720	20.25393
730	−165.18992	20.26033
731	−165.24253	20.26745
732	−165.27754	20.27261
733	−165.31250	20.27808
734	−165.36483	20.28690
735	−165.41702	20.29644
736	−165.45173	20.30321
737	−165.50401	20.31402
738	−165.54798	20.32372
739	−165.60124	20.31609
740	−165.65391	20.30930
741	−165.70669	20.30323
742	−165.75955	20.29790
743	−165.81249	20.29329
744	−165.86549	20.28942
745	−165.91855	20.28628
746	−165.97164	20.28388
747	−166.02477	20.28221
748	−166.07792	20.28127
749	−166.13108	20.28107
750	−166.18423	20.28161
751	−166.23737	20.28287
752	−166.29049	20.28488
753	−166.34357	20.28762
754	−166.36478	20.28892
755	−166.39682	20.29110
756	−166.43214	20.29382
757	−166.48507	20.29852
758	−166.52032	20.30205

Point No.	Longitude	Latitude
759	−166.57311	20.30796
760	−166.61798	20.31350
761	−166.65308	20.31816
762	−166.70563	20.32577
763	−166.74060	20.33125
764	−166.77552	20.33705
765	−166.82777	20.34635
766	−166.87988	20.35637
767	−166.91453	20.36345
768	−166.94911	20.37085
769	−166.99267	20.38061
770	−167.02709	20.38865
771	−167.07857	20.40130
772	−167.11278	20.41012
773	−167.14689	20.41926
774	−167.19433	20.43226
775	−167.22830	20.44187
776	−167.26218	20.45180
777	−167.29596	20.46203
778	−167.32963	20.47258
779	−167.36319	20.48344
780	−167.39664	20.49460
781	−167.44659	20.51193
782	−167.47975	20.52386
783	−167.51278	20.53610
784	−167.54695	20.54912
785	−167.57973	20.56197
786	−167.61238	20.57511
787	−167.64489	20.58856
788	−167.67726	20.60230
789	−167.70949	20.61635
790	−167.74158	20.63068
791	−167.77351	20.64532
792	−167.80530	20.66024
793	−167.83694	20.67546
794	−167.86841	20.69097
795	−167.91533	20.71478
796	−167.94640	20.73101
797	−167.97731	20.74752
798	−168.00804	20.76432
799	−168.03861	20.78140
800	−168.08412	20.80755
801	−168.11424	20.82533
802	−168.14417	20.84338
803	−168.17392	20.86172
804	−168.20348	20.88032
805	−168.24746	20.90873
806	−168.27653	20.92801
807	−168.31977	20.95743
808	−168.36255	20.98744
809	−168.40487	21.01804
810	−168.43282	21.03877
811	−168.47433	21.07033
812	−168.50174	21.09169
813	−168.54244	21.12420
814	−168.58263	21.15727
815	−168.62230	21.19089
816	−168.66145	21.22506
817	−168.68726	21.24813
818	−168.71283	21.27145
819	−168.75073	21.30685
820	−168.77569	21.33074
821	−168.81266	21.36701
822	−168.83700	21.39147
823	−168.87302	21.42858
824	−168.90847	21.46618
825	−168.93178	21.49152
826	−168.96624	21.52992
827	−168.99177	21.55913
828	−169.02276	21.59546
829	−169.04473	21.62184
830	−169.07716	21.66178
831	−169.09844	21.68866
832	−169.12982	21.72934
833	−169.15039	21.75669
834	−169.18071	21.79808
835	−169.20232	21.82840
836	−169.21703	21.84743
837	−169.23883	21.85466
838	−169.27247	21.86611
839	−169.32272	21.88387
840	−169.37269	21.90231
841	−169.42237	21.92143
842	−169.47175	21.94123
843	−169.52083	21.96170
844	−169.56958	21.98284
845	−169.61800	22.00464
846	−169.66608	22.02710
847	−169.71382	22.05022
848	−169.76119	22.07399
849	−169.80819	22.09840
850	−169.85481	22.12345
851	−169.90103	22.14914
852	−169.94686	22.17546
853	−169.97718	22.19335
854	−170.00653	22.21103
855	−170.05123	22.20415
856	−170.08671	22.19907
857	−170.12225	22.19430
858	−170.15783	22.18987
859	−170.19345	22.18575
860	−170.22911	22.18196
861	−170.28268	22.17688
862	−170.31843	22.17390
863	−170.35421	22.17125
864	−170.39001	22.16891
865	−170.42584	22.16691
866	−170.46169	22.16523
867	−170.51548	22.16332
868	−170.55136	22.16245
869	−170.58725	22.16191
870	−170.62314	22.16170
871	−170.65929	22.16181
872	−170.69518	22.16224
873	−170.73106	22.16301
874	−170.76693	22.16410
875	−170.80279	22.16551
876	−170.83863	22.16725
877	−170.89236	22.17047
878	−170.92815	22.17302
879	−170.96391	22.17590
880	−170.99964	22.17910
881	−171.03533	22.18262
882	−171.07099	22.18647
883	−171.12440	22.19286
884	−171.15995	22.19751
885	−171.19545	22.20249
886	−171.23089	22.20780
887	−171.28396	22.21635
888	−171.33689	22.22563
889	−171.38967	22.23563
890	−171.42477	22.24269
891	−171.47727	22.25389
892	−171.52961	22.26579
893	−171.58175	22.27841
894	−171.63370	22.29174
895	−171.68543	22.30577
896	−171.73694	22.32050
897	−171.78823	22.33594
898	−171.83927	22.35207
899	−171.89005	22.36889
900	−171.94057	22.38641
901	−171.99082	22.40461
902	−172.03998	22.42318
903	−172.09233	22.42751
904	−172.12811	22.43088
905	−172.18170	22.43653
906	−172.21738	22.44070

Point No.	Longitude	Latitude
907	−172.25302	22.44519
908	−172.28861	22.45001
909	−172.32414	22.45515
910	−172.37735	22.46346
911	−172.41274	22.46941
912	−172.46572	22.47892
913	−172.50095	22.48566
914	−172.55367	22.49638
915	−172.58872	22.50392
916	−172.64114	22.51582
917	−172.67599	22.52415
918	−172.71075	22.53279
919	−172.76272	22.54635
920	−172.79725	22.55578
921	−172.83168	22.56552
922	−172.86601	22.57558
923	−172.90023	22.58594
924	−172.95136	22.60207
925	−172.98531	22.61320
926	−173.03602	22.63048
927	−173.08645	22.64845
928	−173.11992	22.66081
929	−173.15325	22.67347
930	−173.18646	22.68643
931	−173.23601	22.70643
932	−173.26888	22.72014
933	−173.30160	22.73415
934	−173.34556	22.75354
935	−173.37723	22.74830
936	−173.41276	22.74274
937	−173.44836	22.73750
938	−173.48400	22.73258
939	−173.51970	22.72798
940	−173.55544	22.72371
941	−173.59122	22.71976
942	−173.62704	22.71613
943	−173.66290	22.71283
944	−173.69879	22.70985
945	−173.73471	22.70720
946	−173.77065	22.70487
947	−173.80661	22.70286
948	−173.84260	22.70118
949	−173.87860	22.69983
950	−173.91461	22.69880
951	−173.95063	22.69810
952	−173.98666	22.69772
953	−174.02268	22.69767
954	−174.05871	22.69794
955	−174.09473	22.69854
956	−174.13075	22.69947
957	−174.16675	22.70072
958	−174.20274	22.70229
959	−174.23871	22.70419
960	−174.27466	22.70642
961	−174.31059	22.70897
962	−174.34649	22.71185
963	−174.38235	22.71504
964	−174.41819	22.71857
965	−174.45398	22.72242
966	−174.48974	22.72659
967	−174.52545	22.73108
968	−174.56111	22.73589
969	−174.59672	22.74103
970	−174.63227	22.74649
971	−174.66777	22.75227
972	−174.70321	22.75837
973	−174.73859	22.76479
974	−174.77389	22.77153
975	−174.82672	22.78224
976	−174.86184	22.78978
977	−174.89689	22.79763
978	−174.93185	22.80580
979	−174.96673	22.81429
980	−175.00151	22.82309
981	−175.03621	22.83220
982	−175.07081	22.84163
983	−175.10531	22.85136
984	−175.13972	22.86141
985	−175.17401	22.87177
986	−175.20820	22.88244
987	−175.24228	22.89342
988	−175.27624	22.90471
989	−175.31009	22.91630
990	−175.34381	22.92820
991	−175.37741	22.94040
992	−175.41089	22.95290
993	−175.44423	22.96571
994	−175.47744	22.97882
995	−175.51051	22.99222
996	−175.54345	23.00593
997	−175.57624	23.01993
998	−175.60888	23.03422
999	−175.64138	23.04881
1000	−175.67372	23.06370
1001	−175.70591	23.07887
1002	−175.73795	23.09434
1003	−175.76982	23.11009
1004	−175.81731	23.13426
1005	−175.84877	23.15073
1006	−175.88005	23.16748
1007	−175.91116	23.18451
1008	−175.94209	23.20183
1009	−175.98815	23.22832
1010	−176.01862	23.24633
1011	−176.04891	23.26461
1012	−176.09398	23.29254
1013	−176.12379	23.31150
1014	−176.15339	23.33073
1015	−176.18280	23.35022
1016	−176.21200	23.36998
1017	−176.25542	23.40011
1018	−176.28410	23.42052
1019	−176.31256	23.44119
1020	−176.35486	23.47268
1021	−176.38278	23.49399
1022	−176.41048	23.51554
1023	−176.43795	23.53735
1024	−176.46520	23.55940
1025	−176.50563	23.59294
1026	−176.53229	23.61560
1027	−176.55872	23.63850
1028	−176.59790	23.67330
1029	−176.62372	23.69679
1030	−176.66199	23.73246
1031	−176.68719	23.75653
1032	−176.71213	23.78082
1033	−176.73682	23.80534
1034	−176.76125	23.83007
1035	−176.78542	23.85503
1036	−176.80933	23.88021
1037	−176.83297	23.90559
1038	−176.85635	23.93119
1039	−176.87945	23.95700
1040	−176.90229	23.98302
1041	−176.93602	24.02243
1042	−176.96913	24.06229
1043	−176.99085	24.08911
1044	−177.01229	24.11613
1045	−177.03344	24.14334
1046	−177.06462	24.18450
1047	−177.08505	24.21218
1048	−177.10518	24.24004
1049	−177.12502	24.26808
1050	−177.14456	24.29630
1051	−177.17331	24.33895
1052	−177.19210	24.36760
1053	−177.21058	24.39642
1054	−177.22875	24.42540

Point No.	Longitude	Latitude
1055	−177.25544	24.46918
1056	−177.27284	24.49856
1057	−177.28992	24.52810
1058	−177.30670	24.55779
1059	−177.32315	24.58763
1060	−177.33929	24.61762
1061	−177.36249	24.66210
1062	−177.38606	24.67081
1063	−177.41985	24.68359
1064	−177.45352	24.69667
1065	−177.48704	24.71005
1066	−177.53706	24.73067
1067	−177.57023	24.74479
1068	−177.60325	24.75920
1069	−177.63612	24.77391
1070	−177.66883	24.78890
1071	−177.71760	24.81194
1072	−177.74992	24.82767
1073	−177.78207	24.84367
1074	−177.81404	24.85997
1075	−177.83690	24.87185
1076	−177.88667	24.87745
1077	−177.94111	24.88429
1078	−177.97195	24.88850
1079	−177.99642	24.89200
1080	−178.05062	24.90028
1081	−178.10469	24.90929
1082	−178.14066	24.91569
1083	−178.16577	24.92034
1084	−178.21953	24.93078
1085	−178.27313	24.94194
1086	−178.32655	24.95380
1087	−178.37978	24.96637
1088	−178.43281	24.97965
1089	−178.48563	24.99363
1090	−178.53822	25.00832
1091	−178.59058	25.02370
1092	−178.61445	25.03096
1093	−178.64360	25.04005
1094	−178.67821	25.05115
1095	−178.70077	25.05859
1096	−178.72148	25.06052
1097	−178.75794	25.06420
1098	−178.81257	25.07031
1099	−178.86732	25.07718
1100	−178.90360	25.08214
1101	−178.93984	25.08742
1102	−178.98140	25.09383
1103	−179.01755	25.09959
1104	−179.07166	25.10883
1105	−179.10765	25.11539
1106	−179.14357	25.12227
1107	−179.19731	25.13318
1108	−179.25088	25.14480
1109	−179.28649	25.15295
1110	−179.32201	25.16141
1111	−179.35744	25.17018
1112	−179.38198	25.17642
1113	−179.43515	25.19048
1114	−179.47030	25.20018
1115	−179.50534	25.21020
1116	−179.55771	25.22581
1117	−179.60982	25.24211
1118	−179.66167	25.25910
1119	−179.69609	25.27081
1120	−179.73039	25.28283
1121	−179.76456	25.29514
1122	−179.79860	25.30776
1123	−179.83251	25.32068
1124	−179.86628	25.33389
1125	−179.89991	25.34741
1126	−179.93340	25.36122
1127	−179.96674	25.37533
1128	−180.00000	25.38976

APPENDIX B TO SUBPART W OF PART 922—COORDINATES FOR THE OUTER SANCTUARY ZONE

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

The boundaries for the areas listed in this appendix, unless otherwise described in this rule, begin at Point 1 as indicated in the particular area's coordinate table and continue to each successive point in numerical order until ending at the last point in the table.

Point No.	Longitude	Latitude
1	180.00000	25.38976
2	179.99985	25.38982
3	179.96681	25.40451
4	179.93392	25.41950
5	179.90119	25.43477
6	179.86863	25.45034
7	179.83622	25.46619
8	179.78793	25.49050
9	179.75595	25.50707
10	179.72415	25.52391
11	179.69252	25.54104
12	179.66108	25.55844
13	179.62981	25.57612
14	179.59874	25.59408
15	179.56786	25.61231
16	179.53716	25.63081
17	179.50667	25.64959
18	179.47637	25.66863
19	179.44627	25.68794
20	179.41638	25.70751
21	179.38670	25.72735
22	179.35722	25.74745
23	179.32796	25.76781
24	179.28448	25.79883
25	179.25576	25.81983
26	179.22255	25.84463
27	179.18175	25.87583
28	179.15383	25.89770
29	179.12613	25.91982
30	179.09868	25.94218
31	179.07146	25.96479
32	179.03108	25.99915
33	179.00447	26.02235
34	178.97810	26.04578
35	178.93902	26.08137
36	178.91329	26.10537
37	178.88781	26.12961
38	178.86259	26.15407
39	178.82525	26.19117
40	178.80068	26.21618
41	178.77639	26.24141
42	178.75236	26.26685
43	178.71684	26.30540
44	178.69349	26.33136
45	178.65901	26.37068
46	178.63637	26.39715
47	178.61378	26.42409
48	178.59171	26.45096
49	178.56993	26.47801
50	178.54844	26.50526
51	178.52724	26.53270
52	178.49600	26.57420
53	178.46544	26.61611
54	178.44544	26.64427
55	178.41601	26.68685
56	178.39677	26.71544
57	178.37784	26.74421
58	178.35922	26.77314

Point No.	Longitude	Latitude
59	178.34092	26.80223
60	178.30653	26.85803
61	178.28885	26.88744
62	178.26293	26.93184
63	178.24606	26.96164
64	178.22951	26.99158
65	178.21329	27.02166
66	178.19632	27.05394
67	178.17402	27.09775
68	178.15895	27.12831
69	178.14422	27.15901
70	178.12274	27.20530
71	178.10884	27.23631
72	178.08864	27.28305
73	178.06920	27.33006
74	178.05667	27.36154
75	178.03853	27.40896
76	178.02687	27.44071
77	178.01003	27.48851
78	177.99924	27.52051
79	177.98881	27.55259
80	177.97873	27.58477
81	177.96901	27.61703
82	177.95509	27.66559
83	177.94198	27.71432
84	177.93368	27.74690
85	177.92568	27.77984
86	177.91811	27.81256
87	177.90744	27.86176
88	177.90079	27.89464
89	177.89149	27.94406
90	177.88574	27.97707
91	177.88037	28.01014
92	177.87300	28.05982
93	177.86647	28.10958
94	177.86258	28.14281
95	177.85744	28.19271
96	177.85448	28.22601
97	177.85073	28.27601
98	177.84871	28.30936
99	177.84706	28.34273
100	177.84529	28.39281
101	177.84437	28.44291
102	177.84422	28.47631
103	177.84445	28.50971
104	177.84551	28.55981
105	177.84670	28.59348
106	177.84844	28.63098
107	177.85148	28.68101
108	177.85399	28.71434
109	177.85761	28.75561
110	177.86197	28.79830
111	177.86786	28.84813
112	177.87226	28.88131
113	177.87543	28.90359
114	177.87967	28.93174
115	177.88514	28.96554
116	177.89133	29.00123
117	177.90063	29.05066
118	177.90735	29.08379
119	177.91806	29.13300
120	177.92568	29.16572
121	177.93780	29.21468
122	177.94636	29.24723
123	177.95989	29.29590
124	177.96959	29.32896
125	177.97946	29.36123
126	177.98970	29.39340
127	178.00575	29.44148
128	178.01692	29.47341
129	178.03438	29.52113
130	178.04647	29.55280
131	178.06531	29.60012
132	178.08497	29.64717
133	178.09853	29.67840
134	178.11268	29.71000
135	178.13426	29.75642
136	178.15665	29.80255
137	178.17203	29.83313
138	178.19577	29.87875
139	178.21216	29.90921
140	178.22879	29.93930
141	178.25439	29.98416
142	178.27525	30.01949
143	178.29311	30.04905
144	178.31861	30.09002
145	178.34009	30.12350
146	178.35931	30.15271
147	178.38857	30.19588
148	178.41018	30.22681
149	178.43934	30.26737
150	178.47063	30.30946
151	178.49239	30.33792
152	178.51400	30.36556
153	178.54703	30.40666
154	178.57973	30.44608
155	178.60482	30.47552
156	178.62805	30.50217
157	178.65341	30.53062
158	178.68811	30.56854
159	178.71589	30.59815
160	178.75298	30.63662
161	178.77809	30.66199
162	178.80351	30.68714
163	178.84220	30.72443
164	178.88157	30.76121
165	178.90818	30.78543
166	178.94864	30.82133
167	178.97598	30.84496
168	179.00360	30.86835
169	179.04556	30.90298
170	179.07393	30.92578
171	179.11693	30.95947
172	179.14594	30.98161
173	179.18995	31.01433
174	179.21963	31.03582
175	179.26462	31.06757
176	179.29516	31.08855
177	179.34112	31.11929
178	179.38763	31.14941
179	179.41894	31.16915
180	179.45050	31.18861
181	179.49827	31.21728
182	179.54657	31.24532
183	179.57905	31.26365
184	179.61792	31.28512
185	179.65085	31.30287
186	179.70065	31.32895
187	179.73411	31.34597
188	179.77707	31.36728
189	179.81095	31.38371
190	179.86214	31.40779
191	179.89652	31.42346
192	179.94844	31.44640
193	179.98329	31.46131
194	−180.00000	31.46823
195	−179.96410	31.48309
196	−179.92880	31.49723
197	−179.89333	31.51105
198	−179.83980	31.53119
199	−179.78591	31.55062
200	−179.74978	31.56318
201	−179.71350	31.57542
202	−179.65880	31.59317
203	−179.62215	31.60460
204	−179.56691	31.62114
205	−179.51138	31.63695
206	−179.47371	31.64721

Point No.	Longitude	Latitude
207	−179.41770	31.66178
208	−179.38021	31.67109
209	−179.33210	31.68252
210	−179.28243	31.69383
211	−179.23675	31.70369
212	−179.19878	31.71149
213	−179.16071	31.71896
214	−179.10344	31.72953
215	−179.06516	31.73615
216	−179.00758	31.74546
217	−178.94983	31.75399
218	−178.90738	31.75980
219	−178.86874	31.76473
220	−178.82975	31.76934
221	−178.79099	31.77358
222	−178.75218	31.77748
223	−178.71331	31.78104
224	−178.67441	31.78425
225	−178.63547	31.78712
226	−178.59650	31.78964
227	−178.55749	31.79182
228	−178.51846	31.79366
229	−178.47941	31.79515
230	−178.43412	31.79649
231	−178.39504	31.79729
232	−178.35596	31.79775
233	−178.32396	31.79786
234	−178.28487	31.79769
235	−178.24552	31.79717
236	−178.20645	31.79631
237	−178.16738	31.79510
238	−178.12834	31.79355
239	−178.08931	31.79165
240	−178.05031	31.78940
241	−178.01134	31.78682
242	−177.97241	31.78389
243	−177.93351	31.78061
244	−177.89466	31.77699
245	−177.85585	31.77303
246	−177.81646	31.76865
247	−177.77776	31.76401
248	−177.73912	31.75902
249	−177.70055	31.75369
250	−177.66205	31.74802
251	−177.62362	31.74202
252	−177.58526	31.73567
253	−177.54140	31.72800
254	−177.50321	31.72097
255	−177.46512	31.71361
256	−177.42712	31.70592
257	−177.38921	31.69788
258	−177.35141	31.68952
259	−177.31372	31.68082
260	−177.27613	31.67179
261	−177.23866	31.66242
262	−177.20131	31.65273
263	−177.16094	31.64185
264	−177.12384	31.63150
265	−177.08687	31.62082
266	−177.04995	31.60978
267	−176.99406	31.60543
268	−176.95227	31.60174
269	−176.91351	31.59795
270	−176.87481	31.59382
271	−176.83616	31.58934
272	−176.79756	31.58453
273	−176.73979	31.57666
274	−176.70136	31.57100
275	−176.66300	31.56499
276	−176.60561	31.55534
277	−176.56718	31.54844
278	−176.52911	31.54125
279	−176.49114	31.53372
280	−176.45325	31.52586
281	−176.41282	31.51708
282	−176.37095	31.50759
283	−176.33338	31.49873
284	−176.29414	31.48910
285	−176.23818	31.47469
286	−176.20102	31.46467
287	−176.14552	31.44902
288	−176.10869	31.43818
289	−176.07199	31.42701
290	−176.03543	31.41553
291	−175.99902	31.40371
292	−175.94468	31.38539
293	−175.90865	31.37278
294	−175.87278	31.35985
295	−175.83644	31.34637
296	−175.80089	31.33281
297	−175.76551	31.31893
298	−175.72777	31.30370
299	−175.67361	31.30264
300	−175.62462	31.30118
301	−175.58577	31.29962
302	−175.56300	31.29856
303	−175.50480	31.29533
304	−175.44667	31.29132
305	−175.38861	31.28654
306	−175.33066	31.28099
307	−175.27281	31.27467
308	−175.21509	31.26757
309	−175.15434	31.25928
310	−175.10019	31.25117
311	−175.05021	31.24316
312	−174.99307	31.23327
313	−174.93613	31.22261
314	−174.87938	31.21120
315	−174.82112	31.19865
316	−174.78357	31.19012
317	−174.74613	31.18126
318	−174.69017	31.16735
319	−174.65301	31.15766
320	−174.61598	31.14765
321	−174.57907	31.13730
322	−174.54229	31.12663
323	−174.48737	31.11001
324	−174.43277	31.09266
325	−174.39656	31.08069
326	−174.36049	31.06840
327	−174.32457	31.05579
328	−174.28881	31.04287
329	−174.25322	31.02962
330	−174.21779	31.01607
331	−174.16782	30.99630
332	−174.12317	30.97807
333	−174.08835	30.96342
334	−174.03646	30.94087
335	−174.00210	30.92545
336	−173.95092	30.90176
337	−173.91394	30.88410
338	−173.88027	30.86763
339	−173.83014	30.84236
340	−173.79699	30.82515
341	−173.74828	30.79912
342	−173.71286	30.77965
343	−173.67333	30.75735
344	−173.63202	30.73338
345	−173.60020	30.71444
346	−173.56860	30.69522
347	−173.52165	30.66586
348	−173.49065	30.64594
349	−173.45306	30.62120
350	−173.40817	30.59091
351	−173.37804	30.57004
352	−173.34479	30.54651
353	−173.30046	30.51431
354	−173.25673	30.48153

Point No.	Longitude	Latitude
355	−173.22791	30.45935
356	−173.19936	30.43692
357	−173.15960	30.40490
358	−173.12000	30.37227
359	−173.09241	30.34897
360	−173.06512	30.32542
361	−173.02470	30.28965
362	−172.98494	30.25335
363	−172.95880	30.22886
364	−172.93295	30.20413
365	−172.89474	30.16662
366	−172.85721	30.12860
367	−172.83096	30.10131
368	−172.79458	30.06247
369	−172.77072	30.03631
370	−172.74717	30.00995
371	−172.71244	29.97001
372	−172.67843	29.92961
373	−172.65616	29.90243
374	−172.62336	29.86129
375	−172.60190	29.83362
376	−172.57892	29.80334
377	−172.55812	29.77530
378	−172.52756	29.73290
379	−172.50760	29.70441
380	−172.48798	29.67574
381	−172.46870	29.64690
382	−172.44976	29.61789
383	−172.42200	29.57406
384	−172.40392	29.54464
385	−172.37746	29.50021
386	−172.35178	29.45544
387	−172.33510	29.42540
388	−172.31074	29.38007
389	−172.29495	29.34967
390	−172.27193	29.30382
391	−172.25702	29.27308
392	−172.23535	29.22673
393	−172.22135	29.19567
394	−172.20103	29.14885
395	−172.18794	29.11749
396	−172.18269	29.10461
397	−172.14425	29.10857
398	−172.10644	29.11211
399	−172.06858	29.11531
400	−172.01172	29.11948
401	−171.95480	29.12286
402	−171.91682	29.12469
403	−171.87882	29.12618
404	−171.82179	29.12776
405	−171.78376	29.12839
406	−171.73360	29.12869
407	−171.67655	29.12830
408	−171.63852	29.12761
409	−171.60049	29.12658
410	−171.54349	29.12439
411	−171.50552	29.12250
412	−171.45928	29.11977
413	−171.42136	29.11719
414	−171.38347	29.11427
415	−171.32671	29.10925
416	−171.28892	29.10547
417	−171.25118	29.10135
418	−171.21350	29.09689
419	−171.17551	29.09204
420	−171.13794	29.08690
421	−171.10043	29.08142
422	−171.04430	29.07256
423	−171.00697	29.06623
424	−170.96972	29.05956
425	−170.93255	29.05256
426	−170.89547	29.04522
427	−170.85848	29.03755
428	−170.82159	29.02954
429	−170.78479	29.02120
430	−170.74809	29.01253
431	−170.69325	28.99890
432	−170.65683	28.98940
433	−170.60242	28.97453
434	−170.56630	28.96421
435	−170.53030	28.95356
436	−170.49444	28.94259
437	−170.44089	28.92552
438	−170.40537	28.91374
439	−170.36999	28.90164
440	−170.33476	28.88922
441	−170.29968	28.87648
442	−170.24735	28.85678
443	−170.21266	28.84325
444	−170.16441	28.82380
445	−170.11868	28.81843
446	−170.06241	28.81110
447	−170.00627	28.80301
448	−169.95029	28.79415
449	−169.89448	28.78454
450	−169.85736	28.77770
451	−169.80186	28.76683
452	−169.74655	28.75519
453	−169.69147	28.74281
454	−169.63661	28.72968
455	−169.60017	28.72051
456	−169.54573	28.70614
457	−169.49155	28.69103
458	−169.45559	28.68055
459	−169.40188	28.66422
460	−169.34847	28.64716
461	−169.29538	28.62937
462	−169.24262	28.61087
463	−169.19019	28.59165
464	−169.13811	28.57172
465	−169.08640	28.55108
466	−169.03506	28.52974
467	−169.00106	28.51513
468	−168.95037	28.49264
469	−168.90010	28.46945
470	−168.85025	28.44559
471	−168.81726	28.42931
472	−168.76813	28.40432
473	−168.71946	28.37867
474	−168.67125	28.35237
475	−168.62352	28.32541
476	−168.58344	28.30203
477	−168.53902	28.30813
478	−168.48296	28.31510
479	−168.42677	28.32131
480	−168.37049	28.32675
481	−168.33291	28.32995
482	−168.27648	28.33411
483	−168.21998	28.33750
484	−168.16342	28.34011
485	−168.10683	28.34195
486	−168.05021	28.34302
487	−168.00043	28.34332
488	−167.94380	28.34293
489	−167.88718	28.34177
490	−167.83059	28.33984
491	−167.77404	28.33713
492	−167.73621	28.33489
493	−167.67976	28.33089
494	−167.62339	28.32613
495	−167.56712	28.32059
496	−167.51095	28.31429
497	−167.45490	28.30722
498	−167.39898	28.29939
499	−167.34321	28.29079
500	−167.30612	28.28464
501	−167.25063	28.27477
502	−167.21374	28.26778

Point No.	Longitude	Latitude
503	−167.15856	28.25665
504	−167.10359	28.24478
505	−167.04883	28.23215
506	−166.99432	28.21878
507	−166.94004	28.20466
508	−166.88603	28.18981
509	−166.85017	28.17950
510	−166.81444	28.16886
511	−166.79269	28.16221
512	−166.76001	28.15196
513	−166.72461	28.14051
514	−166.68934	28.12874
515	−166.65422	28.11665
516	−166.61924	28.10424
517	−166.58441	28.09152
518	−166.54974	28.07847
519	−166.51522	28.06511
520	−166.48086	28.05144
521	−166.42964	28.03034
522	−166.39570	28.01589
523	−166.36193	28.00113
524	−166.31162	27.97842
525	−166.27830	27.96290
526	−166.24517	27.94707
527	−166.21223	27.93095
528	−166.17948	27.91452
529	−166.14693	27.89780
530	−166.11458	27.88078
531	−166.06622	27.85459
532	−166.03438	27.83684
533	−166.00275	27.81881
534	−165.97134	27.80048
535	−165.94014	27.78187
536	−165.90917	27.76298
537	−165.87842	27.74381
538	−165.83251	27.71439
539	−165.80234	27.69452
540	−165.77240	27.67438
541	−165.74242	27.65378
542	−165.71296	27.63310
543	−165.68375	27.61215
544	−165.65478	27.59094
545	−165.62607	27.56946
546	−165.59760	27.54773
547	−165.56939	27.52573
548	−165.54144	27.50348
549	−165.50001	27.46963
550	−165.47272	27.44675
551	−165.44570	27.42363
552	−165.41895	27.40026
553	−165.39248	27.37664
554	−165.36628	27.35279
555	−165.34036	27.32870
556	−165.30201	27.29213
557	−165.27680	27.26746
558	−165.25188	27.24255
559	−165.21504	27.20478
560	−165.19085	27.17932
561	−165.16695	27.15365
562	−165.14335	27.12775
563	−165.12006	27.10165
564	−165.09707	27.07533
565	−165.07732	27.05226
566	−165.03132	27.03829
567	−164.99614	27.02718
568	−164.96109	27.01574
569	−164.90877	26.99799
570	−164.85677	26.97951
571	−164.82201	26.96670
572	−164.70700	26.92271
573	−164.68299	26.92268
574	−164.64572	26.92233
575	−164.58983	26.92118
576	−164.55259	26.91997
577	−164.51536	26.91843
578	−164.45955	26.91547
579	−164.40380	26.91174
580	−164.34813	26.90724
581	−164.29254	26.90197
582	−164.25554	26.89803
583	−164.21858	26.89375
584	−164.16325	26.88669
585	−164.10804	26.87887
586	−164.05299	26.87029
587	−164.01637	26.86414
588	−163.97983	26.85766
589	−163.92516	26.84731
590	−163.87068	26.83620
591	−163.81641	26.82434
592	−163.78034	26.81602
593	−163.74438	26.80737
594	−163.69063	26.79377
595	−163.63712	26.77943
596	−163.58387	26.76435
597	−163.54853	26.75389
598	−163.51331	26.74311
599	−163.46071	26.72632
600	−163.40842	26.70881
601	−163.35645	26.69058
602	−163.30480	26.67164
603	−163.27056	26.65861
604	−163.21948	26.63848
605	−163.16876	26.61765
606	−163.13516	26.60338
607	−163.08506	26.58138
608	−163.03536	26.55870
609	−163.00000	26.54202
610	−163.00000	24.11409
611	−164.53740	24.39976
612	−165.58333	24.59413
613	−166.05600	24.68197
614	−166.75000	25.17393
615	−167.32998	25.58506
616	−167.44143	25.66407
617	−167.61200	25.78498
618	−167.80596	25.81664
619	−167.96475	25.84257
620	−170.38404	26.23759
621	−171.41934	26.55588
622	−171.45849	26.56791
623	−171.51400	26.58498
624	−171.56405	26.59157
625	−171.62846	26.60005
626	−173.51320	26.84822
627	−175.00000	28.26784
628	−175.17766	28.43748
629	−175.32900	28.58198
630	−175.57260	28.64457
631	−175.59127	28.64937
632	−177.12157	29.04257
633	−177.20130	29.05797
634	−178.14636	29.24060
635	−178.20545	29.24908
636	−178.26503	29.25427
637	−178.32487	29.25614
638	−178.38473	29.25468
639	−178.44436	29.24991
640	−178.50352	29.24183
641	−178.56197	29.23049
642	−178.61949	29.21593
643	−178.67583	29.19820
644	−178.73077	29.17738
645	−178.78409	29.15356
646	−178.83557	29.12682
647	−178.88501	29.09728
648	−178.93222	29.06506
649	−178.97700	29.03028
650	−179.01917	28.99308

Point No.	Longitude	Latitude
651	−179.05858	28.95361
652	−179.09506	28.91204
653	−179.12848	28.86852
654	−179.15870	28.82324
655	−179.18560	28.77636
656	−179.20909	28.72809
657	−179.22907	28.67861
658	−179.24548	28.62811
659	−179.25824	28.57681
660	−179.26732	28.52490
661	−179.27269	28.47258
662	−179.27400	28.43037
663	−179.27432	28.42008
664	−179.27400	28.41208
665	−179.27222	28.36758
666	−179.26640	28.31530
667	−179.25689	28.26345
668	−179.24374	28.21223
669	−179.22699	28.16184
670	−179.20673	28.11247
671	−179.18302	28.06433
672	−179.15598	28.01760
673	−179.12572	27.97246
674	−179.09234	27.92909
675	−179.05599	27.88765
676	−179.01681	27.84832
677	−178.97496	27.81123
678	−178.93061	27.77654
679	−178.88391	27.74438
680	−178.83507	27.71488
681	−178.78427	27.68814
682	−178.73170	27.66428
683	−178.67758	27.64338
684	−178.62211	27.62552
685	−178.56551	27.61078
686	−178.49843	27.59784
687	−177.55523	27.41586
688	−176.49794	27.24611
689	−175.00000	25.83069
690	−174.41400	25.27697
691	−171.83651	24.93729
692	−170.86958	24.62936
693	−170.83964	24.61983
694	−170.79300	24.60497
695	−170.73999	24.59633
696	−168.38105	24.21167
697	−168.38083	24.21163
698	−168.38072	24.21155
699	−166.79085	23.09144
700	−166.75000	23.06265
701	−166.60000	22.95697
702	−166.38872	22.93221
703	−166.32723	22.92501
704	−165.58333	22.83782
705	−164.86038	22.75309
706	−163.00000	22.40727
707	−163.00000	19.23458
708	−163.02954	19.26137
709	−163.05474	19.28472
710	−163.07970	19.30831
711	−163.10443	19.33213
712	−163.12891	19.35619
713	−163.15314	19.38047
714	−163.18902	19.41731
715	−163.21262	19.44214
716	−163.23597	19.46720
717	−163.25906	19.49247
718	−163.28189	19.51796
719	−163.31564	19.55659
720	−163.33781	19.58261
721	−163.35971	19.60883
722	−163.38134	19.63525
723	−163.41328	19.67526
724	−163.43423	19.70218
725	−163.45489	19.72929
726	−163.47678	19.75859
727	−163.49689	19.78608
728	−163.51671	19.81376
729	−163.54591	19.85563
730	−163.56501	19.88376
731	−163.58383	19.91207
732	−163.60235	19.94056
733	−163.62957	19.98361
734	−163.64735	20.01252
735	−163.66483	20.04159
736	−163.68201	20.07082
737	−163.69888	20.10022
738	−163.71545	20.12977
739	−163.73841	20.17193
740	−163.75664	20.18197
741	−163.78708	20.19906
742	−163.81734	20.21644
743	−163.84743	20.23409
744	−163.87734	20.25202
745	−163.90706	20.27023
746	−163.93659	20.28870
747	−163.95588	20.30099
748	−163.98535	20.29532
749	−164.02014	20.28893
750	−164.07244	20.27996
751	−164.12487	20.27171
752	−164.17742	20.26419
753	−164.23008	20.25739
754	−164.28284	20.25133
755	−164.33569	20.24599
756	−164.38861	20.24139
757	−164.44159	20.23752
758	−164.49463	20.23438
759	−164.54771	20.23197
760	−164.58106	20.23084
761	−164.60571	20.23016
762	−164.65884	20.22922
763	−164.71217	20.22902
764	−164.74760	20.22930
765	−164.78302	20.22990
766	−164.83614	20.23141
767	−164.88922	20.23366
768	−164.92459	20.23557
769	−164.97761	20.23904
770	−165.01292	20.24176
771	−165.04914	20.24489
772	−165.10200	20.25007
773	−165.13720	20.25393
774	−165.18992	20.26033
775	−165.24253	20.26745
776	−165.27754	20.27261
777	−165.31250	20.27808
778	−165.36483	20.28690
779	−165.41702	20.29644
780	−165.45173	20.30321
781	−165.50401	20.31402
782	−165.54798	20.32372
783	−165.60124	20.31609
784	−165.65391	20.30930
785	−165.70669	20.30323
786	−165.75955	20.29790
787	−165.81249	20.29329
788	−165.86549	20.28942
789	−165.91855	20.28628
790	−165.97164	20.28388
791	−166.02477	20.28221
792	−166.07792	20.28127
793	−166.13108	20.28107
794	−166.18423	20.28160
795	−166.23737	20.28288
796	−166.29049	20.28488
797	−166.34357	20.28762
798	−166.36478	20.28892

Point No.	Longitude	Latitude
799	−166.39682	20.29110
800	−166.43214	20.29382
801	−166.48507	20.29852
802	−166.52032	20.30205
803	−166.57311	20.30796
804	−166.61798	20.31350
805	−166.65308	20.31816
806	−166.70563	20.32577
807	−166.74060	20.33125
808	−166.77552	20.33705
809	−166.82777	20.34635
810	−166.87988	20.35637
811	−166.91453	20.36345
812	−166.94911	20.37085
813	−166.99267	20.38061
814	−167.02709	20.38865
815	−167.07857	20.40130
816	−167.11278	20.41012
817	−167.14689	20.41926
818	−167.19433	20.43226
819	−167.22831	20.44187
820	−167.26218	20.45180
821	−167.29596	20.46203
822	−167.32963	20.47258
823	−167.36319	20.48344
824	−167.39664	20.49460
825	−167.44659	20.51193
826	−167.47975	20.52386
827	−167.51278	20.53610
828	−167.54695	20.54913
829	−167.57973	20.56197
830	−167.61238	20.57511
831	−167.64489	20.58856
832	−167.67726	20.60230
833	−167.70949	20.61634
834	−167.74158	20.63068
835	−167.77351	20.64532
836	−167.80530	20.66024
837	−167.83694	20.67546
838	−167.86841	20.69097
839	−167.91533	20.71478
840	−167.94640	20.73101
841	−167.97731	20.74752
842	−168.00804	20.76432
843	−168.03861	20.78140
844	−168.08412	20.80755
845	−168.11424	20.82533
846	−168.14417	20.84338
847	−168.17392	20.86172
848	−168.20348	20.88032
849	−168.24746	20.90873
850	−168.27653	20.92801
851	−168.31977	20.95743
852	−168.36255	20.98744
853	−168.40487	21.01804
854	−168.43282	21.03877
855	−168.47433	21.07033
856	−168.50174	21.09169
857	−168.54244	21.12420
858	−168.58263	21.15727
859	−168.62230	21.19089
860	−168.66145	21.22506
861	−168.68726	21.24813
862	−168.71283	21.27145
863	−168.75073	21.30685
864	−168.77569	21.33075
865	−168.81266	21.36701
866	−168.83700	21.39147
867	−168.87302	21.42858
868	−168.90847	21.46618
869	−168.93178	21.49152
870	−168.96624	21.52992
871	−168.99177	21.55913
872	−169.02276	21.59546
873	−169.04473	21.62184
874	−169.07716	21.66178
875	−169.09844	21.68866
876	−169.12982	21.72934
877	−169.15039	21.75669
878	−169.18071	21.79808
879	−169.20233	21.82840
880	−169.21703	21.84743
881	−169.23883	21.85466
882	−169.27247	21.86611
883	−169.32272	21.88387
884	−169.37269	21.90231
885	−169.42237	21.92143
886	−169.47175	21.94122
887	−169.52083	21.96170
888	−169.56958	21.98284
889	−169.61800	22.00464
890	−169.66609	22.02710
891	−169.71382	22.05022
892	−169.76119	22.07399
893	−169.80819	22.09840
894	−169.85481	22.12345
895	−169.90103	22.14914
896	−169.94686	22.17546
897	−169.97718	22.19335
898	−170.00653	22.21103
899	−170.05123	22.20415
900	−170.08671	22.19907
901	−170.12224	22.19431
902	−170.15783	22.18987
903	−170.19345	22.18575
904	−170.22911	22.18196
905	−170.28268	22.17688
906	−170.31843	22.17390
907	−170.35421	22.17125
908	−170.39002	22.16891
909	−170.42584	22.16691
910	−170.46169	22.16523
911	−170.51549	22.16332
912	−170.55136	22.16245
913	−170.58725	22.16191
914	−170.62314	22.16170
915	−170.65929	22.16181
916	−170.69518	22.16224
917	−170.73106	22.16301
918	−170.76693	22.16410
919	−170.80279	22.16551
920	−170.83863	22.16725
921	−170.89236	22.17047
922	−170.92815	22.17302
923	−170.96391	22.17590
924	−170.99964	22.17910
925	−171.03533	22.18263
926	−171.07099	22.18648
927	−171.12440	22.19286
928	−171.15995	22.19751
929	−171.19545	22.20249
930	−171.23089	22.20780
931	−171.28396	22.21635
932	−171.33689	22.22563
933	−171.38967	22.23563
934	−171.42477	22.24269
935	−171.47727	22.25389
936	−171.52961	22.26579
937	−171.58175	22.27841
938	−171.63369	22.29174
939	−171.68543	22.30577
940	−171.73694	22.32050
941	−171.78823	22.33594
942	−171.83927	22.35207
943	−171.89005	22.36889
944	−171.94057	22.38641
945	−171.99082	22.40461
946	−172.03998	22.42318

Point No.	Longitude	Latitude
947	−172.09233	22.42751
948	−172.12811	22.43088
949	−172.18170	22.43653
950	−172.21738	22.44070
951	−172.25302	22.44519
952	−172.28861	22.45001
953	−172.32414	22.45515
954	−172.37735	22.46346
955	−172.41274	22.46941
956	−172.46572	22.47892
957	−172.50095	22.48567
958	−172.55366	22.49638
959	−172.58872	22.50392
960	−172.64114	22.51582
961	−172.67599	22.52415
962	−172.71075	22.53279
963	−172.76272	22.54635
964	−172.79725	22.55578
965	−172.83168	22.56552
966	−172.86601	22.57558
967	−172.90023	22.58594
968	−172.95136	22.60207
969	−172.98531	22.61320
970	−173.03602	22.63048
971	−173.08645	22.64845
972	−173.11992	22.66081
973	−173.15325	22.67347
974	−173.18646	22.68643
975	−173.23601	22.70643
976	−173.26888	22.72014
977	−173.30160	22.73415
978	−173.34556	22.75354
979	−173.37723	22.74830
980	−173.41277	22.74274
981	−173.44836	22.73750
982	−173.48400	22.73258
983	−173.51970	22.72798
984	−173.55544	22.72371
985	−173.59122	22.71976
986	−173.62704	22.71613
987	−173.66290	22.71283
988	−173.69879	22.70985
989	−173.73470	22.70720
990	−173.77065	22.70487
991	−173.80661	22.70286
992	−173.84260	22.70118
993	−173.87860	22.69983
994	−173.91461	22.69880
995	−173.95063	22.69810
996	−173.98666	22.69772
997	−174.02268	22.69767
998	−174.05871	22.69794
999	−174.09473	22.69854
1000	−174.13075	22.69947
1001	−174.16675	22.70072
1002	−174.20274	22.70229
1003	−174.23871	22.70419
1004	−174.27466	22.70642
1005	−174.31059	22.70897
1006	−174.34649	22.71185
1007	−174.38235	22.71505
1008	−174.41819	22.71857
1009	−174.45398	22.72242
1010	−174.48974	22.72659
1011	−174.52545	22.73108
1012	−174.56111	22.73589
1013	−174.59672	22.74103
1014	−174.63227	22.74649
1015	−174.66777	22.75227
1016	−174.70321	22.75837
1017	−174.73859	22.76479
1018	−174.77389	22.77154
1019	−174.82672	22.78224
1020	−174.86184	22.78978
1021	−174.89689	22.79763
1022	−174.93185	22.80580
1023	−174.96673	22.81429
1024	−175.00151	22.82308
1025	−175.03621	22.83220
1026	−175.07081	22.84163
1027	−175.10531	22.85136
1028	−175.13972	22.86141
1029	−175.17401	22.87178
1030	−175.20820	22.88244
1031	−175.24228	22.89342
1032	−175.27624	22.90471
1033	−175.31009	22.91630
1034	−175.34381	22.92820
1035	−175.37741	22.94040
1036	−175.41089	22.95290
1037	−175.44423	22.96571
1038	−175.47744	22.97882
1039	−175.51051	22.99222
1040	−175.54345	23.00593
1041	−175.57624	23.01993
1042	−175.60888	23.03422
1043	−175.64138	23.04881
1044	−175.67372	23.06370
1045	−175.70591	23.07887
1046	−175.73795	23.09434
1047	−175.76982	23.11009
1048	−175.81731	23.13426
1049	−175.84877	23.15073
1050	−175.88005	23.16748
1051	−175.91116	23.18451
1052	−175.94209	23.20183
1053	−175.98815	23.22832
1054	−176.01862	23.24633
1055	−176.04891	23.26461
1056	−176.09398	23.29254
1057	−176.12379	23.31150
1058	−176.15339	23.33073
1059	−176.18280	23.35022
1060	−176.21200	23.36998
1061	−176.25542	23.40011
1062	−176.28410	23.42053
1063	−176.31256	23.44120
1064	−176.35486	23.47268
1065	−176.38278	23.49399
1066	−176.41048	23.51554
1067	−176.43795	23.53735
1068	−176.46520	23.55940
1069	−176.50563	23.59294
1070	−176.53229	23.61560
1071	−176.55872	23.63850
1072	−176.59790	23.67330
1073	−176.62372	23.69679
1074	−176.66199	23.73246
1075	−176.68719	23.75653
1076	−176.71213	23.78082
1077	−176.73682	23.80534
1078	−176.76125	23.83007
1079	−176.78542	23.85503
1080	−176.80933	23.88021
1081	−176.83297	23.90559
1082	−176.85635	23.93119
1083	−176.87945	23.95700
1084	−176.90229	23.98302
1085	−176.93602	24.02243
1086	−176.96913	24.06229
1087	−176.99085	24.08911
1088	−177.01229	24.11613
1089	−177.03344	24.14334
1090	−177.06462	24.18451
1091	−177.08505	24.21218
1092	−177.10518	24.24004
1093	−177.12502	24.26808
1094	−177.14456	24.29630

Point No.	Longitude	Latitude
1095	−177.17331	24.33895
1096	−177.19209	24.36760
1097	−177.21058	24.39642
1098	−177.22875	24.42540
1099	−177.25544	24.46918
1100	−177.27284	24.49856
1101	−177.28992	24.52810
1102	−177.30670	24.55779
1103	−177.32315	24.58763
1104	−177.33929	24.61762
1105	−177.36249	24.66210
1106	−177.38606	24.67081
1107	−177.41985	24.68359
1108	−177.45352	24.69667
1109	−177.48704	24.71005
1110	−177.53706	24.73067
1111	−177.57023	24.74479
1112	−177.60325	24.75920
1113	−177.63612	24.77391
1114	−177.66883	24.78891
1115	−177.71760	24.81195
1116	−177.74992	24.82767
1117	−177.78206	24.84367
1118	−177.81404	24.85996
1119	−177.83690	24.87185
1120	−177.88667	24.87745
1121	−177.94111	24.88429
1122	−177.97195	24.88850
1123	−177.99642	24.89200
1124	−178.05062	24.90028
1125	−178.10469	24.90929
1126	−178.14066	24.91569
1127	−178.16577	24.92034
1128	−178.21953	24.93078
1129	−178.27313	24.94194
1130	−178.32655	24.95380
1131	−178.37978	24.96637
1132	−178.43281	24.97965
1133	−178.48563	24.99363
1134	−178.53822	25.00832
1135	−178.59058	25.02370
1136	−178.61445	25.03096
1137	−178.64360	25.04005
1138	−178.67821	25.05115
1139	−178.70077	25.05859
1140	−178.72148	25.06052
1141	−178.75794	25.06420
1142	−178.81257	25.07031
1143	−178.86732	25.07718
1144	−178.90360	25.08214
1145	−178.93984	25.08742
1146	−178.98140	25.09382
1147	−179.01755	25.09959
1148	−179.07166	25.10883
1149	−179.10765	25.11539
1150	−179.14357	25.12227
1151	−179.19731	25.13318
1152	−179.25088	25.14480
1153	−179.28649	25.15295
1154	−179.32201	25.16140
1155	−179.35744	25.17018
1156	−179.38198	25.17642
1157	−179.43516	25.19048
1158	−179.47030	25.20018
1159	−179.50534	25.21020
1160	−179.55770	25.22581
1161	−179.60982	25.24211
1162	−179.66168	25.25911
1163	−179.69610	25.27081
1164	−179.73039	25.28283
1165	−179.76456	25.29514
1166	−179.79860	25.30776
1167	−179.83251	25.32068
1168	−179.86628	25.33389
1169	−179.89991	25.34741
1170	−179.93340	25.36122
1171	−179.96674	25.37533
1172	−180.00000	25.38976

Appendix C to Subpart W of Part 922—Coordinates for the Midway Atoll Special Management Area

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

The boundaries for the areas listed in this appendix, unless otherwise described in this rule, begin at Point 1 as indicated in the particular area's coordinate table and continue to each successive point in numerical order until ending at the last point in the table.

Point No.	Longitude	Latitude
1	−177.31267	27.99792
2	−177.36342	27.99124
3	−177.41762	27.99216
4	−177.47082	27.99962
5	−177.51875	28.01516
6	−177.55393	28.03661
7	−177.59424	28.06817
8	−177.62036	28.10572
9	−177.64395	28.14862
10	−177.65507	28.20134
11	−177.65600	28.21430
12	−177.65028	28.23674
13	−177.65187	28.25877
14	−177.63704	28.29735
15	−177.62519	28.31624
16	−177.60768	28.33804
17	−177.59529	28.36997
18	−177.56544	28.40418
19	−177.52661	28.43628
20	−177.49013	28.46044
21	−177.44568	28.47591
22	−177.42409	28.48231
23	−177.37872	28.48480
24	−177.32412	28.48128
25	−177.26570	28.46492
26	−177.21865	28.44274
27	−177.17255	28.41268
28	−177.13782	28.37680
29	−177.11574	28.33244
30	−177.08945	28.26879
31	−177.08725	28.21427
32	−177.08489	28.17927
33	−177.09363	28.15669
34	−177.10914	28.12595
35	−177.12481	28.09780
36	−177.15060	28.06781
37	−177.18677	28.03986
38	−177.22207	28.02105
39	−177.26492	28.00572
40	−177.31267	27.99792

Appendix D to Subpart W of Part 922—Coordinates for the Special Preservation Areas (SPAs)

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

The boundaries for the areas listed in this appendix, unless otherwise described in this rule, begin at Point 1 as indicated in the particular area's coordinate table and continue to each successive point in numerical order until ending at the last point in the table.

TABLE 1—COORDINATES FOR HŌLANIKŪ (KURE ATOLL) SPA

Point No.	Longitude	Latitude
1	−178.42982	28.39284
2	−178.43641	28.39991
3	−178.44628	28.41516
4	−178.44829	28.43220
5	−178.44120	28.45537
6	−178.43083	28.47814
7	−178.41324	28.49646
8	−178.40698	28.50082
9	−178.39886	28.50648
10	−178.38081	28.51486
11	−178.35703	28.51998
12	−178.33482	28.52195
13	−178.33480	28.52195
14	−178.33096	28.52588
15	−178.32267	28.52960
16	−178.30753	28.54606
17	−178.29651	28.54402
18	−178.28574	28.52279
19	−178.28205	28.50290
20	−178.28203	28.50289
21	−178.27634	28.49938
22	−178.26090	28.48707
23	−178.25026	28.47569
24	−178.24590	28.47103
25	−178.23869	28.45022
26	−178.23126	28.41686
27	−178.23242	28.39706
28	−178.23826	28.37827
29	−178.24572	28.36305
30	−178.24663	28.36228
31	−178.24665	28.36227
32	−178.23880	28.35166
33	−178.22857	28.34386
34	−178.21418	28.34135
35	−178.21125	28.32830
36	−178.21580	28.32098
37	−178.22682	28.31875
38	−178.23360	28.32678
39	−178.26169	28.33216
40	−178.26256	28.34256
41	−178.26685	28.34603
42	−178.26983	28.34386
43	−178.28608	28.33631
44	−178.31541	28.33530
45	−178.36386	28.34022
46	−178.38109	28.34407
47	−178.40622	28.32394
48	−178.42837	28.32125
49	−178.43274	28.36763
50	−178.42982	28.39284

TABLE 2—COORDINATES FOR MANAWAI (PEARL AND HERMES ATOLL) SPA

Point No.	Longitude	Latitude
1	−176.03652	27.75775
2	−176.04088	27.76832
3	−176.04088	27.76832
4	−176.04830	27.77010
5	−176.06549	27.78232
6	−176.03704	27.84094

TABLE 2—COORDINATES FOR MANAWAI (PEARL AND HERMES ATOLL) SPA—Continued

Point No.	Longitude	Latitude
7	−176.03441	27.85558
8	−176.03489	27.87411
9	−176.02724	27.89274
10	−176.01285	27.89991
11	−175.98350	27.91077
12	−175.98347	27.91080
13	−175.97662	27.91971
14	−175.96741	27.92798
15	−175.95689	27.93510
16	−175.94636	27.93942
17	−175.93781	27.94332
18	−175.92692	27.95035
19	−175.90613	27.96355
20	−175.88894	27.97471
21	−175.87548	27.98165
22	−175.86046	27.98780
23	−175.83952	27.99711
24	−175.82333	28.00466
25	−175.81383	28.00844
26	−175.80379	28.01098
27	−175.79318	28.01152
28	−175.78174	28.01106
29	−175.77016	28.01031
30	−175.76421	28.00935
31	−175.76418	28.00935
32	−175.76189	28.01111
33	−175.73451	28.02165
34	−175.71502	28.00762
35	−175.70865	27.98973
36	−175.70863	27.98971
37	−175.69833	27.98219
38	−175.69171	27.97663
39	−175.68857	27.97399
40	−175.68160	27.96778
41	−175.67658	27.96256
42	−175.67240	27.95558
43	−175.66795	27.94587
44	−175.66433	27.93515
45	−175.66239	27.92393
46	−175.66156	27.91419
47	−175.66186	27.89972
48	−175.66410	27.88349
49	−175.66915	27.86916
50	−175.67268	27.85916
51	−175.67530	27.84825
52	−175.67894	27.83626
53	−175.68258	27.82801
54	−175.68899	27.81801
55	−175.69097	27.81125
56	−175.69321	27.80550
57	−175.69331	27.80524
58	−175.69713	27.79526
59	−175.70412	27.78375
60	−175.70943	27.77649
61	−175.71351	27.77101
62	−175.71352	27.77099
63	−175.71049	27.76347
64	−175.71993	27.75551
65	−175.72502	27.75516
66	−175.72955	27.74921
67	−175.73541	27.74444
68	−175.74364	27.73989
69	−175.75468	27.73513
70	−175.76640	27.73259
71	−175.77924	27.73129
72	−175.79543	27.73023
73	−175.81639	27.73105
74	−175.82556	27.73236
75	−175.83310	27.73358
76	−175.83756	27.73456
77	−175.84175	27.73504

TABLE 2—COORDINATES FOR MANAWAI (PEARL AND HERMES ATOLL) SPA—Continued

Point No.	Longitude	Latitude
78	−175.84594	27.73228
79	−175.85277	27.72748
80	−175.86185	27.72274
81	−175.87480	27.71713
82	−175.89491	27.70934
83	−175.91378	27.70257
84	−175.92997	27.69926
85	−175.94532	27.69745
86	−175.95649	27.69766
87	−175.96681	27.69937
88	−175.97685	27.70332
89	−175.98968	27.71026
90	−176.00334	27.72044
91	−176.01701	27.73237
92	−176.02593	27.74182
93	−176.02997	27.74680
94	−176.03178	27.74903
95	−176.03652	27.75775

TABLE 3—COORDINATES FOR KAPOU (LISIANSKI ISLAND) SPA

Point No.	Longitude	Latitude
1	−173.79069	25.94039
2	−173.79506	25.91077
3	−173.79506	25.91077
4	−173.85089	25.87148
5	−173.89161	25.87949
6	−173.94399	25.87998
7	−174.10879	25.96371
8	−174.12000	25.97958
9	−174.14257	26.00021
10	−174.15729	26.04055
11	−174.15482	26.12273
12	−174.13333	26.17497
13	−174.08554	26.21215
14	−174.05059	26.21724
15	−173.98290	26.21243
16	−173.93333	26.18331
17	−173.89656	26.14220
18	−173.86186	26.11938
19	−173.82229	26.08560
20	−173.79999	26.04164
21	−173.76666	26.00831
22	−173.75210	25.98825
23	−173.75283	25.97102
24	−173.79069	25.94039

TABLE 4—COORDINATES FOR KAMOLE (LAYSAN ISLAND) SPA

Point No.	Longitude	Latitude
1	−171.65000	25.71667
2	−171.66667	25.70000
3	−171.70000	25.69167
4	−171.70833	25.70000
5	−171.73333	25.70000
6	−171.75000	25.69167
7	−171.78333	25.69167
8	−171.81667	25.70833
9	−171.85000	25.75833
10	−171.86667	25.79167
11	−171.87500	25.83333
12	−171.85000	25.86667
13	−171.83333	25.88333
14	−171.80000	25.90000
15	−171.76667	25.90000

TABLE 4—COORDINATES FOR KAMOLE (LAYSAN ISLAND) SPA—Continued

Point No.	Longitude	Latitude
16	−171.67500	25.88333
17	−171.62500	25.86667
18	−171.60000	25.83333
19	−171.59167	25.79167
20	−171.60000	25.76667
21	−171.61667	25.74167
22	−171.63333	25.72500
23	−171.65000	25.71667

TABLE 5—COORDINATES FOR KAMOKUOKAMOHOALIʻI (MARO REEF) SPA

Point No.	Longitude	Latitude
1	−170.51714	25.56669
2	−170.40880	25.46669
3	−170.35047	25.37502
4	−170.40880	25.25835
5	−170.42547	25.25002
6	−170.54214	25.25835
7	−170.59214	25.28335
8	−170.65047	25.30002
9	−170.76714	25.31669
10	−170.80047	25.33335
11	−170.80880	25.35835
12	−170.86714	25.39169
13	−170.89214	25.45002
14	−170.90047	25.52502
15	−170.90047	25.55002
16	−170.87547	25.58335
17	−170.80881	25.62502
18	−170.77547	25.63335
19	−170.70880	25.63335
20	−170.68381	25.61669
21	−170.57547	25.59169
22	−170.51714	25.56669

TABLE 6—COORDINATES FOR ʻŌNŪNUI AND ʻŌNUIKI (GARDNER PINNACLES) SPA

Point No.	Longitude	Latitude
1	−167.93207	25.06955
2	−167.92506	25.04175
3	−167.94165	25.01326
4	−167.94166	24.94164
5	−167.92273	24.90603
6	−167.90123	24.88174
7	−167.89166	24.84997
8	−167.89766	24.74763
9	−167.87266	24.62908
10	−167.87360	24.59072
11	−167.86659	24.56315
12	−167.87500	24.49164
13	−167.89063	24.44829
14	−167.90184	24.42844
15	−167.95440	24.41115
16	−167.98968	24.41979
17	−168.00369	24.43801
18	−168.01666	24.50831
19	−168.05000	24.57498
20	−168.08333	24.59164
21	−168.12500	24.69997
22	−168.13333	24.77497
23	−168.15000	24.81664
24	−168.15000	24.88331
25	−168.22500	24.94997
26	−168.26666	25.00831
27	−168.27799	25.06540

TABLE 6—COORDINATES FOR ʻŌNŪNUI AND ʻŌNUIKI (GARDNER PINNACLES) SPA—Continued

Point No.	Longitude	Latitude
28	−168.26794	25.09301
29	−168.25089	25.10375
30	−168.22575	25.16587
31	−168.19632	25.18175
32	−168.14166	25.19164
33	−168.08636	25.19273
34	−168.04128	25.17404
35	−167.98333	25.12498
36	−167.93207	25.06955

TABLE 7—COORDINATES FOR LALO (FRENCH FRIGATE SHOALS) SPA

Point No.	Longitude	Latitude
1	−165.58333	23.99997
2	−165.58333	23.49997
3	−166.75000	23.66664
4	−166.92817	23.68779
5	−166.92756	23.74082
6	−166.92417	24.03651
7	−166.75227	24.03400
8	−166.75000	24.16664
9	−165.58333	23.99997

TABLE 8—COORDINATES FOR MOKUMANAMANA (NECKER) SPA

Point No.	Longitude	Latitude
1	−164.55178	23.64216
2	−164.53515	23.61324
3	−164.53018	23.58826
4	−164.52734	23.55099
5	−164.50977	23.52283
6	−164.45148	23.49085
7	−164.44165	23.48045
8	−164.39327	23.46288
9	−164.36812	23.46322
10	−164.32711	23.44904
11	−164.30462	23.43128
12	−164.28233	23.39686
13	−164.27062	23.35708
14	−164.25021	23.30870
15	−164.25676	23.28970
16	−164.26716	23.27912
17	−164.27585	23.25682
18	−164.29815	23.23537
19	−164.33671	23.23253
20	−164.36910	23.23801
21	−164.39560	23.25619
22	−164.45702	23.26300
23	−164.47063	23.27037
24	−164.48333	23.29164
25	−164.52500	23.30831
26	−164.59613	23.30887
27	−164.63036	23.29942
28	−164.64112	23.30040
29	−164.63917	23.31377
30	−164.62971	23.32387
31	−164.61895	23.32681
32	−164.62156	23.34246
33	−164.60917	23.35387
34	−164.58863	23.40643
35	−164.57950	23.44490
36	−164.60558	23.45599
37	−164.60917	23.46675

TABLE 8—COORDINATES FOR MOKUMANAMANA (NECKER) SPA—Continued

Point No.	Longitude	Latitude
38	−164.62260	23.47995
39	−164.65117	23.49002
40	−164.69597	23.49691
41	−164.73352	23.49654
42	−164.76980	23.48444
43	−164.78209	23.50277
44	−164.79929	23.50920
45	−164.81081	23.52337
46	−164.83255	23.53736
47	−164.84703	23.56743
48	−164.83436	23.60088
49	−164.81981	23.61619
50	−164.80110	23.62243
51	−164.76840	23.62148
52	−164.73854	23.63112
53	−164.68789	23.65058
54	−164.62458	23.66325
55	−164.57582	23.65644
56	−164.55178	23.64216

TABLE 9—COORDINATES FOR NIHOA ISLAND SPA

Point No.	Longitude	Latitude
1	−161.97131	23.09961
2	−161.97057	23.10037
3	−161.96981	23.10112
4	−161.96904	23.10185
5	−161.96825	23.10258
6	−161.96745	23.10329
7	−161.96663	23.10399
8	−161.96580	23.10468
9	−161.96495	23.10535
10	−161.96409	23.10602
11	−161.96322	23.10667
12	−161.96234	23.10731
13	−161.96144	23.10793
14	−161.96053	23.10854
15	−161.95961	23.10914
16	−161.95867	23.10972
17	−161.95773	23.11029
18	−161.95677	23.11085
19	−161.95580	23.11139
20	−161.95482	23.11191
21	−161.95383	23.11242
22	−161.95283	23.11292
23	−161.95182	23.11340
24	−161.95080	23.11387
25	−161.94977	23.11432
26	−161.94874	23.11475
27	−161.94769	23.11517
28	−161.94664	23.11558
29	−161.94557	23.11597
30	−161.94450	23.11634
31	−161.94342	23.11670
32	−161.94234	23.11704
33	−161.94125	23.11736
34	−161.94015	23.11767
35	−161.93905	23.11796
36	−161.93794	23.11824
37	−161.93682	23.11850
38	−161.93570	23.11874
39	−161.93458	23.11897
40	−161.93345	23.11917
41	−161.93232	23.11937
42	−161.93118	23.11954
43	−161.93004	23.11970
44	−161.92890	23.11984
45	−161.92775	23.11996

TABLE 9—COORDINATES FOR NIHOA ISLAND SPA—Continued

Point No.	Longitude	Latitude
46	−161.92661	23.12007
47	−161.92546	23.12016
48	−161.92431	23.12023
49	−161.92315	23.12029
50	−161.92200	23.12032
51	−161.92085	23.12035
52	−161.91969	23.12035
53	−161.91854	23.12034
54	−161.91739	23.12030
55	−161.91624	23.12026
56	−161.91509	23.12019
57	−161.91394	23.12011
58	−161.91279	23.12001
59	−161.91164	23.11989
60	−161.91050	23.11976
61	−161.90936	23.11961
62	−161.90823	23.11944
63	−161.90709	23.11925
64	−161.90597	23.11905
65	−161.90484	23.11883
66	−161.90372	23.11860
67	−161.90261	23.11835
68	−161.90150	23.11808
69	−161.90040	23.11779
70	−161.89930	23.11749
71	−161.89821	23.11717
72	−161.89713	23.11684
73	−161.89605	23.11649
74	−161.89520	23.11619
75	−161.89498	23.11612
76	−161.89401	23.11577
77	−161.89392	23.11574
78	−161.89287	23.11534
79	−161.89182	23.11493
80	−161.89079	23.11450
81	−161.88976	23.11405
82	−161.88874	23.11359
83	−161.88774	23.11311
84	−161.88674	23.11262
85	−161.88575	23.11212
86	−161.88477	23.11160
87	−161.88381	23.11107
88	−161.88285	23.11052
89	−161.88191	23.10995
90	−161.88097	23.10938
91	−161.88005	23.10878
92	−161.87915	23.10818
93	−161.87825	23.10756
94	−161.87737	23.10693
95	−161.87650	23.10628
96	−161.87564	23.10563
97	−161.87480	23.10495
98	−161.87397	23.10427
99	−161.87316	23.10358
100	−161.87236	23.10287
101	−161.87157	23.10215
102	−161.87080	23.10142
103	−161.87004	23.10067
104	−161.86930	23.09992
105	−161.86858	23.09916
106	−161.86787	23.09838
107	−161.86750	23.09796
108	−161.86718	23.09759
109	−161.86650	23.09679
110	−161.86584	23.09599
111	−161.86520	23.09517
112	−161.86457	23.09435
113	−161.86396	23.09351
114	−161.86337	23.09267
115	−161.86279	23.09181
116	−161.86224	23.09095

TABLE 9—COORDINATES FOR NIHOA ISLAND SPA—Continued

Point No.	Longitude	Latitude
117	−161.86170	23.09008
118	−161.86117	23.08920
119	−161.86067	23.08832
120	−161.86018	23.08742
121	−161.85972	23.08653
122	−161.85927	23.08562
123	−161.85884	23.08470
124	−161.85842	23.08378
125	−161.85803	23.08286
126	−161.85766	23.08193
127	−161.85730	23.08099
128	−161.85697	23.08004
129	−161.85665	23.07910
130	−161.85635	23.07814
131	−161.85608	23.07719
132	−161.85582	23.07622
133	−161.85558	23.07526
134	−161.85536	23.07429
135	−161.85516	23.07332
136	−161.85499	23.07235
137	−161.85483	23.07137
138	−161.85469	23.07039
139	−161.85457	23.06941
140	−161.85447	23.06843
141	−161.85439	23.06744
142	−161.85433	23.06645
143	−161.85429	23.06547
144	−161.85428	23.06448
145	−161.85428	23.06349
146	−161.85430	23.06251
147	−161.85434	23.06152
148	−161.85440	23.06053
149	−161.85449	23.05955
150	−161.85459	23.05857
151	−161.85471	23.05758
152	−161.85485	23.05660
153	−161.85502	23.05563
154	−161.85520	23.05465
155	−161.85540	23.05367
156	−161.85562	23.05271
157	−161.85586	23.05174
158	−161.85612	23.05078
159	−161.85641	23.04982
160	−161.85671	23.04887
161	−161.85703	23.04791
162	−161.85736	23.04697
163	−161.85772	23.04603
164	−161.85810	23.04510
165	−161.85850	23.04417
166	−161.85891	23.04324
167	−161.85935	23.04233
168	−161.85980	23.04142
169	−161.86027	23.04051
170	−161.86076	23.03962
171	−161.86126	23.03873
172	−161.86179	23.03785
173	−161.86233	23.03698
174	−161.86289	23.03611
175	−161.86347	23.03525
176	−161.86407	23.03440
177	−161.86468	23.03357
178	−161.86531	23.03274
179	−161.86596	23.03191
180	−161.86662	23.03110
181	−161.86730	23.03031
182	−161.86800	23.02951
183	−161.86871	23.02873
184	−161.86943	23.02796
185	−161.87018	23.02720
186	−161.87094	23.02646
187	−161.87171	23.02572

TABLE 9—COORDINATES FOR NIHOA ISLAND SPA—Continued

Point No.	Longitude	Latitude
188	−161.87250	23.02500
189	−161.87330	23.02428
190	−161.87412	23.02358
191	−161.87495	23.02290
192	−161.87579	23.02222
193	−161.87665	23.02156
194	−161.87752	23.02091
195	−161.87841	23.02027
196	−161.87931	23.01965
197	−161.88022	23.01903
198	−161.88114	23.01844
199	−161.88207	23.01786
200	−161.88302	23.01729
201	−161.88398	23.01673
202	−161.88494	23.01619
203	−161.88592	23.01567
204	−161.88691	23.01515
205	−161.88791	23.01466
206	−161.88892	23.01417
207	−161.88994	23.01371
208	−161.89097	23.01326
209	−161.89201	23.01282
210	−161.89306	23.01240
211	−161.89411	23.01200
212	−161.89517	23.01161
213	−161.89624	23.01123
214	−161.89732	23.01088
215	−161.89841	23.01054
216	−161.89950	23.01021
217	−161.90059	23.00990
218	−161.90170	23.00961
219	−161.90281	23.00934
220	−161.90392	23.00908
221	−161.90504	23.00884
222	−161.90617	23.00861
223	−161.90730	23.00840
224	−161.90843	23.00821
225	−161.90875	23.00816
226	−161.90956	23.00803
227	−161.91070	23.00788
228	−161.91185	23.00774
229	−161.91299	23.00761
230	−161.91366	23.00755
231	−161.91414	23.00751
232	−161.91529	23.00742
233	−161.91644	23.00734
234	−161.91759	23.00729
235	−161.91874	23.00725
236	−161.91990	23.00723
237	−161.92105	23.00723
238	−161.92221	23.00724
239	−161.92336	23.00727
240	−161.92336	23.00727
241	−161.92451	23.00732
242	−161.92566	23.00738
243	−161.92681	23.00747
244	−161.92796	23.00757
245	−161.92910	23.00768
246	−161.93024	23.00782
247	−161.93138	23.00797
248	−161.93252	23.00814
249	−161.93365	23.00832
250	−161.93478	23.00852
251	−161.93590	23.00874
252	−161.93702	23.00898
253	−161.93814	23.00923
254	−161.93924	23.00950
255	−161.94035	23.00978
256	−161.94144	23.01008
257	−161.94253	23.01040
258	−161.94362	23.01074

TABLE 9—COORDINATES FOR NIHOA ISLAND SPA—Continued

Point No.	Longitude	Latitude
259	−161.94469	23.01109
260	−161.94576	23.01146
261	−161.94682	23.01184
262	−161.94788	23.01224
263	−161.94892	23.01265
264	−161.94996	23.01308
265	−161.95098	23.01352
266	−161.95200	23.01399
267	−161.95301	23.01446
268	−161.95401	23.01495
269	−161.95500	23.01546
270	−161.95597	23.01598
271	−161.95694	23.01651
272	−161.95790	23.01706
273	−161.95884	23.01762
274	−161.95977	23.01820
275	−161.96069	23.01879
276	−161.96160	23.01940
277	−161.96172	23.01948
278	−161.96189	23.01960
279	−161.96250	23.02001
280	−161.96338	23.02065
281	−161.96425	23.02129
282	−161.96510	23.02195
283	−161.96595	23.02262
284	−161.96677	23.02330
285	−161.96759	23.02400
286	−161.96839	23.02471
287	−161.96917	23.02543
288	−161.96995	23.02616
289	−161.97070	23.02690
290	−161.97144	23.02765
291	−161.97217	23.02842
292	−161.97287	23.02920
293	−161.97357	23.02998
294	−161.97424	23.03078
295	−161.97490	23.03159
296	−161.97555	23.03240
297	−161.97617	23.03323
298	−161.97678	23.03406
299	−161.97738	23.03491
300	−161.97795	23.03576
301	−161.97851	23.03662
302	−161.97905	23.03749
303	−161.97957	23.03837
304	−161.98008	23.03926
305	−161.98056	23.04015
306	−161.98103	23.04105
307	−161.98148	23.04196
308	−161.98191	23.04287
309	−161.98232	23.04379
310	−161.98271	23.04472
311	−161.98309	23.04565
312	−161.98344	23.04659
313	−161.98378	23.04753
314	−161.98409	23.04848
315	−161.98439	23.04943
316	−161.98467	23.05039
317	−161.98493	23.05135
318	−161.98516	23.05232
319	−161.98538	23.05329
320	−161.98558	23.05426
321	−161.98576	23.05523
322	−161.98592	23.05621
323	−161.98606	23.05719
324	−161.98618	23.05817
325	−161.98628	23.05915
326	−161.98635	23.06013
327	−161.98641	23.06112
328	−161.98645	23.06211
329	−161.98647	23.06309

TABLE 9—COORDINATES FOR NIHOA ISLAND SPA—Continued

Point No.	Longitude	Latitude
330	−161.98647	23.06408
331	−161.98645	23.06507
332	−161.98640	23.06606
333	−161.98634	23.06704
334	−161.98626	23.06803
335	−161.98616	23.06901
336	−161.98603	23.06999
337	−161.98589	23.07097
338	−161.98573	23.07195
339	−161.98555	23.07293
340	−161.98535	23.07390
341	−161.98512	23.07487
342	−161.98488	23.07583
343	−161.98462	23.07680
344	−161.98434	23.07776
345	−161.98404	23.07871
346	−161.98372	23.07966
347	−161.98338	23.08061
348	−161.98302	23.08155
349	−161.98265	23.08248
350	−161.98225	23.08341
351	−161.98183	23.08433
352	−161.98140	23.08525
353	−161.98095	23.08616
354	−161.98048	23.08706
355	−161.97999	23.08796
356	−161.97948	23.08885
357	−161.97896	23.08973
358	−161.97841	23.09060
359	−161.97785	23.09147
360	−161.97727	23.09232
361	−161.97668	23.09317
362	−161.97606	23.09401
363	−161.97543	23.09484
364	−161.97479	23.09566
365	−161.97413	23.09647
366	−161.97345	23.09727
367	−161.97275	23.09806
368	−161.97204	23.09884
369	−161.97131	23.09961

APPENDIX E TO SUBPART W OF PART 922—COORDINATES FOR THE SHIP REPORTING AREA

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

The Reporting Area Outer Boundary is defined by the following geographic coordinates and description as outlined in IMO Resolution MSC.279(85) Appendix 1—Outer Boundary adopted on 1 December 2008 that superseded and amended IMO Resolution MEPC.171(57) adopted on 4 April 2008.

The outer boundary of the CORALSHIPREP reporting area consists of lines connecting the following geographical positions:

Starting at (1) 29° 24′.21 N, 178° 06′.45 W;

A rhumb line to (2) 29° 12′.16 N, 177° 04′.25 W;

Then a rhumb line to (3) 28° 43′.78 N, 175° 13′.76 W;

Then a rhumb line to (4) 27° 00′.28 N, 173° 25′.37 W;

Then a rhumb line to (5) 26° 44′.85 N, 171° 28′.22 W;

Then a rhumb line to (6) 26° 23′.95 N, 170° 20′.25 W;

Then a rhumb line to (7) 25° 56′.49 N, 167° 32′.03 W;

Then a rhumb line to (8) 24° 50′.23 N, 165° 58′.56 W;

Then a rhumb line to (9) 24° 02′.61 N, 161° 42′.30 W;

Then an arc with a 60.25 nm radius centered at (21) 23° 03′.61 N, 161° 55′.22 W;

To a point (10) 22° 04′.59 N, 162° 08′.14 W;

Then a rhumb line to (11) 22° 35′.32 N, 164° 53′.46 W;

Then a rhumb line to (12) 22° 47′.86 N, 166° 40′.44 W;

Then a rhumb line to (13) 24° 03′.30 N, 168° 27′.53 W;

Then a rhumb line to (14) 24° 26′.59 N, 170° 50′.37 W;

Then a rhumb line to (15) 24° 46′.49 N, 171° 52′.87 W;

Then a rhumb line to (16) 25° 07′.23 N, 174° 30′.23 W;

Then a rhumb line to (17) 27° 05′.50 N, 176° 35′.40 W;

Then a rhumb line to (18) 27° 15′.11 N, 177° 35′.26 W;

Then a rhumb line to (19) 27° 26′.10 N, 178° 32′.23 W;

Then an arc with a 60.17 nm radius centered at (20) 28° 25′.23 N, 178° 19′.51 W;

Then to point (1) 29° 24′.21 N, 178° 06′.45 W.

The boundaries for the Inner Reporting Areas listed in this appendix, unless otherwise described in this rule, begin at Point 1 as indicated in the particular area's coordinate table and continue to each successive point in numerical order until ending at the last point in the table.

TABLE 1—COORDINATES OF THE INNER REPORTING AREA BOUNDARY AROUND HŌLANIKŪ (KURE ATOLL), KUAIHELANI (MIDWAY ATOLL), MANAWAI (PEARL AND HERMES ATOLL) AREA TO BE AVOIDED (ATBA)

Point No.	Longitude	Latitude
1	−175.78700	27.01217
2	−175.87900	27.01133
3	−175.96933	27.01817
4	−176.05883	27.03317
5	−176.14683	27.05567
6	−176.23183	27.08533
7	−176.31317	27.12283
8	−176.39000	27.16633
9	−176.46233	27.21700
10	−176.47833	27.22950
11	−176.49783	27.24600
12	−177.55517	27.41583
13	−178.49833	27.59783
14	−178.56550	27.61067
15	−178.62200	27.62550
16	−178.67750	27.64333
17	−178.73167	27.66417
18	−178.78417	27.68800
19	−178.83500	27.71483
20	−178.88383	27.74433
21	−178.93050	27.77650

TABLE 1—COORDINATES OF THE INNER REPORTING AREA BOUNDARY AROUND HŌLANIKŪ (KURE ATOLL), KUAIHELANI (MIDWAY ATOLL), MANAWAI (PEARL AND HERMES ATOLL) AREA TO BE AVOIDED (ATBA)—Continued

Point No.	Longitude	Latitude
22	−178.97483	27.81117
23	−179.01667	27.84817
24	−179.05650	27.88700
25	−179.09350	27.92817
26	−179.12683	27.97150
27	−179.15783	28.01683
28	−179.18500	28.06350
29	−179.20883	28.11183
30	−179.22917	28.16117
31	−179.24583	28.21167
32	−179.25900	28.26300
33	−179.26850	28.31517
34	−179.27417	28.36733
35	−179.27600	28.41200
36	−179.27617	28.42000
37	−179.27600	28.43017
38	−179.27400	28.47250
39	−179.26833	28.52483
40	−179.25900	28.57683
41	−179.24583	28.62817
42	−179.22900	28.67850
43	−179.20900	28.72800
44	−179.18550	28.77633
45	−179.15867	28.82317
46	−179.12833	28.86850
47	−179.09500	28.91200
48	−179.05850	28.95350
49	−179.01917	28.99300
50	−178.97700	29.03017
51	−178.93217	29.06500
52	−178.88500	29.09717
53	−178.83550	29.12667
54	−178.78400	29.15350
55	−178.73067	29.17733
56	−178.67567	29.19817
57	−178.61933	29.21583
58	−178.56183	29.23033
59	−178.50350	29.24167
60	−178.44433	29.24983
61	−178.38467	29.25467
62	−178.32483	29.25600
63	−178.26500	29.25417
64	−178.20533	29.24900
65	−178.14633	29.24050
66	−177.20117	29.05783
67	−177.12150	29.04250
68	−175.59117	28.64933
69	−175.57250	28.64450
70	−175.32900	28.58183
71	−175.17750	28.43733
72	−175.14917	28.41017
73	−175.15067	28.40883
74	−175.08183	28.33483
75	−175.03200	28.26750
76	−174.98883	28.19633
77	−174.95383	28.12150
78	−174.92800	28.04383
79	−174.91033	27.96400
80	−174.90083	27.88350
81	−174.90083	27.80200
82	−174.91033	27.72133
83	−174.92850	27.64133
84	−174.95533	27.56350
85	−174.99050	27.48833
86	−175.03383	27.41667
87	−175.08450	27.34883
88	−175.14317	27.28633

TABLE 1—COORDINATES OF THE INNER REPORTING AREA BOUNDARY AROUND HŌLANIKŪ (KURE ATOLL), KUAIHELANI (MIDWAY ATOLL), MANAWAI (PEARL AND HERMES ATOLL) AREA TO BE AVOIDED (ATBA)—Continued

Point No.	Longitude	Latitude
89	−175.20783	27.22883
90	−175.27783	27.17650
91	−175.35417	27.13133
92	−175.43483	27.09283
93	−175.51917	27.06100
94	−175.60667	27.03700
95	−175.69633	27.02150
96	−175.78700	27.01217

TABLE 2—COORDINATES FOR THE INNER REPORTING AREA BOUNDARY AROUND ʻŌNŪNUI AND ʻŌNUIKI (GARDNER PINNACLES), LALO (FRENCH FRIGATE SHOALS), MOKUMANAMANA (NECKER) ATBA

Point No.	Longitude	Latitude
1	−168.00150	25.83633
2	−167.87767	25.82733
3	−167.87750	25.82833
4	−167.80583	25.81650
5	−167.61200	25.78483
6	−167.44133	25.66400
7	−167.32983	25.58500
8	−166.75000	25.17383
9	−166.05600	24.68183
10	−165.58317	24.59400
11	−164.51867	24.39633
12	−164.51900	24.39317
13	−164.49567	24.38850
14	−164.40867	24.36417
15	−164.32317	24.33500
16	−164.24267	24.29583
17	−164.16617	24.24983
18	−164.09483	24.19767
19	−164.03000	24.13833
20	−163.97050	24.07467
21	−163.92033	24.00450
22	−163.87650	23.93083
23	−163.84267	23.85283
24	−163.81633	23.77217
25	−163.79983	23.68950
26	−163.79267	23.60567
27	−163.79333	23.52117
28	−163.80467	23.43783
29	−163.82500	23.35567
30	−163.85233	23.27550
31	−163.89117	23.19933
32	−163.93583	23.12567
33	−163.98967	23.05767
34	−164.05017	22.99417
35	−164.11833	22.93783
36	−164.19150	22.88700
37	−164.26967	22.84333
38	−164.35267	22.80800
39	−164.43800	22.77883
40	−164.52667	22.75817
41	−164.61717	22.74717
42	−164.70850	22.74417
43	−164.79983	22.74867
44	−164.82533	22.75183
45	−164.85800	22.75650
46	−164.85883	22.75283
47	−165.58317	22.83767
48	−166.32717	22.92500

TABLE 2—COORDINATES FOR THE INNER REPORTING AREA BOUNDARY AROUND ʻŌNŪNUI AND ʻŌNUIKI (GARDNER PINNACLES), LALO (FRENCH FRIGATE SHOALS), MOKUMANAMANA (NECKER) ATBA—Continued

Point No.	Longitude	Latitude
49	−166.38867	22.93217
50	−166.60000	22.95683
51	−166.75000	23.06250
52	−166.79083	23.09133
53	−168.38100	24.21167
54	−168.37967	24.21467
55	−168.45467	24.26750
56	−168.52767	24.31917
57	−168.59917	24.37117
58	−168.66567	24.42850
59	−168.72583	24.49183
60	−168.77717	24.56117
61	−168.82150	24.63433
62	−168.85767	24.71133
63	−168.88533	24.79083
64	−168.90467	24.87233
65	−168.91367	24.95533
66	−168.91583	25.03867
67	−168.90717	25.12167
68	−168.88867	25.20317
69	−168.86267	25.28317
70	−168.82667	25.35950
71	−168.78217	25.43233
72	−168.73100	25.50150
73	−168.67367	25.56483
74	−168.60867	25.62283
75	−168.53733	25.67483
76	−168.46133	25.72067
77	−168.38033	25.75950
78	−168.29600	25.79050
79	−168.20783	25.81317
80	−168.11817	25.82867
81	−168.02700	25.83517
82	−168.00150	25.83633

TABLE 3—COORDINATES FOR INNER REPORTING AREA BOUNDARY AROUND THE KAPOU (LISIANSKI ISLAND), KAMOLE (LAYSAN ISLAND), KAMOKUOKAMOHOALIʻI (MARO REEF), RAITA BANK ATBA

Point No.	Longitude	Latitude
1	−173.56150	26.85217
2	−173.51450	26.84583
3	−173.51317	26.84817
4	−171.62833	26.60000
5	−171.56400	26.59150
6	−171.51400	26.58500
7	−171.45833	26.56783
8	−171.41933	26.55583
9	−170.38400	26.23767
10	−169.81600	26.14483
11	−169.81717	26.13933
12	−169.76383	26.12700
13	−169.67617	26.10050
14	−169.59400	26.06617
15	−169.51517	26.02517
16	−169.44083	25.97750
17	−169.37233	25.92200
18	−169.31000	25.86117
19	−169.25317	25.79633
20	−169.20567	25.72567
21	−169.16550	25.65083
22	−169.13467	25.57283

TABLE 3—COORDINATES FOR INNER REPORTING AREA BOUNDARY AROUND THE KAPOU (LISIANSKI ISLAND), KAMOLE (LAYSAN ISLAND), KAMOKUOKAMOHOALIʻI (MARO REEF), RAITA BANK ATBA—Continued

Point No.	Longitude	Latitude
23	−169.11267	25.49233
24	−169.09883	25.41017
25	−169.09400	25.32717
26	−169.09883	25.24417
27	−169.11100	25.16150
28	−169.13367	25.08083
29	−169.16600	25.00283
30	−169.20583	24.92767
31	−169.25233	24.85583
32	−169.30800	24.78950
33	−169.37033	24.72817
34	−169.43850	24.67233
35	−169.51300	24.62367
36	−169.59400	24.58333
37	−169.67767	24.55033
38	−169.76467	24.52233
39	−169.85133	24.50517
40	−169.94217	24.49467
41	−170.03017	24.49267
42	−170.07617	24.49350
43	−170.73983	24.59617
44	−170.79300	24.60483
45	−170.83950	24.61967
46	−170.86950	24.62933
47	−171.83650	24.93717
48	−174.41400	25.27683
49	−174.64083	25.49267
50	−174.70050	25.55467
51	−174.75333	25.62217
52	−174.79733	25.69467
53	−174.83417	25.77050
54	−174.86283	25.84883
55	−174.88183	25.93000
56	−174.89117	26.01183
57	−174.89350	26.09450
58	−174.88450	26.17650
59	−174.86800	26.25767
60	−174.84283	26.33667
61	−174.80733	26.41250
62	−174.76567	26.48583
63	−174.71600	26.55433
64	−174.65817	26.61850
65	−174.59383	26.67667
66	−174.52383	26.72917
67	−174.44783	26.77483
68	−174.36817	26.81500
69	−174.28383	26.84650
70	−174.19650	26.87000
71	−174.10717	26.88683
72	−174.01633	26.89567
73	−173.92467	26.89567
74	−173.83367	26.88817
75	−173.74300	26.87600
76	−173.65233	26.86417
77	−173.56150	26.85217

TABLE 4—COORDINATES FOR THE INNER REPORTING AREA BOUNDARY AROUND NIHOA ATBA

Point No.	Longitude	Latitude
1	−161.78483	23.88033
2	−161.74450	23.87317
3	−161.74233	23.88033
4	−161.68667	23.86833

TABLE 4—COORDINATES FOR THE INNER REPORTING AREA BOUNDARY AROUND NIHOA ATBA—Continued

Point No.	Longitude	Latitude
5	−161.63200	23.85300
6	−161.57850	23.83467
7	−161.52633	23.81317
8	−161.47583	23.78883
9	−161.42700	23.76150
10	−161.38017	23.73133
11	−161.33550	23.69867
12	−161.29333	23.66333
13	−161.25350	23.62567
14	−161.21650	23.58567
15	−161.18217	23.54367
16	−161.15083	23.49983
17	−161.12250	23.45417
18	−161.09750	23.40700
19	−161.07567	23.35850
20	−161.05717	23.30867
21	−161.04217	23.25800
22	−161.03067	23.20650
23	−161.02250	23.15450
24	−161.01817	23.10217
25	−161.01717	23.04950
26	−161.01983	22.99700
27	−161.02617	22.94483
28	−161.03583	22.89300
29	−161.04917	22.84183
30	−161.06583	22.79167
31	−161.08583	22.74250
32	−161.10900	22.69450
33	−161.13550	22.64800
34	−161.16500	22.60317
35	−161.19750	22.56017
36	−161.23283	22.51900
37	−161.27083	22.48017
38	−161.31150	22.44350
39	−161.35433	22.40933
40	−161.39950	22.37767
41	−161.44667	22.34867
42	−161.49567	22.32250
43	−161.54633	22.29917
44	−161.59833	22.27883
45	−161.65167	22.26167
46	−161.70617	22.24750

TABLE 4—COORDINATES FOR THE INNER REPORTING AREA BOUNDARY AROUND NIHOA ATBA—Continued

Point No.	Longitude	Latitude
47	−161.76133	22.23667
48	−161.81717	22.22883
49	−161.87350	22.22450
50	−161.93000	22.22333
51	−161.98633	22.22550
52	−162.04250	22.23083
53	−162.09083	22.23850
54	−162.09817	22.23950
55	−162.11467	22.24317
56	−162.20300	22.26450
57	−162.28850	22.29500
58	−162.37000	22.33283
59	−162.44733	22.37883
60	−162.51917	22.43133
61	−162.58483	22.49017
62	−162.64350	22.55467
63	−162.69533	22.62450
64	−162.73900	22.69883
65	−162.77450	22.77717
66	−162.80083	22.85800
67	−162.81817	22.94100
68	−162.82633	23.02500
69	−162.82483	23.10967
70	−162.81483	23.19350
71	−162.79500	23.27617
72	−162.76633	23.35600
73	−162.72917	23.43367
74	−162.68350	23.50667
75	−162.63050	23.57517
76	−162.56967	23.63767
77	−162.50300	23.69483
78	−162.42983	23.74533
79	−162.35183	23.78933
80	−162.26933	23.82583
81	−162.18317	23.85400
82	−162.09383	23.87400
83	−162.00417	23.88567
84	−161.91250	23.88933
85	−161.82133	23.88483
86	−161.78483	23.88033

APPENDIX F TO SUBPART W OF PART 922—IMO STANDARD REPORTING FORMAT AND DATA SYNTAX FOR SHIP REPORTING SYSTEM

Telegraphy	Function	Information required	Example field text
	System identifier	CORAL SHIPREP //	CORAL SHIPREP //
A	Ship	Vessel name/call sign/flag/IMO number/Federal documentation or State registration number if applicable //.	A/OCEAN VOYAGER/C5FU8/BAHAMAS/IMO 9359165/.
B	Date, time (UTC), and month of entry.	A 6-digit group giving day of month (first two digits), hours and minutes (last four digits) in coordinated universal time, suffixed by the letter Z (indicating time in UTC), and three letters indicating month //.	B/271107Z DEC//.
C	Position	A 4-digit group giving latitude in degrees and minutes, suffixed with the letter N (indicating north), followed by a single /, and a five-digit group giving longitude in degrees and minutes, suffixed with the letter W (indicating west) // [Report in the World Geodetic System 1984 Datum (WGS–84)].	C/2728N/17356W//.
E	True course	3-digit number indicating true course //	E/180//.
F	Speed in knots and tenths	3-digit group indicating knots decimal tenths //	F/20.5//.
I	Destination and estimated time of arrival.	Name of port city/country/estimated arrival date and time group expressed as in (B) //.	I/SEATTLE/USA/311230Z DEC//.

Telegraphy	Function	Information required	Example field text
	System identifier	CORAL SHIPREP //	CORAL SHIPREP //
L	Intended route through the re- porting area.	Route information should be reported as a direct rhumbline (RL) course through the reporting area and intended speed (expressed as in E and F) or a series of waypoints (WP). Each waypoint entry should be reported as latitude and longitude, expressed as in (C), and intended speed be- tween waypoints (as in F) // (Note: As many ''L'' lines as needed may be used to describe the vessel's intended route.).	L/RL/215/20.5// -OR- L/WP/2734N/17352W/ 20.5// L/WP/2641N/17413W/ 20.5// L/WP/2605N/17530W/ 20.5//.
O	Vessel draft in meters	Maximum present static draft reported in meters decimal centimeters //.	O/11.50//.
P	Categories of Hazardous Cargoes*.	Classification Code (e.g., IMDG, IBC, IGC, INF) / and all corresponding Categories of Hazardous Cargoes (delimited by commas) // Note: If necessary, use a separate ''P'' line for each type of Classification Code.	P/IMDG/1.4G,2.1,2.2,2.3, 3,4.1,6.1,8,9//.
Q	Defects or deficiencies**	Brief details of defects, damage, deficiencies or limitations that restrict maneuverability or impair normal navigation // (If none, enter the number zero.).	Q/Include details as required//.
R	Pollution incident or goods lost overboard**.	Description of pollution incident or goods lost overboard with- in the Monument, the Reporting Area, or the U.S. Exclusive Economic Zone// (If none, enter the number zero.).	R/0//.
T	Contact information of ship's agent or owner.	Name/address/and phone number of ship's agent or owner //.	T/JOHN DOE/GENERIC SHIPPING COMPANY INC, 6101 ACME ROAD, ROOM 123, CITY, STATE, COUNTRY 12345/123–123–1234//.
U	Ship size (length overall and gross tonnage) and type.	Length overall reported in meters decimal centimeters/number of gross tons/type of ship (e.g., bulk carrier, chemical tanker, oil tanker, gas tanker, container, general cargo, fishing vessel, research, passenger, OBO, RORO) //.	U/294.14/54592/CONTAINER SHIP//.
W	Persons	Total number of persons on board //	W/15//.

Table Notes:

*Categories of hazardous cargoes means goods classified in the International Maritime Dangerous Goods (IMDG) Code; substances classified in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) and chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code); oils as defined in MARPOL Annex I; noxious liquid substances as defined in MARPOL Annex II; harmful substances as defined in MARPOL Annex III; and radioactive materials specified in the Code for the Safe Carriage of the Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes in Flasks on Board Ships (INF Code).

**In accordance with the provisions of the MARPOL Convention, ships must report information relating to defects, damage, deficiencies or other limitations as well as, if necessary, information relating to pollution incidents or loss of cargo. Safety related reports must be provided to CORAL SHIPREP without delay should a ship suffer damage, failure or breakdown affecting the safety of the ship (Item Q), or if a ship makes a marked deviation from a route, course or speed previously advised (Item L). Pollution or cargo lost overboard must be reported without delay (Item R).

PART 923—COASTAL ZONE MANAGEMENT PROGRAM REGULATIONS

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AUTHORITY: 16 U.S.C. 1451 *et seq.;* 31 U.S.C. 6506; 42 U.S.C. 3334; Sections 923.92 and 923.94 are also issued under E.O. 12372, July 14, 1982, 3 CFR 1982 Comp. p. 197, as amended by E.O. 12416, April 8, 1983, 3 CFR 1983 Comp. p. 186.

SOURCE: 44 FR 18595, Mar. 28, 1979, unless otherwise noted.

Subpart A—General

SOURCE: 61 FR 33805, June 28, 1996, unless otherwise noted.

§ 923.1 Purpose and scope.

(a) The regulations in this part set forth the requirements for State coastal management program approval by the Assistant Administrator for Ocean Services and Coastal Zone Management pursuant to the Coastal Zone Management Act of 1972, as amended (hereafter, the Act); the grant application procedures for program funds; conditions under which grants may be terminated; and requirements for review of approved management programs.

(b) Sections 306 and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. The specifics of these requirements are set forth below under the following headings: General Requirements; Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; and Coordination, Public Involvement

and National Interest. All relevant sections of the Act are dealt with under one of these groupings, but not necessarily in the order in which they appear in the Act.

(c) In summary, the requirements for program approval are that a State develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act as requiring management or protection by the State;

(2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable;

(3) Determines specific use and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements;

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it. In arriving at these elements of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate, and Federal agencies;

(7) Provides for public participation in permitting processes, consistency determinations, and other similar decisions;

(8) Provides a mechanism to ensure that all state agencies will adhere to the program; and

(9) Contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the state required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

§ 923.2 Definitions.

(a) The term *Act* means the Coastal Zone Management Act of 1972, as amended.

(b) The term *Secretary* means the Secretary of Commerce and his/her designee.

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

(d)(1) The term *relevant Federal agencies* means those Federal agencies with programs, activities, projects, regulatory, financing, or other assistance responsibilities in the following fields which could impact or affect a State's coastal zone:

(i) Energy production or transmission,

(ii) Recreation of a more than local nature,

(iii) Transportation,

(iv) Production of food and fiber,

(v) Preservation of life and property,

(vi) National defense,

(vii) Historic, cultural, aesthetic, and conservation values,

(viii) Mineral resources and extraction, and

(ix) Pollution abatement and control.

(2) The following are defined as relevant Federal agencies: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Transportation; Environmental Protection Agency; Federal Energy Regulatory Commission; General Services Administration, Nuclear Regulatory Commission; Federal Emergency Management Agency.

(e) The term *Federal agencies principally affected* means the same as ''relevant Federal agencies.'' The Assistant Administrator may include other agencies for purposes of reviewing the management program and environmental impact statement.

(f) The term *Coastal State* means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of America, Long Island Sound, or one or more of the Great Lakes. Pursuant to section 304(3) of the Act, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa. Pursuant to section

703 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the term also includes the Northern Marianas.

(g) The term *management program* includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, including an articulation of enforceable policies and citation of authorities providing this enforceability, prepared and adopted by the State in accordance with the provisions of this Act and this part, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(h) The following terms, as used in these regulations, have the same definition as provided in section 304 of the Act:

(1) Coastal zone;
(2) Coastal waters;
(3) Enforceable policy;
(4) Estuary;
(5) Land use; and
(6) Water use.

(i) The term *grant* means a financial assistance instrument and refers to both grants and cooperative agreements.

[61 FR 33805, June 28, 1996, as amended at 90 FR 38002, Aug. 7, 2025]

§ 923.3 General requirements.

(a) The management program must be developed and adopted in accordance with the requirements of the Act and this part, after notice, and the opportunity for full participation by relevant Federal and State agencies, local governments, regional organizations, port authorities, and other interested parties and persons, and be adequate to carry out the purposes of the Act and be consistent with the national policy set forth in section 303 of the Act.

(b) The management program must provide for the management of those land and water uses having a direct and significant impact on coastal waters and those geographic areas which are likely to be affected by or vulnerable to sea level rise. The program must include provisions to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the State's coastal zone a unique, vulnerable, or valuable area.

(c) The management program must contain a broad class of policies for each of the following areas: resource protection, management of coastal development, and simplification of governmental processes. These three broad classes must include specific policies that provide the framework for the exercise of various management techniques and authorities governing coastal resources, uses, and areas. The three classes must include policies that address uses of or impacts on wetlands and floodplains within the State's coastal zone, and that minimize the destruction, loss or degradation of wetlands and preserve and enhance their natural values in accordance with the purposes of Executive Order 11990, pertaining to wetlands. These policies also must reduce risks of flood loss, minimize the impact of floods on human safety, health and welfare, and preserve the natural, beneficial values served by floodplains, in accordance with the purposes of Executive Order 11988, pertaining to floodplains.

(d) The policies in the program must be appropriate to the nature and degree of management needed for uses, areas, and resources identified as subject to the program.

(e) The policies, standards, objectives, criteria, and procedures by which program decisions will be made must provide:

(1) A clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and

(2) A clear sense of direction and predictability for decisionmakers who must take actions pursuant to or consistent with the management program.

Subpart B—Uses Subject to Management

SOURCE: 61 FR 33806, June 28, 1996, unless otherwise noted.

§ 923.10 General.

This subpart sets forth the requirements for management program approvability with respect to land and water uses which, because of their direct and significant impacts on coastal

waters or those geographic areas likely to be affected by or vulnerable to sea level rise, are subject to the terms of the management program. This subpart deals in full with the following subsections of the Act: 306(d)(1)(B), Uses Subject to the Management Program, 306(d)(2)(H), Energy Facility Planning, and 306(d)(12)(B), Uses of Regional Benefit.

§ 923.11 Uses subject to management.

(a)(1) The management program for each coastal state must include a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(2) The management program must identify those land and water uses that will be subject to the terms of the management program. These uses shall be those with direct and significant impacts on coastal waters or on geographic areas likely to be affected by or vulnerable to sea level rise.

(3) The management program must explain how those uses identified in paragraph (a)(2) of this section will be managed. The management program must also contain those enforceable policies, legal authorities, performance standards or other techniques or procedures that will govern whether and how uses will be allowed, conditioned, modified, encouraged or prohibited.

(b) In identifying uses and their appropriate management, a State should analyze the quality, location, distribution and demand for the natural and man-made resources of their coastal zone, and should consider potential individual and cumulative impacts of uses on coastal waters.

(c) States should utilize the following types of analyses:

(1) Capability and suitability of resources to support existing or projected uses;

(2) Environmental impacts on coastal resources;

(3) Compatibility of various uses with adjacent uses or resources;

(4) Evaluation of inland and other location alternatives; and

(5) Water dependency of various uses and other social and economic considerations.

(d) Examination of the following factors is suggested:

(1) Air and water quality;

(2) Historic, cultural and esthetic resources where coastal development is likely to affect these resources;

(3) Open space or recreational uses of the shoreline where increased access to the shorefront is a particularly important concern;

(4) Floral and faunal communities where loss of living marine resources or threats to endangered or threatened coastal species are particularly important concerns.

(5) Information on the impacts of global warming and resultant sea level rise on natural resources such as beaches, dunes, estuaries, and wetlands, on salinization of drinking water supplies, and on properties, infrastructure and public works.

§ 923.12 Uses of regional benefit.

The management program must contain a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit. To this end, the management program must:

(a) Identify what constitutes uses of regional benefit; and

(b) Identify and utilize any one or a combination of methods, consistent with the control techniques employed by the State, to assure local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

§ 923.13 Energy facility planning process.

The management program must contain a planning process for energy facilities likely to be located in or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities. (See subsection 304(5) of the Act.) This process must contain the following elements:

(a) Identification of energy facilities which are likely to locate in, or which may significantly affect, a State's coastal zone;

(b) Procedures for assessing the suitability of sites for such facilities designed to evaluate, to the extent practicable, the costs and benefits of proposed and alternative sites in terms of State and national interests as well as local concerns;

(c) Articulation and identification of enforceable State policies, authorities and techniques for managing energy facilities and their impacts; and

(d) Identification of how interested and affected public and private parties will be involved in the planning process.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

Subpart C—Special Management Areas

SOURCE: 61 FR 33806, June 28, 1996, unless otherwise noted.

§ 923.20 General.

(a) This subpart sets forth the requirements for management program approvability with respect to areas of particular concern because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system which is part of the management program. As a result, these areas require special management attention within the terms of the State's overall coastal program. This special management may include regulatory or permit requirements applicable only to the area of particular concern. It also may include increased intergovernmental coordination, technical, assistance, enhanced public expenditures, or additional public services and maintenance to a designated area. This subpart deals with the following subsections of the Act: 306(d)(2)(C)—Geographic Areas of Particular Concern; 306(d)(2)(E)—Guidelines on Priorities of Uses; 306(d)(2)(G)—Shorefront Access and protection Planning; 306(d)(2)(I)—Shoreline Erosion/Mitigation Planning; and 306(d)(9)—Areas for Preservation and Restoration.

(b) The importance of designating areas of particular concern for management purposes and the number and type of areas that should be designated is directly related to the degree of comprehensive controls applied throughout a State's coastal zone. Where a State's general coastal management policies and authorities address state and national concerns comprehensively and are specific with respect to particular resources and uses, relatively less emphasis need be placed on designation of areas of particular concern. Where these policies are limited and non-specific, greater emphasis should be placed on areas of particular concern to assure effective management and an adequate degree of program specificity.

§ 923.21 Areas of particular concern.

(a) The management program must include an inventory and designation of areas of particular concern within the coastal zone, on a generic and/or site-specific basis, and broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(b) In developing criteria for inventorying and designating areas of particular concern. States must consider whether the following represent areas of concern requiring special management:

(1) Areas of unique, scarce, fragile or vulnerable natural habitat; unique or fragile, physical, figuration (as, for example, Niagara Falls); historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National Register of Historic Places.);

(2) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and endangered species and the various trophic levels in the food web critical to their well-being;

(3) Areas of substantial recreational value and/or opportunity;

(4) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(5) Areas of unique hydrologic, geologic or topographic significance for industrial or commercial development or for dredge spoil disposal;

(6) Areas or urban concentration where shoreline utilization and water uses are highly competitive;

(7) Areas where, if development were permitted, it might be subject to significant hazard due to storms, slides, floods, erosion, settlement, salt water intrusion, and sea level rise;

(8) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

(c) Where states will involve local governments, other state agencies, federal agencies and/or the public in the process of designating areas of particular concern, States must provide guidelines to those who will be involved in the designation process. These guidelines shall contain the purposes, criteria, and procedures for nominating areas of particular concern.

(d) In identifying areas of concern by location (if site specific) or category of coastal resources (if generic), the program must contain sufficient detail to enable affected landowners, governmental entities and the public to determine with reasonable certainty whether a given area is designated.

(e) In identifying areas of concern, the program must describe the nature of the concern and the basis on which designations were made.

(f) The management program must describe how the management program addresses and resolves the concerns for which areas are designated; and

(g) The management program must provide guidelines regarding priorities of uses in these areas, including guidelines on uses of lowest priority.

§ 923.22 Areas for preservation or restoration.

The management program must include procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical or esthetic values, and the criteria for such designations.

§ 923.23 Other areas of particular concern.

(a) The management program may, but is not required to, designate specific areas known to require additional or special management, but for which additional management techniques have not been developed or necessary authorities have not been established at the time of program approval. If a management program includes such designations, the basis for designation must be clearly stated, and a reasonable time frame and procedures must be set forth for developing and implementing appropriate management techniques. These procedures must provide for the development of those items required in § 923.21. The management program must identify an agency (or agencies) capable of formulating the necessary management policies and techniques.

(b) The management program must meet the requirements of § 923.22 for containing procedures for designating areas for preservation or restoration. The management program may include procedures and criteria for designating areas of particular concern for other than preservation or restoration purposes after program approval.

§ 923.24 Shorefront access and protection planning.

(a) The management program must include a definition of the term ''beach'' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

(b) The basic purpose in focusing special planning attention on shorefront access and protection is to provide public beaches and other public coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value with special management attention within the purview of the State's management program. This special management attention may be achieved by designating public shorefront areas requiring additional access or protection as areas of particular concern pursuant to § 923.21 or areas for preservation or restoration pursuant to § 923.22.

(c) The management program must contain a procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.

(d) The management program must contain a definition of the term ''beach'' that is the broadest definition allowable under state law or constitutional provisions, and an identification of public areas meeting that definition.

(e) The management program must contain an identification and description of enforceable policies, legal authorities, funding program and other techniques that will be used to provide such shorefront access and protection that the State's planning process indicates is necessary.

§ 923.25 Shoreline erosion/mitigation planning.

(a) The management program must include a planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, including potential impacts of sea level rise, and to restore areas adversely affected by such erosion. This planning process may be within the broader context of coastal hazard mitigation planning.

(b) The basic purpose in developing this planning process is to give special attention to erosion issues. This special management attention may be achieved by designating erosion areas as areas of particular concern pursuant to § 923.21 or as areas for preservation or restoration pursuant to § 923.22.

(c) The management program must include an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion, including potential impacts of sea level rise, as the state's planning process indicates is necessary.

[61 FR 33806, June 28, 1996; 61 FR 36965, July 15, 1996]

Subpart D—Boundaries

SOURCE: 61 FR 33808, June 28, 1996, unless otherwise noted.

§ 923.30 General.

This subpart sets forth the requirements for management program approvability with respect to boundaries of the coastal zone. There are four elements to a State's boundary: the inland boundary, the seaward boundary, areas excluded from the boundary, and, in most cases, interstate boundaries. Specific requirements with respect to procedures for determining and identifying these boundary elements are discussed in the sections of this subpart that follow.

§ 923.31 Inland boundary.

(a) The inland boundary of a State's coastal zone must include:

(1) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, or are likely to be affected by or vulnerable to sea level rise, pursuant to section 923.11 of these regulations.

(2) Those special management areas identified pursuant to § 923.21;

(3) Waters under saline influence—waters containing a significant quantity of seawater, as defined by and uniformly applied by the State;

(4) Salt marshes and wetlands—Areas subject to regular inundation of tidal salt (or Great Lakes) waters which contain marsh flora typical of the region;

(5) Beaches—The area affected by wave action directly from the sea. Examples are sandy beaches and rocky areas usually to the vegetation line;

(6) Transitional and intertidal areas-Areas subject to coastal storm surge, and areas containing vegetation that is salt tolerant and survives because of conditions associated with proximity to coastal waters. Transitional and intertidal areas also include dunes and rocky shores to the point of upland vegetation;

(7) Islands—Bodies of land surrounded by water on all sides. Islands must be included in their entirety, except when uses of interior portions of islands do not cause direct and significant impacts.

(8) The inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether property or an activity is located within the management area.

States must be able to advise interested parties whether they are subject to the terms of the management program within, at a maximum, 30 days of receipt of an inquiry. An inland coastal zone boundary defined in terms of political jurisdiction (e.g., county, township or municipal lines) cultural features (e.g., highways, railroads), planning areas (e.g., regional agency jurisdictions, census enumeration districts), or a uniform setback line is acceptable so long as it includes the areas indentified.

(b) The inland boundary of a State's coastal zone may include:

(1) Watersheds—A state may determine some uses within entire watersheds which have direct and significant impact on coastal waters or are likely to be affected by or vulnerable to sea level rise. In such cases it may be appropriate to define the coastal zone as including these watersheds.

(2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters or areas that are likely to be affected by or vulnerable to sea level rise.

(3) Indian lands not held in trust by the Federal Government.

(c) In many urban areas or where the shoreline has been modified extensively, natural system relationships between land and water may be extremely difficult, if not, impossible, to define in terms of direct and significant impacts. Two activities that States should consider as causing direct and significant impacts on coastal waters in urban areas are sewage discharges and urban runoff. In addition, States should consider dependency of uses on water access and visual relationships as factors appropriate for the determination of the inland boundary in highly urbanized areas.

§ 923.32 Lakeward or seaward boundary.

(a)(1) For states adjoining the Great Lakes, the lakeward boundary of the State's coastal zone is the international boundary with Canada or the boundaries with adjacent states. For states adjacent to the Atlantic or Pacific Ocean, or the Gulf of America, the seaward boundary is the outer limit of state title and ownership under the Submerged Lands Act (48 U.S.C. 1301 *et seq.*), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 10, 1963, (48 U.S.C. 1705, as applicable).

(2) The requirement for defining the seaward boundary of a State's coastal zone can be met by a simple restatement of the limits defined in this section, unless there are water areas which require a more exact delineation because of site specific policies associated with these areas. Where States have site specific policies for particular water areas, these shall be mapped, described or referenced so that their location can be determined reasonably easily by any party affected by the policies.

(b) The seaward limits, as defined in this section, are for purposes of this program only and represent the area within which the State's management program may be authorized and financed. These limits are irrespective of any other claims States may have by virtue of other laws.

[61 FR 33808, June 28, 1996, as amended at 90 FR 38002, Aug. 7, 2025]

§ 923.33 Excluded lands.

(a) The boundary of a State's coastal zone must exclude lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents. To meet this requirement, the program must describe, list or map lands or types of lands owned, leased, held in trust or otherwise used solely by Federal agencies.

(b) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a state's management program. In excluding Federal

lands from a State's coastal zone for the purposes of this Act, a State does not impair any rights or authorities that it may have over Federal lands that exist separate from this program.

§ 923.34 Interstate boundary.

States must document that there has been consultation and coordination with adjoining coastal States regarding delineation of any adjacent inland and lateral seaward boundary.

Subpart E—Authorities and Organization

SOURCE: 61 FR 33809, June 28, 1996, unless otherwise noted.

§ 923.40 General.

(a) This subpart sets forth the requirements for management program approvability with respect to authorities and organization. The authorities and organizational structure on which a State will rely to administer its management program are the crucial underpinnings for enforcing the policies which guide the management of the uses and areas identified in its management program. There is a direct relationship between the adequacy of authorities and the adequacy of the overall program. The authorities need to be broad enough in both geographic scope and subject matter to ensure implementation of the State's enforceable policies. These enforceable policies must be sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses in order to assure wise use of the coastal zone. (Issues relating to the adequate scope of the program are dealt with in § 923.3.)

(b) The entity or entities which will exercise the program's authorities is a matter of State determination. They may be the state agency designated pursuant to section 306(d)(6) of the Act, other state agencies, regional or interstate bodies, and local governments. The major approval criterion is a determination that such entity or entities are required to exercise their authorities in conformance with the policies of the management program. Accordingly, the essential requirement is that the State demonstrate that there is a means of ensuring such compliance. This demonstration will be in the context of one or a combination of the three control techniques specified in section 306(d)(11) of the Act. The requirements related to section 306(d)(12) of the Act are described in §§ 923.42 through 923.44 of this subchapter.

(c) In determining the adequacy of the authorities and organization of a state's programs, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(h) of the Act.

(d) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 306(d)(2)(D)—Means of Control; 306(d)(10)-Authorities; 306(d)(10)(A)-Control Development and Resolve Conflicts; 306(d)(10)(B)-Powers of Acquisition; 306(d)(11)—Techniques of Control; and 307(f)—Air and Water Quality Control Requirements. The organization requirements of the Act dealt with in this subpart are those contained in sections 306(d)(2)(F)—Organizational Structure; 306(d)(6)—Designated State Agency; and 306(d)(7)—Organization.

§ 923.41 Identification of authorities.

(a)(1) The management program must identify the means by which the state proposes to exert control over the permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters, including a listing of relevant state constitutional provisions, laws, regulations, and judicial decisions. These are the means by which the state will enforce its coastal management policies. (See section 304(6a) of the Act.)

(2) The state chosen agency or agencies (including local governments, area-wide agencies, regional agencies, or interstate agencies) must have the authority for the management of the coastal zone. Such authority includes the following powers:

(i) To administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(ii) To acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(b) In order to meet these requirements, the program must identify relevant state constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the state's management program, including the authorities pursuant to sections 306(d)(10) and 306(d)(11) of the Act which require a state to have the ability to:

(1) Administer land and water use regulations in conformance with the policies of the management program;

(2) Control such development as is necessary to ensure compliance with the management program;

(3) Resolve conflicts among competing uses; and

(4) Acquire appropriate interest in lands, waters or other property as necessary to achieve management objectives. Where acquisition will be a necessary technique for accomplishing particular program policies and objectives, the management program must indicate for what purpose acquisition will be used (*i.e.*, what policies or objectives will be accomplished); the type of acquisition (e.g., fee simple, purchase of easements, condemnation); and what agency (or agencies) of government have the authority for the specified type of acquisition.

§ 923.42 State establishment of criteria and standards for local implementation—Technique A.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land uses and water uses within the coastal zone. The first such control technique, at subsection 306(d)(11)(A) of the Act, is state establishment of criteria and standards for local implementation, subject to administrative review and enforcement (control technique A).

(b) There are 5 principal requirements that control technique A must embody in order to be approved:

(1) The State must have developed and have in effect at the time of program approval enforceable policies that meet the requirements of § 923.3. These policies must serve as the standards and criteria for local program development or the State must have separate standards and criteria, related to these enforceable policies, that will guide local program development.

(2) During the period while local programs are being developed, a State must have sufficient authority to assure that land and water use decisions subject to the management program will comply with the program's enforceable policies. The adequacy of these authorities will be judged on the same basis as specified for direct State controls or case-by-case reviews.

(3) A State must be able to ensure that coastal programs will be developed pursuant to the State's standards and criteria, or failing this, that the management program can be implemented directly by the State. This requirement can be met if a State can exercise any one of the following techniques:

(i) Direct State enforcement of its standards and criteria in which case a State would need to meet the requirements of this section which address the direct State control technique;

(ii) Preparation of a local program by a State agency which the local government then would implement. To use this technique the State must have statutory authority to prepare and adopt a program for a local government, and a mechanism by which the State can cause the local government to enforce the State-created program. Where the mechanism to assure local enforcement will be judicial relief, the program must include the authority under which judicial relief can be sought;

(iii) State preparation and enforcement of a program on behalf of a local government. Here the State must have the authority to:

(A) Prepare and adopt a plan, regulations, and ordinances for the local government and

(B) Enforce such plans, regulations and ordinances;

(iv) State review of local government actions on a case-by-case basis or on appeal, and prevention of actions inconsistent with the standards and criteria. Under this technique, when a local government fails to adopt an approvable program, the State must have the ability to review activities in the coastal zone subject to the management program and the power to prohibit, modify or condition those activities based on the policies, standards and criteria of the management program; or

(v) If a locality fails to adopt a management program, the State may utilize a procedure whereby the responsibility for preparing a program shifts to an intermediate level government, such as a county. If this intermediate level of government fails to produce a program, then the State must have the ability to take one of the actions described above. This alternative cannot be used where the intermediate level of government lacks the legal authority to adopt and implement regulations necessary to implement State policies, standards and criteria.

(4) A State must have a procedure whereby it reviews and certifies the local program's compliance with State standards and criteria. This procedure must include provisions for:

(i) Opportunity for the public and governmental entities (including Federal agencies) to participate in the development of local programs; and

(ii) Opportunity for the public and governmental entities (including Federal agencies) to make their views known (through public hearings or other means) to the State agency prior to approval of local programs; and

(iii) Review by the State of the adequacy of local programs consideration of facilities identified in a State's management program in which there is a national interest.

(5) A State must be able to assure implementation and enforcement of a local program once approved. To accomplish this a State must:

(i) Establish a monitoring system which defines what constitutes and detects patterns of non-compliance. In the case of uses of regional benefit and facilities in which there is a national interest, the monitoring system must be capable of detecting single instances of local actions affecting such uses or facilities in a manner contrary to the management program.

(ii) Be capable of assuring compliance when a pattern of deviation is detected or when a facility involving identified national interests or a use of regional benefit is affected in a manner contrary to the program's policies. When State action is required because of failure by a local government to enforce its program, the State must be able to do one or a combination of the following:

(A) Directly enforce the entire local program;

(B) Directly enforce that portion of the local program that is being enforced improperly. State intervention would be necessary only in those local government activities that are violating the policies, standards or criteria.

(C) Seek judicial relief against local government for failure to properly enforce;

(D) Review local government actions on a case-by-case basis or on appeal and have the power to prevent those actions inconsistent with the policies and standards.

(E) Provide a procedure whereby the responsibility for enforcing a program shifts to an intermediate level of government, assuming statutory authority exists to enable the immediate of government to assume this responsibility.

§ 923.43 Direct State land and water use planning and regulation—Technique B.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The second such control technique, at subsection 306(d)(11)(B) of the Act, is direct state land and water use planning and regulation (control technique B).

(b) To have control technique B approved, the State must have the requisite direct authority to plan and regulate land and water uses subject to

the management program. This authority can take the form of:

(1) Comprehensive legislation—A single piece of comprehensive legislation specific to coastal management and the requirements of this Act.

(2) Networking—The utilization of authorities which are compatible with and applied on the basis of coastal management policies developed pursuant to § 923.3.

(c) In order to apply the networking concept, the State must:

(1) Demonstrate that, taken together, existing authorities can and will be used to implement the full range of policies and management techniques identified as necessary for coastal management purposes; and

(2) Bind each party which exercises statutory authority that is part of the management program to conformance with relevant enforceable policies and management techniques. Parties may be bound to conformance through an executive order, administrative directive or a memorandum of understanding provided that:

(i) The management program authorities provide grounds for taking action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can act to ensure compliance: The State agency designated pursuant to subsection 306(d)(6) of the Act, the State's Attorney General, another State agency, a local government, or a citizen.

(ii) The executive order, administrative directive or memorandum of understanding establishes conformance requirements of other State agency activities or authorities to management program policies. A gubernatorial executive order will be acceptable if networked State agency heads are directly responsible to the Governor.

(3) Where networked State agencies can enforce the management program policies at the time of section 306 approval without first having to revise their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. Where State agencies cannot enforce coastal policies without first revising their rules and regulations, then these revisions must be made prior to approval of the State's program by the Assistant Administrator.

§ 923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.

(a) The management program must provide for any one or a combination of general techniques specified in subsection 306(d)(11) of the Act for control of land and water uses within the coastal zone. The third such control technique, at subsection 306(d)(11)(C) of the Act, is state administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings (control technique C).

(b) Under case-by-case review, States have the power to review individual development plans, projects or land and water use regulations (including variances and exceptions thereto) proposed by any State or local authority or private developer which have been identified in the management program as being subject to review for consistency with the management program. This control technique requires the greatest degree of policy specificity because compliance with the program will not require any prior actions on the part of anyone affected by the program. Specificity also is needed to avoid challenges that decisions (made pursuant to the management program) are unfounded, arbitrary or capricious.

(c) To have control technique C approved, a State must:

(1) Identify the plans, projects or regulations subject to review, based on their significance in terms of impacts on coastal resources, potential for incompatibility with the State's coastal management program, and having greater than local significance;

(2) Identify the State agency that will conduct this review;

(3) Include the criteria by which identified plans, projects and regulations will be approved or disapproved;

(4) Have the power to approve or disapprove identified plans, projects or regulations that are inconsistent with the management program, or the power to seek court review thereof; and

(5) Provide public notice of reviews and the opportunity for public hearing prior to rendering a decision on each case-by-case review.

§ 923.45 Air and water pollution control requirements.

The program must incorporate, by reference or otherwise, all requirements established by the Federal Water Pollution Control Act, as amended (Clean Water Act or CWA), or the Clean Air Act, as amended (CAA), or established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements must be the water pollution control and air pollution control requirements applicable to such program. Incorporation of the air and water quality requirements pursuant to the CWA and CAA should involve their consideration during program development, especially with respect to use determinations and designation of areas for special management. In addition, this incorporation will prove to be more meaningful if close coordination and working relationships between the State agency and the air and water quality agencies are developed and maintained throughout the program development process and after program approval.

§ 923.46 Organizational structure.

The State must be organized to implement the management program. The management program must describe the organizational structure that will be used to implement and administer the management program including a discussion of those state and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(d)(3)(B); 306(d)(10); 306(d)(10) (A) and (B); 306(d)(11) and (12); and 307(f). The management program must also describe the relationship of these administering agencies to the state agency designated pursuant to subsection 306(d)(6) of the Act.

§ 923.47 Designated State agency.

(a) For program approval, the Governor of the state must designate a single state agency to receive and administer the grants for implementing the management program.

(1) This entity must have the fiscal and legal capability to accept and administer grant funds, to make contracts or other arrangements (such as passthrough grants) with participating agencies for the purpose of carrying out specific management tasks and to account for the expenditure of the implementation funds of any recipient of such monies, and

(2) This entity must have the administrative capability to monitor and evaluate the management of the State's coastal resources by the various agencies and/or local governments with specified responsibilities under the management program (irrespective of whether such entities receive section 306 funds); to make periodic reports to the Office of Ocean and Coastal Resource Management (OCRM), the Governor, or the State legislature, as appropriate, regarding the performance of all agencies involved in the program. The entity also must be capable of presenting evidence of adherence to the management program or justification for deviation as part of the review by OCRM of State performance required by section 312 of the Act.

(b)(1) The 306 agency designation is designed to establish a single point of accountability for prudent use of administrative funds in the furtherance of the management and for monitoring of management activities. Designation does not imply that this single agency need be a ''super agency'' or the principal implementation vehicle. It is, however, the focal point for proper administration and evaluation of the State's program and the entity to which OCRM will look when monitoring and reevaluating a State's program during program implementation.

(2) The requirement for the single designated agency should not be viewed

as confining or otherwise limiting the role and responsibilities which may be assigned to this agency. It is up to the State to decide in what manner and to what extent the designated State agency will be involved in actual program implementation or enforcement. In determining the extent to which this agency should be involved in program implementation or enforcement, specific factors should be considered, such as the manner in which local and regional authorities are involved in program implementation, the administrative structure of the State, the authorities to be relied upon and the agencies administering such authorities. Because the designated State agency may be viewed as the best vehicle for increasing the unity and efficiency of a management program, the State may want to consider the following in selecting which agency to designate:

(i) Whether the designated State entity has a legislative mandate to coordinate other State or local programs, plans and/or policies within the coastal zone;

(ii) To what extent linkages already exist between the entity, other agencies, and local governments;

(iii) To what extent management or regulatory authorities affecting the coastal zone presently are administered by the agency; and

(iv) Whether the agency is equipped to handle monitoring, evaluation and enforcement responsibilities.

§ 923.48 Documentation.

A transmittal letter signed by the Governor is required for the submission of a management program for federal approval. The letter must state that the Governor:

(a) Has reviewed and approved as State policy, the management program, and any changes thereto, submitted for the approval of the Assistant Administrator.

(b) Has designated a single State agency to receive and administer implementation grants;

(c) Attests to the fact that the State has the authorities necessary to implement the management program; and

(d) Attests to the fact that the State is organized to implement the management program.

Subpart F—Coordination, Public Involvement and National Interest

SOURCE: 61 FR 33812, June 28, 1996, unless otherwise noted.

§ 923.50 General.

(a) Coordination with governmental agencies having interests and responsibilities affecting the coastal zone, and involvement of interest groups as well as the general public is essential to the development and administration of State coastal management programs. The coordination requirements of this subpart are intended to achieve a proper balancing of diverse interests in the coastal zone. The policies of section 303 of the Act require that there be a balancing of variety, sometimes conflicting, interests, including:

(1) The preservation, protection, development and, where possible, the restoration or enhancement of coastal resources;

(2) The achievement of wise use of coastal land and water resources with full consideration for ecological, cultural, historic, and aesthetic values and needs for compatible economic development;

(3) The involvement of the public, of Federal, state and local governments and of regional agencies in the development and implementation of coastal management programs;

(4) The management of coastal development to improve, safeguard, and restore coastal water quality; and

(5) The study and development of plans for addressing the adverse effects of coastal hazards, including erosion, flooding, land subsidence and sea level rise.

(b) In order to be meaningful, coordination with and participation by various units and levels of government including regional commissions, interest groups, and the general public should begin early in the process of program development and should continue throughout on a timely basis to assure that such efforts will result in substantive inputs into a State's management program. State efforts should be

devoted not only to obtaining information necessary for developing the management program but also to obtaining reactions and recommendations regarding the content of the management program and to responding to concerns by interested parties. The requirements for intergovernmental cooperation and public participation continue after program approval.

(c) This subpart deals with requirements for coordination with governmental entities, interest groups and the general public to assure that their interests are fully expressed and considered during the program development process and that procedures are created to insure continued consideration of their views during program implementation. In addition, this subpart deals with mediation procedures for serious disagreements between States and Federal agencies that occur during program development and implementation. This subpart addresses the requirements of the following subsections of the Act: 306(d)(1)—Opportunity for Full Participation; 306(d)(3)(A)—Plan Coordination; 306(d)(3)(B)—Continued State-Local Consultation; 306(d)(4)—Public Hearings; 306(d)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

§ 923.51 Federal-State consultation.

(a) The management program must be developed and adopted with the opportunity of full participation by relevant Federal agencies and with adequate consideration of the views of Federal agencies principally affected by such program.

(b) By providing relevant Federal agencies with the opportunity for full participation during program development and for adequately considering the views of such agencies, States can effectuate the Federal consistency provisions of subsections 307 (c) and (d) of the Act once their programs are approved. (See 15 CFR part 930 for a full discussion of the Federal consistency provisions of the Act.)

(c) In addition to the consideration of relevant Federal agency views required during program development, Federal agencies have the opportunity to provide further comment during the program review and approval process. (See subpart G for details on this process.) Moreover, in the event of a serious disagreement between a relevant Federal agency and designated State agency during program development or during program implementation, the mediation provisions of subsection 307(h) of the Act are available. (See § 923.54 for details on mediation.)

(d) In order to provide an opportunity for participation by relevant Federal agencies and give adequate consideration to their views, each state must:

(1) Contact each relevant Federal Agency listed in § 923.2(d) and such other Federal agencies as may be relevant, owing to a State's particular circumstances, early in the development of its management program. The purpose of such contact is to develop mutual arrangements or understandings regarding that agency's participation during program development;

(2) Provide for Federal agency input on a timely basis as the program is developed. Such input shall be related both to information required to develop the management program and to evaluation of and recommendations concerning various elements of the management program;

(3) Solicit statements from the head of Federal agencies identified in Table 1 of § 923.52(c)(1) as to their interpretation of the national interest in the planning for and siting of facilities which are more than local in nature;

(4) Summarize the nature, frequency, and timing of contacts with relevant Federal agencies;

(5) Evaluate Federal comments received during the program development process and, where appropriate in the opinion of the State, accommodate the substance of pertinent comments in the management program. States must consider and evaluate relevant Federal agency views or comments about the following:

(i) Management of coastal resources for preservation, conservation, development, enhancement or restoration purposes;

(ii) Statements of the national interest in the planning for or siting of facilities which are more than local in nature;

(iii) Uses which are subject to the management program;

(iv) Areas which are of particular concern to the management program;

(v) Boundary determinations;

(vi) Shorefront access and protecting planning, energy facility planning and erosion planning processes; and

(vii) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(d)(3) of the Act.

(6) Indicate the nature of major comments by Federal agencies provided during program development (either by including copies of comments or by summarizing comments) and discuss any major differences or conflicts between the management program and Federal views that have not been resolved at the time of program submission.

§ 923.52 Consideration of the national interest in facilities.

(a) The management program must provide for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the State must have considered any applicable national or interstate energy plan or program.

(b) The primary purpose of this requirement is to assure adequate consideration by States of the national interest involved in the planning for and siting of facilities (which are necessary to meet other than local requirements) during:

(1) The development of the State's management program,

(2) The review and approval of the program by the Assistant Administrator, and

(3) The implementation of the program as such facilities are proposed.

(c) In order to fulfill this requirement, States must:

(1) Describe the national interest in the planning for and siting of facilities considered during program development.

(2) Indicate the sources relied upon for a description of the national interest in the planning for and siting of the facilities.

(3) Indicate how and where the consideration of the national interest is reflected in the substance of the management program. In the case of energy facilities in which there is a national interest, the program must indicate the consideration given any national or interstate energy plans or programs which are applicable to or affect a state's coastal zone.

(4) Describe the process for continued consideration of the national interest in the planning for and siting of facilities during program implementation, including a clear and detailed description of the administrative procedures and decisions points where such interest will be considered.

§ 923.53 Federal consistency procedures.

(a) A State must include in its management program submission, as part of the body of the submission an appendix or an attachment, the procedures it will use to implement the Federal consistency requirements of subsections 307 (c) and (d) of the Act. At a minimum, the following must be included:

(1) An indication of whether the state agency designated pursuant to subsection 306(d)(6) of the Act or a single other agency will handle consistency review (see 15 CFR 930.18);

(2) A list of Federal license and permit activities that will be subject to review (see 15 CFR 930.53);

(3) For States anticipating coastal zone effects from Outer Continental Shelf (OCS) activities, the license and permit list also must include OCS plans which describe in detail Federal license and permit activities (see 15 CFR 930.74); and

(4) The public notice procedures to be used for certifications submitted for Federal License and permit activities and, where appropriate, for OCS plans (see 15 CFR 930.61 through 930.62 and 930.78).

(b) Beyond the minimum requirements contained in paragraph (a) of

this section, States have the option of including:

(1) A list of Federal activities, including development projects, which in the opinion of the State agency are likely to significantly affect the coastal zone and thereby will require a Federal agency consistency determination (see 15 CFR 930.35); and

(2) A description of the types of information and data necessary to assess the consistency of Federal license and permit activities and, where appropriate, those described in detail in OCS plans (see 15 CFR 930.56 and 930.75).

§ 923.54 Mediation.

(a) Section 307(h) of the Act provides for mediation of serious disagreement between any Federal agency and a coastal state in the development and implementation of a management program. In certain cases, mediation by the Secretary, with the assistance of the Executive Office of the President, may be an appropriate forum for conflict resolution.

(b) State-Federal differences should be addressed initially by the parties involved. Whenever a serious disagreement cannot be resolved between the parties concerned, either party may request the informal assistance of the Assistant Administrator in resolving the disagreement. This request shall be in writing, stating the points of disagreement and the reason therefore. A copy of the request shall be sent to the other party to the disagreement.

(c) If a serious disagreement persists, the Secretary or other head of a relevant Federal agency, or the Governor or the head of the state agency designated by the Governor as administratively responsible for program development (if a state still is receiving section 305 program development grants) or for program implementation (if a state is receiving section 306 program implementation grants) may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees and to the Assistant Administrator.

(d) Secretarial mediation efforts shall last only so long as the parties agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

(e) Mediation shall terminate:

(1) At any time the parties agree to a resolution of the serious disagreement,

(2) If one of the parties withdraws from mediation,

(3) In the event the parties fail to reach a resolution of the serious disagreement within 15 days following Secretarial mediation efforts, and the parties do not agree to extend mediation beyond that period, or

(4) For other good cause.

(f) The availability of the mediation services provided in this section is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided herein.

§ 923.55 Full participation by State and local governments, interested parties, and the general public.

The management program must be developed and adopted with the opportunity of full participation by state agencies, local governments, regional commissions and organizations, port authorities, and other interested public and private parties. To meet this requirement, a State must:

(a) Develop and make available general information regarding the program design, its content and its status throughout program development;

(b) Provide a listing, as comprehensive as possible, of all governmental agencies, regional organizations, port authorities and public and private organizations likely to be affected by or to have a direct interest in the development and implementation of the management program;

(c) Indicate the nature of major comments received from interested or affected parties, identified in paragraph (b)(2) of this section, and the nature of the State's response to these comments; and

(d) Hold public meetings, workshops, etc., during the course of program development at accessible locations and convenient times, with reasonable notice and availability of materials.

§ 923.56 Plan coordination.

(a) The management program must be coordinated with local, areawide, and interstate plans applicable to areas within the coastal zone—

(1) Existing on January 1 of the year in which the state's management program is submitted to the Secretary; and

(2) Which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency.

(b) A State must insure that the contents of its management program has been coordinated with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Assistant Administrator for approval. To document this coordination, the management program must:

(1) Identify local governments, areawide agencies and regional or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted;

(2) List or provide a summary of contacts with these entities for the purpose of coordinating the management program with plans adopted by a governmental entity as of January 1 of the year in which the management program is submitted. At a minimum, the following plans, affecting a State coastal zone, shall be reviewed: Land use plans prepared pursuant to section 701 of the Housing and Urban Development Act of 1968, as amended; State and areawide waste treatment facility or management plans prepared pursuant to sections 201 and 208 of the Clean Water Act, as amended; plans and designations made pursuant to the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended; hazard mitigation plans prepared pursuant to section 409 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; any applicable interstate energy plans or programs developed pursuant to section 309 of the Act; regional and interstate highway plans; plans developed by Regional Action Planning Commission; and fishery management plans developed pursuant to the Fisheries Conservation and Management Act.

(3) Identify conflicts with those plans of a regulatory nature that are unresolved at the time of program submission and the means that can be used to resolve these conflicts.

§ 923.57 Continuing consultation.

(a) As required by subsection 306(d)(3)(B) of the Act, a State must establish an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) of section 306(d) of the Act and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this Act.

(b) The management program must establish a procedure whereby local governments with zoning authority are notified of State management program decisions which would conflict with any local zoning ordinance decision.

(1) ''Management program decision'' refers to any major, discretionary policy decisions on the part of a management agency, such as the determination of permissible land and water uses, the designation of areas or particular concern or areas for preservation or restoration, or the decision to acquire property for public uses. Regulatory actions which are taken pursuant to these major decisions are not subject to the State-local consultation mechanisms. A State management program decision is in conflict with a local zoning ordinance if the decision is contradictory to that ordinance. A State management program decision that consists of additional but not contradictory requirements is not in conflict with a local zoning ordinance, decision or other action;

(2) ''Local government'' refers to these defined in section 304(11) of the

Act which have some form of zoning authority.

(3) ''Local zoning ordinance, decision or other action'' refers to any local government land or water use action which regulates or restricts the construction, alteration of use of land, water or structures thereon or thereunder. These actions include zoning ordinances, master plans and official maps. A local government has the right to comment on a State management program decision when such decision conflicts with the above specified actions;

(4) Notification must be in writing and must inform the local government of its right to submit comments to the State management agency in the event the proposed State management program decision conflicts with a local zoning ordinance, decision or other action. The effect of providing such notice is to stay State action to implement its management decision for at least a 30-day period unless the local government waives its right to comment.

(5) ''Waiver'' of the right of local government to comment (thereby permitting a State agency to proceed immediately with implementation of the management program decision) shall result:

(i) Following State agency receipt of a written statement from a local government indicating that it either:

(A) Waives its right to comment; or

(B) Concurs with the management program decision; or

(C) Intends to take action which conflicts or interferes with the management program decision; or

(ii) Following a public statement by a local government to the same effect as paragraph (b)(5)(i) of this section; or

(iii) Following an action by a local government that conflicts or interferes with the management program decision.

(6) The management program shall include procedures to be followed by a management agency in considering a local government's comments. These procedures shall include, at a minimum, circumstances under which the agency will exercise its discretion to hold a public hearing. Where public hearings will be held, the program must set forth notice and other hearing procedures that will be followed. Following State agency consideration of local comments (when a discretionary public hearing is not held) or following public hearing, the management agency shall provide a written response to the affected local government, affected local government, within a reasonable period of time and prior to implementation of the management program decision, on the results of the agency's consideration of public comments.

§ 923.58 Public hearings.

The management program must be developed and adopted after the holding of public hearings. A State must:

(a) Hold a minimum of two public hearings during the course of program development, at least one of which will be on the total scope of the coastal management program. Hearings on the total management program do not have to be held on the actual document submitted to the Assistant Administrator for section 306 approval. However, such hearing(s) must cover the substance and content of the proposed management program in such a manner that the general public, and particularly affected parties, have a reasonable opportunity to understand the impacts of the management program. If the hearing(s) are not on the management document per se, all requests for such document must be honored and comments on the document received prior to submission of the document to the Assistant Administrator must be considered;

(b) Provide a minimum of 30 days public notice of hearing dates and locations;

(c) Make available for public review, at the time of public notice, all agency materials pertinent to the hearings; and

(d) Include a transcript or summary of the public hearing(s) with the State's program document or submit same within thirty (30) days following submittal of the program to the Assistant Administrator. At the same time this transcript or summary is submitted to the Assistant Administrator, it must be made available, upon request, to the public.

Subpart G—Review/Approval Procedures

SOURCE: 61 FR 33815, June 28, 1996, unless otherwise noted.

§ 923.60 Review/approval procedures.

(a) All state management program submissions must contain an environmental assessment at the time of submission of the management program to OCRM for threshold review. In accordance with regulations implementing the National Environmental Policy Act of 1969, as amended, OCRM will assist the State by outlining the types of information required. (See 40 CFR § 1506.5 (a) and (b).)

(b) Upon submission by a State of its draft management program, OCRM will determine if it adequately meets the requirements of the Act and this part. Assuming positive findings are made and major revisions to the State's draft management program are not required, OCRM will prepare draft and final environmental impact statements, in accordance with National Environmental Policy Act requirements. Because the review process involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review; states should anticipate that it will take at least 7 months between the time a state first submits a draft management program to OCRM for threshold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this time table; these factors are discussed in OCRM guidance on the review/approval process. The OCRM guidance also recommends a format for the program document submitted to the Assistant Administrator for review and approval.

Subpart H—Changes to Approved Management Programs

SOURCE: 84 FR 38131, Aug. 6, 2019, unless otherwise noted.

§ 923.80 General.

(a) This subpart establishes the criteria and procedures by which any proposed change to approved management programs shall be made. The term ''program change'' includes all terms used in section 306(e) of the Act, including amendment, modification or other program change. Draft program changes submitted to NOAA for informal review and comment are not subject to these requirements. Unless otherwise specified, the term ''NOAA'' refers to the Office for Coastal Management, within NOAA's National Ocean Service. (The Office for Coastal Management was formerly known as the Office of Ocean and Coastal Resource Management and the Coastal Services Center.)

(b) Pursuant to section 306(e) of the Act, a coastal state may not implement any change to a management program as part of its management program unless the state submits, and NOAA approves, the change for incorporation into the state's federally-approved management program. A state shall not use a state or local government policy or requirement as an ''enforceable policy'' under 16 U.S.C. 1453(6a) and § 930.11(h) of this subchapter for purposes of Federal consistency under 16 U.S.C. 1456 and part 930 of this subchapter, unless NOAA has approved the incorporation of, and subsequent changes to, the state or local policy into the state's management program under this subpart. State or local government law not approved by NOAA as part of a state's management program remain legal requirements for state and local government purposes, but not for CZMA Federal consistency purposes.

(c) For purposes of this subpart, program changes include changes to enforceable policies as well as changes to one or more of the following management program areas under part 923: Uses Subject to Management (Subpart B); Special Management Areas (Subpart C); Boundaries (Subpart D); Authorities and Organization (Subpart E); and Coordination, Public Involvement and National Interest (Subpart F).

(d) The phrase ''enforceable policies'' used in this subpart is described in 16 U.S.C. 1453(6a) and § 930.11(h) of this

subchapter. Enforceable policies are the only policies states can use to determine whether a Federal action is consistent with its management program under section 307, the Federal Consistency provision, of the Act (16 U.S.C. 1456 and part 930 of this subchapter).

(e) Pursuant to section 306(e)(1) of the Act and § 923.135, NOAA may suspend all or part of any grant or cooperative agreement made under section 306 of the Act if the state has failed to submit a program change identified as a necessary action under section 312 of the Act and part 923, subpart L (Review of Performance) and pursuant to the requirements for NOAA to notify the Governor of a state under the enforcement provisions of § 923.135.

§ 923.81 Program change procedures, deadlines, public notice and comment, and application of approved changes.

(a) Pursuant to section 306(d)(6) of the Act and § 930.11(o) of this subchapter, all program changes shall be submitted to NOAA by: The Governor of a coastal state with an approved management program; the head of the single state agency designated under the management program to be the lead state agency for administering the CZMA; or the head of an office within the designated single state agency if the state has authorized that person to submit program changes. Program changes may be submitted to NOAA on a cyclical basis (e.g., quarterly, twice a year, annually) or as the changes occur.

(1) One (1) copy shall be submitted electronically using the Program Change Form on NOAA's Program Change website, *http://coast.noaa.gov/czmprogramchange*.

(i) If a state is not able to electronically send all or part of a program change to NOAA through NOAA's Program Change website, the state and NOAA shall agree to an alternative method (e.g., email, electronic CD, or a state website). In such instances, NOAA will, to the extent practicable, post the program change to NOAA's Program Change website.

(ii) [Reserved]

(2) All deadlines and timeframes under this subpart shall start on the first full business day after the day NOAA receives a program change (Day 1). For example, if a submission is received on a Thursday, day one of NOAA's review period would be Friday; if the day of receipt is Friday and Monday is a Federal holiday, Day 1 would be Tuesday. All days, starting with Day 1, are included in the calculation of total time for a deadline, including weekends and Federal holidays, except for the last day (e.g., Day 30 or Day 120). The day that NOAA's decision is due shall also end on a full business day. For example, if Day 30 is a Saturday, then NOAA's decision will be due the next Monday, or if Monday is a Federal holiday, on Tuesday. A state may request that NOAA's review period begin on a specified date following receipt by NOAA.

(b) Within 5 days of receipt of a program change submission, NOAA shall notify the state (via email or letter) of the date the program change was received and NOAA's expected decision deadline. NOAA will also notify the state within 10 days of receipt of a program change submission if NOAA determines the submission is incomplete. If NOAA determines a submission is incomplete, NOAA shall inform the state that the program change review timeline shall not start until the missing information is submitted. During NOAA's review of a program change request, NOAA may request additional information that NOAA needs to make its decision.

(c) NOAA's program change review period shall start on Day 1 pursuant to paragraph (a)(2) of this section, unless NOAA determines the submission is incomplete pursuant to paragraph (b) of this section. NOAA shall respond to the state (via email or letter) within 30 calendar days after the date NOAA receives a program change. NOAA's approval is presumed if NOAA does not respond or extend its review period within the 30-day period. NOAA may extend its review period up to 120 days after receipt of a program change request, if NOAA so notifies the state during the 30-day period. NOAA can extend beyond 120 days only as necessary

to meet the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). NOAA shall inform the state via email or letter whether NOAA approves, approves in part, approves with qualifications or denies the incorporation of the program change into the state's management program.

(d) States shall, to the extent practicable, consult with NOAA prior to state adoption of new or revised state laws, policies, regulations, and other changes the state intends to submit to NOAA as a program change. States are encouraged to submit draft program changes to NOAA for informal review and comment prior to submitting a program change. If consulted, NOAA shall review draft submissions to identify issues that would need to be addressed in the formal submission.

(e)(1) A state shall post a public notice of its program change on the state's management program website in a conspicuous manner, and email or mail the public notice to local and regional offices of relevant Federal agencies, Federal agency CZMA headquarter contacts identified on NOAA's Federal consistency website, affected local governments and state agencies, and to individuals requesting direct notice. To meet the requirement for direct public notice (via email or mail), states are encouraged to maintain a coastal management listserv or mailing list. In addition to posting the public notice on the state's website and notifying the parties described above, states may, but are not required to, publish the notice in any state bulletin or newspaper. The timing of the state's public notice. States will draft a public notice of a submission, which shall be included as part of the contents of the program change submission form. When NOAA posts the program change submission on its Program Change website, NOAA will notify the state management program via email. The state will then post its public notice on the state web page providing a link to the submission on NOAA's Program Change website. The state shall send the public notice and link to the state and local agencies, Federal agency contacts, and others who have requested the state's public notice. Day 1 for NOAA review purposes will be the first business day after the state submits to NOAA the program change request. However, the 21-day comment period shall not start until the state posts its public notice on the state web page. If a state fails to post its public notice, then NOAA may either determine the program change submission is not complete and the review period has not started or deny the program change request.

(2) A state's public notice shall:

(i) Describe the changes to the management program;

(ii) If applicable, identify any new, modified or deleted enforceable policies of the management program;

(iii) Indicate that any comments on the incorporation of the program change into the state's management program shall be submitted to NOAA through NOAA's Program Change website within 21 calendar days of the date of the state's public notice; and

(3) NOAA shall post all program changes on its Program Change website where any interested party may review or download materials. NOAA shall also post on its Program Change website deadlines, extensions and any comments received. For each program change posted on NOAA's website, NOAA shall notify the Federal agency CZMA headquarter contacts (identified on NOAA's Federal consistency website) via email. In addition, any party may request through the Program Change website that NOAA notify them via email when program changes are submitted by one or more state(s). NOAA's email shall also state that any party may, through NOAA's Program Change website, submit comments to NOAA on a state's request to incorporate a program change into the state's management program within 21 calendar days from the date of the state's public notice. NOAA shall only consider public and Federal agency comments for program change requests that are pending for a NOAA decision; no comments shall be accepted or considered for program changes once NOAA issues its decision. If a state, during or after the public comment period, submits directly to NOAA a response to a comment before NOAA issues a decision, NOAA shall consider

the state's response and post the state's response on the Program Change website.

(4) NOAA may, at its discretion, extend the public comment period or hold a public hearing. NOAA shall only consider holding a public hearing for a program change that would substantially change a management program and/or be controversial.

(5) NOAA shall post its program change decisions on its CZMA Program Change website and shall notify, by email, Federal agency CZMA headquarter contacts and individuals requesting such notice. A state shall post NOAA's decision regarding a state's program change on the state agency's website.

(f) Application of approved program changes for Federal consistency purposes under section 307 of the Act (16 U.S.C. 1456) and part 930 of this subchapter. The effective date for the approved changes will be the date on NOAA's approval letter. NOAA will post its program change decision letters on its Program Change website. Changes to a state's management program and enforceable policies shall apply for Federal consistency purposes to Federal actions proposed on or after the date NOAA approves the changes. Approved program changes shall not apply retroactively to state Federal consistency reviews under 15 CFR part 930 initiated prior to the date NOAA approved the changes, except as allowed by part 930 (e.g., a Federal action was finalized or authorized and there is a substantial change, amendment or renewal proposed for the Federal action on or after the date of NOAA's approval of a program change, pursuant to the applicable subpart of part 930).

§ 923.82 Program change submissions.

(a) As required by CZMA section 306(e)(3)(A), coastal states may not implement a change as part of its approved management program unless the change is approved by NOAA. In accordance with §§ 923.81 and 923.83, states shall submit program changes to NOAA for approval using the Program Change Form on NOAA's Program Change website.

(b) All state program changes shall identify the program approval area(s) that apply to the program change. The five program approval areas are: Uses Subject to Management (subpart B of this part); Special Management Areas (subpart C of this part); Boundaries (subpart D of this part); Authorities and Organization (subpart E of this part); and Coordination, Public Involvement and National Interest (subpart F of this part).

(c) Program changes that are editorial, non-substantive, or minor in scope. The types of program changes in paragraphs (c)(1) through (4) of this section shall be approved by NOAA and need less review as long as they satisfy the decision criteria in § 923.84 and do not raise issues under any Federal laws, as described in § 923.85:

(1) Editorial or non-substantive changes (e.g., citation changes, minor technical changes, or changes to state agency name) to state laws, regulations, enforceable policies, local government coastal management programs, special area management plans, and other authorities;

(2) Changes that do not change a state's coastal zone boundary or geographic location description(s), and are not otherwise used by the state for Federal consistency review;

(3) Changes to the organization of a state's management program if the management program's structure and responsibilities will remain intact; and

(4) Changes to enforceable policies previously approved by NOAA that make minor substantive revisions consistent with the scope and application of the previously approved enforceable policy. If the proposed changes are not consistent with the scope and application of the previously approved enforceable policy, then NOAA shall more closely review the changes under paragraph (d) of this section to ensure they satisfy the decision criteria.

(d) Any program change that is not described in paragraph (c) of this section shall be reviewed by NOAA to ensure the state's management program will remain approvable if the proposed program change is approved. These changes include:

(1) Changes to the five program approval areas, including: Uses Subject to Management (subpart B of this part); Special Management Areas (subpart C

of this part); Boundaries (subpart D of this part); Authorities and Organization (subpart E of this part); and Coordination, Public Involvement and National Interest (subpart F of this part);

(2) Changes to enforceable policies, including modifications, additions and deletions;

(3) Changes to provisions that are not enforceable policies, but which a state may use to evaluate the scope or applicability of an enforceable policy (e.g., definitions, advisory statements);

(4) Changes to local government coastal management programs or plans if those local programs or plans contain enforceable policies that the state uses for Federal consistency review. States are not required to submit program changes for local government coastal management programs or plans that do not contain enforceable policies for Federal consistency review;

(5) Changes or additions to the state's Federal consistency list or geographic location descriptions (part 930 of this subchapter); and

(6) Changes or additions to Necessary Data and Information (§ 930.58 of this subchapter).

(e) Changes to state Clean Air Act (CAA) and Clean Water Act (CWA) Pollution Control Requirements. Pursuant to section 307(f) of the Act, requirements established by the CWA (33 U.S.C. 1251–1387) and the CAA (42 U.S.C. 7401–7671), or established by the Federal Government or by any state or local government pursuant to the CWA and CAA shall be incorporated in state management programs and shall be the water pollution control and air pollution control requirements applicable to such management program. Therefore, states are not required to submit as program changes any changes to state CAA and CWA provisions.

§ 923.83 Program change materials.

(a) All program changes submitted to NOAA shall be submitted in accordance with § 923.81. States shall use the Program Change website Form and Table to provide the following.

(1) A brief general overview description of the proposed program change(s) and a current version of the document(s) containing the program change (e.g., text of the revised statute, regulation, policy, map). The general overview description shall identify the law, regulation, policy, or other type of program provision contained in the program change submission.

(2) A brief summary of the changes of each authority or policy identified in paragraph (a)(1) of this section, and how the management program as changed is different than the previously approved management program.

(3) Indicate which of one or more of the five management program approval areas under this part apply to the program change:

(i) Uses Subject to Management (subpart B);

(ii) Special Management Areas (subpart C);

(iii) Boundaries (subpart D);

(iv) Authorities and Organization (subpart E); or

(v) Coordination, Public Involvement and National Interest (subpart F).

(4) States shall use the Program Change Table provided by NOAA through the Program Change website to provide:

(i) The State legal citation for the policy (state code, public law number, state regulation, other official state format);

(ii) The title of the policy, section, or other descriptor;

(iii) Whether the change or policy is new, revised, or deleted;

(iv) The date the change was effective in the state;

(v) Identification of each enforceable policy submitted as part of the program change; and

(vi) The state enforceable mechanism citation that makes the policy enforceable under state law. The phrase ''enforceable mechanism'' means a state authority that makes an enforceable policy legally binding under state law, as described in this subpart and § 930.11(h) of this subchapter. Examples of an enforceable mechanism include state statutes, regulations, permitting programs, local government ordinances or court decisions. If an enforceable mechanism is changed so that an enforceable policy is no longer legally binding under state law, then the enforceable policy shall be submitted as a

program change with a new underlying state enforceable mechanism; otherwise the policy is no longer enforceable for purposes of state CZMA Federal consistency reviews under part 930 of this subchapter.

(5) Changes or additions to the state's Federal consistency list or geographic location descriptions.

(i) For each new or revised listed Federal action, states shall describe the:

(A) Type of Federal action;

(B) Specific Federal statutory authority;

(C) Responsible Federal agency; and

(D) Reasonably foreseeable effects to the uses and resources of the state's coastal zone (§ 923.84(d)).

(ii) For each new or revised geographic location description, states shall describe the:

(A) Geographic location description, using specific geographic boundaries;

(B) Listed Federal actions to be included within a geographic location description; and

(C) Reasonably foreseeable effects to the uses and resources of the state's coastal zone (§ 923.84(d)).

(6) States shall describe any changes or additions to Necessary Data and Information approved by NOAA in accordance with § 930.58 of this subchapter and explain why such information is necessary in order for the state to commence its Federal consistency review period.

(7) The state shall indicate that the program change meets each of NOAA's decision criteria in § 923.84.

(8) The state shall describe whether and how the program change will impact the following:

(i) Resources or interests of any federally-recognized Indian Tribe.

(ii) Threatened or endangered species listed under the Federal Endangered Species Act (ESA);

(iii) Historic properties designated under the National Historic Preservation Act (NHPA);

(iv) Essential fish habitat designated under the Magnuson Stevens Fishery Conservation and Management Act (MSFCMA); and

(v) Marine mammals managed under the Marine Mammal Protection Act (MMPA).

(9) The state shall identify the state's website where the public notices for the notification and submission requests are, or will be, located and where, if applicable, state documents related to the request may be viewed.

(10) The state shall submit to NOAA any substantive correspondence between the state and Federal agencies (not including NOAA's Office for Coastal Management) concerning the development of the changes that are the subject of the program change request.

(11) The state shall indicate if the program change was developed as a necessary action pursuant to section 312 of the Act (16 U.S.C. 1458—Review of performance) and, if so, shall briefly describe the necessary action.

(b) [Reserved]

§ 923.84 Program change decision criteria.

(a) NOAA shall review all program changes on a case-by-case basis. NOAA shall determine whether a management program, if changed, would continue to satisfy the applicable program approval criteria of CZMA section 306(d) and subparts B through F of this part and the requirements of this subpart (subpart H).

(b) Enforceable policies. In order for NOAA to approve the incorporation of a new or revised enforceable policy into a state's management program, the policy shall:

(1) Be legally binding under state law;

(2) Contain standards of sufficient specificity to guide public and private uses. A policy is not enforceable if it merely directs a state agency to develop regulations or standards.

(i) Definitions and information requirements are essential elements of determining compliance with regulatory and permit standards. As such, a state law or regulation that contains numerous standards, definitions, and information requirements may be considered enforceable in its entirety after consultation with NOAA. If NOAA determines that a law or regulation may be considered enforceable in its entirety, a state shall still need to apply only the substantive standards within

the statute or regulation as enforceable policies for CZMA Federal consistency reviews. Procedural requirements are not considered to be enforceable policies for CZMA review purposes.

(ii) [Reserved]

(3) Apply only to areas and/or entities under state jurisdiction;

(4) Not refer to or otherwise purport to apply to Federal agencies, Federal lands or Federal waters. The Act does not authorize states to establish regulatory standards for Federal agencies or for Federal lands or waters. A state policy that would regulate or otherwise establish standards for Federal agencies or Federal lands or waters shall not meet the Act's definition of ''enforceable policy'' (*i.e.*, legally binding under state law) under 16 U.S.C. 1453(6a). States apply their NOAA-approved enforceable policies to Federal actions, regardless of location, through CZMA Federal consistency reviews under 16 U.S.C. 1456 and part 930 of this subchapter;

(5) Not be preempted by Federal law. If a state policy is preempted by Federal law, the policy is not legally binding under state law and shall not be an enforceable policy under 16 U.S.C. 1453(6a). Policies previously approved by NOAA as enforceable policies shall no longer be enforceable if Federal law enacted after NOAA's approval preempts the state policy;

(6) Not incorporate by reference other state or local requirements that are not identified, described and evaluated as part of the program change request. Any state or local requirements incorporated by reference shall not be applicable for Federal consistency review purposes unless separately approved by NOAA as enforceable policies;

(7) Not discriminate against a particular type of activity or entity. Enforceable policies shall be applied to all relevant public and private entities that would have similar coastal effects. Enforceable policies may be specific to a particular type of activity or entity if NOAA agrees that a state has demonstrated that the activity or entity present unique circumstances; and

(8) Not adversely affect the national interest in the CZMA objectives described in 16 U.S.C. 1451 and 1452.

(c) If enforceable policies previously approved by NOAA become obsolete or unenforceable through application of subsequently enacted state or Federal law, such policies will no longer be enforceable for purposes of CZMA Federal consistency review. For example, a state law change may repeal a previous policy or may change the policy in a manner that changes the scope and application of the policy. In such cases, the previously approved enforceable policy is no longer applicable under state law and the new or substantially revised policy is not applicable for Federal consistency purposes until that policy has been submitted by the state as a program change and approved by NOAA. A previously approved enforceable policy will no longer be legally enforceable under state law if subsequent Federal law preempts the state policy.

(d) Changes to a management program's Federal consistency list or a new or revised geographic location description under part 930 of this subchapter, subparts C, D, E, F or I. For changes to a management program's list of Federal actions or a new or revised geographic location description, the state's effects analysis shall be based on information that would allow NOAA to find that the listed activity, either within the state's coastal zone or within a geographic location described outside the state's coastal zone, would have reasonably foreseeable effects on the uses or resources of the state's coastal zone. A state's analysis asserting impacts to uses or resources outside of the coastal zone shall not, by itself, demonstrate a coastal effect; rather, the state shall describe a causal connection of how an impact outside the coastal zone could result in a coastal effect. A state's effects analysis shall not be based on unsupported conclusions, speculation or the mere existence of coastal uses or resources within a geographic location. A state's coastal effects analysis shall, to the extent practicable, identify:

(1) The affected uses (e.g., commercial and recreational fishing, boating, tourism, shipping, energy facilities) and resources (e.g., fish, marine mammals, reptiles, birds, landmarks).

(2) Where and in what densities the uses and resources are found.

(3) How the state has a specific interest in the resource or use. States should be specific in showing the connection to the coastal zone of the state (e.g., economic values, harvest amounts, vulnerabilities, seasonal information relevant to the proposed activity).

(4) Where the proposed activity overlaps with these resources, uses and values.

(5) Impacts to the resources or uses from the proposed activity.

(6) A reasonable showing of a causal connection to the proposed activity, including how the impacts from the activity results in reasonably foreseeable effects on the state's coastal uses or resources.

(7) Why any required mitigation may be inadequate.

(8) Empirical data and information that supports the effects analysis and: Can be shown to be reliable; visualizes the affected area, resources and uses with maps; and shows values, trends and vulnerabilities.

§ 923.85 Procedural requirements of other Federal law.

NOAA shall determine on a case-by-case basis whether each program change requires NOAA to take additional actions under any other Federal requirements.

(a) If a state's program change will affect the resources or interests of any federally-recognized Indian Tribe (tribe), NOAA shall contact the affected tribe(s) and determine if Government-to-Government consultation is desired under Executive Order 13175 (Nov. 6, 2000).

(b) If, for the purposes of ESA, NHPA, MSFCMA or MMPA compliance, NOAA determines that a state's program change will have effects on listed threatened or endangered species, historic properties, essential fish habitat or marine mammals, then NOAA shall determine if consultation is needed with the applicable Federal agency under the ESA, NHPA, MSFCMA and MMPA.

(c) When NOAA determines whether to consult under other Federal statutes or tribal executive orders, NOAA's ability to require changes to a state's proposed program change are limited by the following:

(1) Once NOAA approves a state's management program, NOAA cannot require a state to change its program. NOAA can, through periodic evaluations of a state's management program under section 312 of the Act, establish necessary actions if NOAA finds a state is not adhering to its NOAA-approved program, but NOAA can only recommend that a state change its program to create a different state standard or to address emerging issues; and

(2) NOAA can approve or disapprove a program change request. When NOAA reviews a program change, NOAA has a limited ability to require a state to make changes to state policies. If NOAA disapproves a program change request, this does not require a state to change state law. Therefore, there is no effect from NOAA's denial on the implementation of state law at the state (or local government) level. NOAA's denial means the disapproved state policy is not part of the state's NOAA-approved management program and cannot be used for CZMA Federal consistency purposes. NOAA cannot use a program change to require changes to other parts of a state's management program.

Subpart I—Applications for Program Development or Implementation Grants

SOURCE: 61 FR 33816, June 28, 1996, unless otherwise noted.

§ 923.90 General.

(a) The primary purpose of development grants made pursuant to section 305 of the Act is to assist coastal States in the development of comprehensive coastal management programs that can be approved by the Assistant Administrator. The primary purpose of implementation grants made pursuant to section 306 of the Act is to assist coastal States in implementing coastal management programs following their approval, including especially administrative actions to implement enforceable program policies, authorities and other management techniques. The purpose of the guidelines in this subpart is to define

the procedures by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with applicable Federal laws and policies, Department of Commerce grants management regulations, policies and procedures, and any other applicable directives from the NOAA Grants Management Division and OCRM program offices.

(b) Grants awarded to a State must be expended for the development or administration, as appropriate, of a management program that meets the requirements of the Act, and in accordance with the terms of the award.

(c) All applications for funding under section 305 or 306 of the Act, including proposed work programs, funding priorities and allocations are subject to the discretion of the Assistant Administrator.

(d) For purposes of this subpart, the term *development grant* means a grant awarded pursuant to subsection 305(a) of the Act. ''Administrative grant'' and ''implementation grant'' are used interchangeably and mean grants awarded pursuant to subsection 306(a) of the Act.

(e) All application and preapplication forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

§ 923.91 State responsibility.

(a) Applications for program grants are required to be submitted by the Governor of a participating state or by the head of the state entity designated by the Governor pursuant to subsection 306(d)(6) of the Act.

(b) In the case of a section 305 grant, the application must designate a single state agency or entity to receive development grants and to be responsible for development of the State's coastal management program. The designee need not be that entity designated by the Governor pursuant to subsection 306(d)(6) of the Act as a single agency to receive and administer implementation grants.

(c) One State application will cover all program activities for which program development or implementation funds under this Act and matching State funds are provided, irrespective of whether these activities will be carried out by State agencies, areawide or regional agencies, local governments, or interstate entities.

(d) The designated state entity shall be fiscally responsible for all expenditures made under the grant, including expenditures by subgrantees and contractors.

§ 923.92 Allocation.

(a) Subsections 303(4), 306(d)(3)(B) and 306(d)(10) of the Act foster intergovernmental cooperation in that a state, in accordance with its coastal zone management program, may allocate some of its coastal zone management responsibilities to several agencies, including local governments, areawide agencies, regional agencies and interstate agencies. Such allocations provide for continuing consultation and more effective participation and cooperation among state and local governments, interstate, regional and areawide agencies.

(b) A State may allocate a portion or portions of its grant to other State agencies, local governments, areawide or regional agencies, interstate entities, or Indian tribes, if the work to result from such allocation(s) will contribute to the effective development or implementation of the State's management program.

(1) Local governments. Should a State desire to allocate a portion of its grant to a local government, units of general-purpose local government are preferred over special-purpose units of local government. Where a State will be relying on direct State controls as provided for in subsection 306(d)(11)(B) of the Act, pass-throughs to local governments for local planning, regulatory or administrative efforts under a section 306 grant cannot be made, unless they are subject to adequate State overview and are part of the approved management program. Where the approved management program provides for other specified local activities or one-time projects, again subject to adequate State overview, then a portion of

administrative grant funds may be allocated to local governments.

(2) Indian Tribes. Tribal participation in coastal management efforts may be supported and encouraged through a State's program. Individual tribes or groups of tribes may be considered regional agencies and may be allocated a portion of a State's grant for the development of independent tribal coastal management programs or the implementation of specific management projects provided that:

(i) The State certifies that such tribal programs or projects are compatible with its approved coastal management policies; and

(ii) On excluded tribal lands, the State demonstrates that the tribal program or project would or could directly affect the State's coastal zone.

§ 923.93 Eligible implementation costs.

(a) Costs claimed must be beneficial and necessary to the objectives of the grant project. As used herein the terms cost and grant project pertain to both the Federal and the matching share. Allowability of costs will be determined in accordance with the provisions of OMB Circular A–87: Cost Principles for State, Local and Indian Tribal Governments.

(b) Federal funds awarded pursuant to section 306 of the Act may not be used for land acquisition purposes and may not be used for construction purposes. These costs may be eligible, however, pursuant to section 306A of the Act.

(c) The primary purpose for which implementation funds, pursuant to section 306 of the Act, are to be used is to assure effective implementation and administration of the management program, including especially administrative actions to implement enforceable program policies, authorities and other management techniques. Implementation activities should focus on achieving the policies of the Act.

(d) Section 306 funding in support of any of these purposes may be used to fund, among other things:

(1) Personnel costs,

(2) Supplies and overhead,

(3) Equipment, and

(4) Feasibility studies and preliminary engineering reports.

(e) States are encouraged to coordinate administrative funding requests with funding possibilities pursuant to sections 306A, 308, 309, 310 and 315 of the Act, as well as with funding possibilities pursuant to section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990. When in doubt as to the appropriate section of the Act under which to request funding, States should consult with OCRM. States should consult with OCRM on technical aspects of consolidating requests into a single application.

§ 923.94 Application for program development or implementation grants.

(a) OMB Standard Form 424 (4–92) and the NOAA Application Kit for Federal Assistance constitute the formal application. An original and two (2) copies must be submitted 45 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with E.O. 12372 requirements including the resolution of any problems raised by the proposed project. The administrative requirements for grants and subawards, under this program, to state, local and Indian tribal governments are set out in 15 CFR part 24. The administrative requirements for other entities are prescribed under OMB Circular A–110: Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

(b) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein, the terms ''cost'' and ''grant project'' pertain to both the Federal amount awarded and the non-federal matching share. Allowability of costs will be determined in accordance with the provisions of OMB Circular A–87: Cost Principles for State, Local and Indian Tribal Governments. Eligible implementation costs also shall be determined in accordance with § 923.93 of these regulations. Allowability of costs for non-profit organizations will be determined in accordance with OMB Circular A–122: Cost

Principles for Non-Profit Organizations. Allowability of costs for institutions of higher education will be determined in accordance with OMB Circular A–21: Cost Principles for Educational Institutions.

(c) In the grant application, the applicant must describe clearly and briefly the activities that will be undertaken with grant funds in support of implementation and administration of the management program. This description must include:

(1) An identification of those elements of the approved management program that are to be supported in whole or in part by the Federal and the matching share,

(2) A clear statement of the major tasks required to implement each element,

(3) For each task the application must:

(i) Specify how it will be accomplished and by whom;

(ii) Identify any sub-awardees (other State agencies, local governments, individuals, etc.) that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of the sub-awards for each allocation; and

(iii) Indicate the estimated total cost.

(4) The sum of all task costs in paragraph (c)(3) of this section should equal the total estimated grant project cost.

(d) For program development grants, when evaluating whether a State is making satisfactory progress toward completion of an approvable management program which is necessary to establish eligibility for subsequent grants, the Assistant Administrator will consider:

(1) The progress made toward meeting management program goals and objectives;

(2) The progress demonstrated in completing the past year's work program;

(3) The cumulative progress toward meeting the requirements for preliminary or final approval of a coastal management program;

(4) The applicability of the proposed work program to fulfillment of the requirements for final approval; and

(5) The effectiveness of mechanisms for insuring public participation and consultation with affected Federal, State, regional and local agencies in program development.

§ 923.95 Approval of applications.

(a) The application for a grant by any coastal State which complies with the policies and requirements of the Act and these guidelines shall be approved by the NOAA Grants Officer, upon recommendation by the Assistant Administrator, assuming available funding.

(b) Should an application be found deficient, the Assistant Administrator will notify the applicant in detail of any deficiency when an application fails to conform to the requirements of the Act or these regulations. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The NOAA Grants Officer, upon recommendation by the Assistant Administrator, may waive appropriate administrative requirements contained in this subpart, upon finding of extenuating circumstances relating to applications for assistance.

§ 923.96 Grant amendments.

(a) Actions that require an amendment to a grant award such as a request for additional Federal funds, changes in the amount of the non-Federal share, changes in the approved project budget as specified in 15 CFR part 24, or extension of the grant period must be submitted to the Assistant Administrator and approved in writing by the NOAA Grants Officer prior to initiation of the contemplated change. Such requests should be submitted at least 30 days prior to the proposed effective date of the change and, if appropriate, accompanied by evidence of compliance with E.O. 12372 requirements.

(b) NOAA shall acknowledge receipt of the grantee's request within the ten (10) working days of receipt of the correspondence. This notification shall indicate NOAA's decision regarding the request; or indicate a time-frame within which a decision will be made.

Subpart J—Allocation of Section 306 Program Administration Grants

§ 923.110 Allocation formula.

(a) As required by subsection 306(a), the Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal-to-state contributions for the applicable fiscal year:

(1) For those states for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 1 to 1 for any fiscal year.

(2) For programs approved after enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each fiscal year thereafter.

(3) As required by subsection 306(b), the Secretary may make a grant to a coastal state under subsection 306(a) only if the Secretary finds that the management program of the coastal state meets all applicable requirements of this title and has been approved in accordance with subsection 306(d).

(4) As required by subsection 306(c), grants under this section shall be allocated to coastal states under approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal states, maximum and minimum grants for any fiscal year to promote equity between coastal states and effective coastal management.

(b) *Minimum/maximum allocations.* The Assistant Administrator shall establish minimum and maximum state allocations annually, after consultation with the coastal states.

(c) *Allocation formula factors and weighting.* Each State eligible to receive a financial assistance award shall be allocated an amount of the total available Federal funding based on:

(1) A minimum share (established by the Assistant Administrator) of the total funding available for allocation to eligible State coastal management programs, plus

(2) A proportionate share of the remainder to be divided as follows:

(i) Sixty percent will be allocated based on each eligible State's proportionate share of the length of tidal shoreline and/or Great Lake shoreline mileage of all participating States based on the most recently available data from or accepted by the National Ocean Survey, and

(ii) Forty percent will be allocated on each eligible State's proportionate share of the aggregate population of all coastal counties contained in whole or in part within the designated coastal boundary of all eligible State coastal programs based on official data or the most recent U.S. census.

(3) Should any State's base allocation exceed the maximum established by the Assistant Administrator, the excess amount shall be subtracted from the established maximum and redistributed proportionately among those eligible States with allocations not exceeding the established maximum.

(d) *Use of the allocation formula.* The allocation formula shall be used to establish base level allocations for each State coastal management program eligible to receive Federal funding.

(e) *Adjustment for phase down of Federal funding.* The Assistant Administrator may adjust base level allocations as necessary to implement a phase down of Federal financial support. Any such adjustment shall be implemented in a manner which gives some priority to recently approved State coastal management programs. Options for implementation of a phase down will be submitted to the States for review and comment.

(f) *Calculation of financial assistance award levels.* Actual financial assistance award levels will be set from base level allocations, any adjustments

under paragraph (e) above, and in accordance with the provisions of Section 312(c) and (d).

(Secs. 306 and 317 of the Coastal Zone Management Act)

[47 FR 21021, May 17, 1982, as amended at 59 FR 27985, May 31, 1994. Redesignated at 61 FR 33818, June 28, 1996]

Subpart K—Coastal Zone Enhancement Grants Program

AUTHORITY: Section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456).

SOURCE: 57 FR 31116, July 14, 1992, unless otherwise noted. Redesignated at 61 FR 33818, June 28, 1996.

§ 923.121 General.

(a) The purpose of this subpart is to set forth the criteria and procedures for awarding coastal zone enhancement grants under section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456). This subpart describes the criteria States must address in developing and implementing coastal zone enhancement objectives, the procedures for allocating section 309 funds between weighted formula and individual review of proposals of special merit, how the amount of section 309 weighted formula grants will be determined, the criteria NOAA will use to evaluate and rank individual proposals of special merit, and the procedures for applying for financial assistance under section 309. This subpart also allows use of section 309 funds for implementation of program changes for up to 2 fiscal years following the fiscal year in which a program change was approved.

(b) A coastal State with an approved program under section 306 of the Coastal Zone Management Act (CZMA), as amended (16 U.S.C. 1455), is eligible for grants under this subpart if the State meets the following requirements:

(1) The State must have a NOAA approved Assessment and Strategy, submitted in accordance with NOAA guidance and 923.128;

(2) The State must be found to be adhering to its approved program and must be making satisfactory progress in performing grant tasks under section 306, as indicated by not being under interim or final sanctions; and

(3) The State must be making satisfactory progress in carrying out its previous year's award under section 309.

(c) If the Assistant Administrator finds that a State is not undertaking the actions committed to under the terms of a section 309 grant, the Assistant Administrator shall suspend the State's eligibility for future funding under this section for at least one year.

(d) A State's eligibility for future funding under this section will be restored after the State demonstrates, to the satisfaction of the Assistant Administrator, that it will conform with the requirements under this part.

(e) Funds awarded to States under section 309 are for the enhancement of existing coastal zone management programs. A State which reduces overall State financial support for its CZM program as a result of having been awarded section 309 funding may lose eligibility for funding under section 309 in subsequent years.

(f) All applications for funding under section 309 of the CZMA, as amended, including proposed work programs, funding priorities and funding awards, are subject to the administrative discretion of the Assistant Administrator and any additional NOAA guidance.

(g) Grants awarded under section 309 may be used:

(1) To support up to 100 percent of the allowable costs of approved projects under section 309 of the CZMA, as amended; or

(2) To implement program changes approved by the Secretary for up to two fiscal years following the fiscal year in which a program change was approved.

(h) All application forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996; 62 FR 12541, Mar. 17, 1997]

§ 923.122 Objectives.

(a) The objective of assistance provided under this part is to encourage each State with a federally-approved coastal management program to continually improve its program in specified areas of national importance. The Secretary is authorized to make grants to a coastal State for the development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

(b) As required by section 309(a) of the Act, for purposes of this part, the term *coastal zone enhancement objective* means any of the following objectives:

(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.

(3) Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

(6) Preparing and implementing special area management plans for important coastal areas.

(7) Planning for the use of ocean resources.

(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

(9) Adoption of procedures and policies to evaluate and facilitate the siting of public and private aquaculture facilities in the coastal zone, which will enable States to formulate, administer, and implement strategic plans for marine aquaculture.

[57 FR 31116, July 14, 1992. Redesignated at 61 FR 33818, June 28, 1996, as amended at 62 FR 12541, Mar. 17, 1997]

§ 923.123 Definitions.

(a) *Program change* means ''routine program change'' as defined in 15 CFR 923.84 and ''amendment'' as defined in 15 CFR 923.80, and includes the following:

(1) A change to coastal zone boundaries that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(2) New or revised authorities, including statutes, regulations, enforceable policies, administrative decisions, executive orders, and memoranda of agreement/understanding, that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(3) New or revised local coastal programs and implementing ordinances that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(4) New or revised coastal land acquisition, management and restoration programs that improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(5) New or revised Special Area Management Plans or plans for Areas of Particular Concern (APC), including enforceable policies and other necessary implementing mechanisms or criteria and procedures for designating and managing APCs that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(6) New or revised guidelines, procedures and policy documents which are formally adopted by a State and provide specific interpretations of enforceable CZM policies to applicants, local governments and other agencies that will result in meaningful improvements in coastal resource management

and that will improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(b) *Assessment* means a public document, prepared by a State and approved by NOAA in accordance with guidance on Assessments and Strategies issued by NOAA (hereafter referred to as the guidance[1]), that identifies the State's priority needs for improvement with regard to the coastal zone enhancement objectives. The Assessment determines the extent to which problems and opportunities exist with regard to each of the coastal zone enhancement objectives and the effectiveness of efforts to address those problems. The Assessment includes the factual basis for NOAA and the States to determine the priority needs for improvement of management programs in accordance with this part.

(c) *Strategy* means a comprehensive, multi-year statement of goals and the methods for their attainment, prepared by a State in accordance with NOAA guidance and these regulations and approved by NOAA, that sets forth the specific program changes the State will seek to achieve in one or more of the coastal zone enhancement objectives. The Strategy will address only the priority needs for improvement identified by the Assistant Administrator, after careful consultation with the State. The strategy will include specific task descriptions, cost estimates and milestones, as appropriate.

(d) *Weighted Formula Project* means a project or task for which NOAA awards funding based on the criteria at § 923.125(a). Such tasks are essential to meeting the milestones and objectives of each state's strategy. As funding for weighted formula tasks is more predictable than for projects of special merit, basic functions necessary to achieve the objectives of the strategy, such as hiring of full time staff should be included in weighted formula tasks.

(e) *Projects of Special Merit (PSM)* means a project or task that NOAA will rank and evaluate based on criteria at § 923.125(b). As PSM funds will be awarded competitively on an annual basis, these projects should further the objectives of the strategy but may not be essential to meeting specific benchmarks in the strategy. PSM projects should not be dependent on long term levels of funding to succeed.

(f) *Fiscal needs* means the extent to which a State must rely solely on Federal funds to complete a project under section 309 because State funds are not otherwise available.

(g) *Technical needs* means the extent to which a State lacks trained personnel or equipment or access to trained personnel or equipment to complete a project under section 309.

(h) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§ 923.124 Allocation of section 309 funds.

(a)(1) As required by section 309(e) of the Act, a State will not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

(2) As required by section 309(f) of the Act, beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of the Act shall be retained by the Secretary for use in implementing this section, up to a maximum of $10,000,000 annually.

(b) The Assistant Administrator will annually determine the amount of funds to be devoted to section 309, which shall be not less than 10 percent nor more than 20 percent of the total amount appropriated under section 318(a)(2) of the Coastal Zone Management Act, as amended (16 U.S.C. 1464), taking into account the total amount appropriated under section 318(a)(2). The total amount of funds to be devoted to section 309 shall not exceed $10,000,000 annually.

(c) Of the total amount determined in paragraph (b) of this section, the Assistant Administrator will annually determine the proportion to be awarded

[1] NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

to eligible coastal States by weighted formula and the proportion to be awarded to eligible coastal States for projects of special merit. This determination will take into account the total amount appropriated under section 318(a)(2) of the CZMA, as amended.

(d) *Weighted formula funding.* (1)(i) A weighted formula funding target will be determined for each State that meets the eligibility requirements at § 923.121(b). The weighted formula funding target will be the State base allocation determined by the application of the formula at § 923.110(c), multiplied by a weighting factor derived from the Assistant Administrator's evaluation and ranking of the quality of the State's Strategy (as described in (d)(1) of this section), as supported by the State's Assessment.

(ii) The application of the weighting factor may result in a weighted formula funding target that is higher or lower than the State's base allocation. Each State's weighted formula funding target will be adjusted to reflect the funds available.

(iii) The Assistant Administrator may establish minimum and maximum weighted formula funding targets under § 923.124(d).

(2) The Assistant Administrator will determine each State's weighting factor based on an evaluation and ranking of the State's Strategy that takes into consideration the following:

(i) The scope and value of the proposed program change(s) contained in the Strategy in terms of improved coastal resource management;

(ii) The technical merits of the Strategy in terms of project design and cost effectiveness;

(iii) The likelihood of success that the State will have in attaining the proposed program change(s), including an evaluation of the State's past performance and support for the Strategy; and,

(iv) The fiscal and technical needs of the State.

(3) Each State will be notified individually of its weighting factor, the reasons for assigning this weighting factor, and any changes thereto. In consultation with the Assistant Administrator, a State may choose to make substantive changes to its approved Assessment and Strategy to improve its weighting factor, in accordance with the procedures at § 923.128.

(e) *Funding for projects of special merit.* The Assistant Administrator will award the remaining section 309 funds, which are not awarded under § 923.124(d), to States based on an annual evaluation and ranking of projects of special merit, as defined in § 923.123(d). Funding of projects of special merit will be limited to the highest ranked projects based on the criteria at § 923.125(b).

(f) The Assistant Administrator will notify each State annually of the total amount of funds to be devoted to section 309 pursuant to § 923.124(b), the proportion to be awarded by weighted formula pursuant to § 923.124(c), the State's weighted formula funding target pursuant to § 923.124(d), and the total amount of funds available for funding for projects of special merit pursuant to § 923.124(e).

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§ 923.125 Criteria for section 309 project selection.

(a) *Section 309 criteria for weighted formula funding.* (1) For those projects that will be funded by weighted formula, the Assistant Administrator will determine that:

(i) The project is consistent with the State's approved Assessment and Strategy and advances the attainment of the objectives of the Strategy;

(ii) Costs are reasonable and necessary to achieve the objectives of both the project and the Strategy. Allowability of costs will be determined in accordance with the provisions of OMB Circular A–87: Cost Principles for State and Local Governments

(iii) The project is technically sound;

(iv) The State has an effective plan to ensure proper and efficient administration of the project; and

(v) The State has submitted the required project information as specified in § 923.126(b)(1).

(2) In reviewing projects that will be considered under the weighted formula, the Assistant Administrator will take into consideration the fiscal and technical needs of proposing States and the

overall merit of each proposal in terms of benefits to the public.

(b) *Section 309 criteria for evaluation and ranking of projects of special merit.* (1) After determining those projects that will be funded under weighted formula funding, the Assistant Administrator will evaluate and rank State funding proposals of special merit which may be funded under 15 CFR 932.4(e).

(2) In addition to meeting the criteria in paragraph (a)(1) of this section, proposals will be evaluated and ranked under this subsection using the following criteria:

(i) *Merit.* (90 points) The Assistant Administrator will review each application to determine the following:

(A) Degree to which the project significantly advances the program improvements and leads to a program change identified in the State's Strategy. In making this determination, the Assistant Administrator shall consider the weighting factor derived from the evaluation of the quality of the State's Strategy, as supported by the State's Assessment, relative to the weighting factors assigned to other eligible States;

(B) Overall benefit of the project to the public relative to the project's cost;

(C) Innovativeness of the proposal;

(D) Transferability of the results to problems in other coastal States; and

(E) The State's past performance under section 309.

(ii) *Fiscal needs.* (5 points) The Assistant Administrator will review each application to determine the ''fiscal needs'' of a State as defined in § 923.123(e).

(iii) *Technical needs.* (5 points) The Assistant Administrator will review each application to determine the ''technical needs'' of a State as defined in § 923.123(f).

(c) Section 309 funds not awarded to States under § 923.125(a) will be awarded to States under § 923.125(b).

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§ 923.126 Pre-application procedures.

(a) *Pre-submission consultation.* Each State is strongly encouraged to consult with the Assistant Administrator prior to the submission of its draft proposal (see § 923.126(b)) and formal application for section 309 funding. The purpose of the consultation will be to determine whether the proposed projects are consistent with the purposes and objectives of section 309 and with the State's approved Strategy, to resolve any questions concerning eligibility for funding under section 309 (see § 923.121(b)), and to discuss preliminarily the State's recommendations regarding which projects should be funded by weighted formula and which projects should be individually evaluated and ranked as projects of special merit.

(b) *Draft proposals.* States shall submit draft proposals for section 309 funding annually on a schedule to be determined by the Assistant Administrator. These draft proposals shall contain all of the information needed for final application, including the following:

(1) A clear and concise description of the projects that the State proposes to be funded under section 309. This description shall explain the relationship of each proposed project to the State's approved Assessment and Strategy and how each proposed project will accomplish all or part of a program change that the State has identified in its Strategy. In addition, each project description shall include:

(i) A specific timetable for completion of each project;

(ii) A description of the activities that will be undertaken to complete each project and by whom;

(iii) The identification of any subawardees, pursuant to § 923.94(d)(3)(ii); and

(iv) The estimated total cost for each project.

(2) Section 309 funds may be used for any of the following allowable uses which support the attainment of a program change:

(i) Personnel costs;

(ii) Supplies and overhead;

(iii) Travel;

(iv) Equipment (pursuant to 15 CFR part 24);

(v) Projects, studies and reports; and

(vi) Contractual costs including subcontracts, subawards, personal service contracts with individuals, memoranda of agreement/understanding, and other

forms of passthrough funding for the purpose of carrying out the provisions of section 309.

(3) Funds may not be used for land acquisition or low cost construction projects.

(4) The State may recommend which projects should be funded by weighted formula under § 923.125(a) and which projects should be funded as projects of special merit under § 923.125(b).

(5) The draft proposal shall contain documentation of fiscal needs and technical needs, if any. This documentation shall include:

(i) For fiscal needs, information on the current State budget (surplus or deficit), the budget of the applying agency (increase or decrease over previous fiscal year), future budget projections, and what efforts have been made by the applying agency, if any, to secure additional State funds from the Legislature and/or from off-budget sources such as user fees; and

(ii) For technical needs, identification of the technical knowledge, skills and equipment that are needed to carry out proposed projects and that are not available to the applying agency, and what efforts the applying agency has made, if any, to obtain the trained personnel and equipment it needs (for example, through agreements with other State agencies).

(6) The Assistant Administrator may request additional documentation of fiscal and technical needs.

(7) Following the first year of funding under section 309, the draft proposal shall describe how the past year's work contributed to the attainment of a program change as defined in § 923.123(a) in one or more of the coastal zone enhancement objectives.

(8) If the sum of estimated project costs for projects the State recommends be funded under § 923.125(a) exceeds the State's weighted formula funding target pursuant to § 923.124(d), NOAA shall determine, in consultation with the State, which projects are appropriate for funding with weighted formula funds.

(c) *Review of draft proposals.* (1) The Assistant Administrator will make the final determination of which projects should be funded by weighted formula and which projects should be funded as projects of special merit, taking into account the State's recommendations.

(2) The Assistant Administrator may seek advice from technical experts in the fields of the coastal zone enhancement objectives as to the technical soundness and overall merit of section 309 project proposals.

(3) The Assistant Administrator will make the final determinations on project selection using the criteria at § 923.125(a) and evaluate and rank projects of special merit based on the criteria at § 923.125(b).

(4) If the Assistant Administrator determines that a State's project proposal(s) for weighted formula funding fails to meet the criteria at § 923.125(a), the Assistant Administrator may either reduce or deny the amount available to the State under § 923.124(d).

(5) Each state will be notified of the results of the review of draft proposals, as described in paragraphs (c) (3) and (4) of this section, in time to include approved section 309 projects in their applications for financial assistance pursuant to subpart I of 15 CFR part 923.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§ 923.127 Formal application for financial assistance and application review and approval procedures.

(a) Applications for financial assistance under this part must be developed and submitted on the same schedule as applications for financial assistance under subpart I of 15 CFR part 923.

(b) Applications for financial assistance under this part must be in a separate section of the application and must contain the information specified at § 923.126(b)(1) for each approved section 309 project.

(c) Applications will be reviewed for conformance with the regulations at subpart I of 15 CFR part 923.

(d) States will be notified of their section 309 awards at the time they are notified of their section 306/306A awards.

(e) If the Assistant Administrator seeks technical advice pursuant to § 923.126(c)(2), anonymous copies of the project reviews provided to the Assistant Administrator on projects proposed by a State will be made available to

the State upon request after October 1 of each year.

[57 FR 31116, July 14, 1992. Redesignated and amended at 61 FR 33818, 33819, June 28, 1996]

§ 923.128 Revisions to assessments and strategies.

(a) A State, in consultation with the Assistant Administrator, may propose to revise its approved Strategy. Revision(s) to an approved Strategy must be submitted to and approved by the Assistant Administrator prior to the initiation of the contemplated change.

(b) The Assistant Administrator will review such proposed revision(s) and determine if public review and comment is required. This determination will be based on the extent to which the proposed revision(s) changes the original scope of the State's Strategy.

(c) If the Assistant Administrator determines that public review and comment is necessary, he/she will notify the State of his/her determination. The State will be required to provide public review and comment in accordance with NOAA guidance.

(d) A State that wants to revise substantively the program changes identified in its approved Strategy or to address new enhancement objectives not identified as a priority in the original Assessment, also must revise the Assessment through a public process as described in NOAA's guidance.

(e) The Assistant Administrator, in consultation with the State, may reduce a state's weighting factor assigned to its Strategy as a result of failure to meet the milestones in its Strategy.

(f) The Assistant Administrator will notify the State of his/her decision to approve or deny the proposed revision(s) to the Strategy, and any change in the weighting factor assigned to its Strategy.

Subpart L—Review of Performance

AUTHORITY: Section 312 of the Coastal Zone Management Act, as amended (16 U.S.C. 1458).

§ 923.131 General.

This subpart sets forth the requirements for review of approved State coastal zone management (CZM) programs pursuant to section 312 of the Act (16 U.S.C. 1458). This subpart defines ''continuing review'' and other important terms, and sets forth the procedures for:

(a) Conducting continuing reviews of approved State CZM programs;

(b) Providing for public participation;

(c) Invoking interim sanctions for non-adherence to an approved coastal zone management program or a portion of such program; and

(d) Withdrawing program approval and financial assistance.

[57 FR 31113, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

§ 923.132 Definitions.

(a) *Continuing review* means monitoring State performance on an ongoing basis. As part of the continuing review, evaluations of approved CZM programs will be conducted and written findings will be produced at least once every three years.

(b) *Adherence* means to comply with the approved CZM program and financial assistance award or work program.

(c) *Interim sanction* means suspension and redirection of any portion of financial assistance extended to any coastal State under this title, if the Secretary determines that the coastal State is failing to adhere to the management program or a State plan developed to manage a national estuarine reserve, or a portion of the program or plan approved by the Secretary, or the terms of any grant or cooperative agreement funded under this title.

(d) *Approved CZM program* means those elements of the program approved by the Secretary, under 15 CFR part 923 (Development and Approval Provisions), including any changes to those elements made by approved amendments and routine program implementation.

(e) *Financial assistance award* means a legal instrument that creates a relationship between the Federal government and another entity (recipient). The principal purpose of the award is the transfer of money or services in order to accomplish a public purpose authorized by Federal statute. The

term ''financial assistance award'' encompasses grants, loans, and cooperative agreements. The following elements constitute the award:

(1) The work program described in the approved application;

(2) The budget;

(3) The standard terms and conditions of the award;

(4) Any special award conditions included with the award;

(5) The statutes and regulations under which the award is authorized; and

(6) Applicable OMB cost principles and administrative requirements.

(f) *Work program* means a description of the tasks to be undertaken by a State for a given time period for the purpose of implementing and enforcing an approved CZM program. The work program is submitted as a part of a Federal financial assistance application, or separately in the absence of Federal financial assistance.

(g) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

[47 FR 21021, May 17, 1982, as amended at 57 FR 31113, July 14, 1992. Redesignated at 61 FR 33818, June 28, 1996]

§ 923.133 Procedure for conducting continuing reviews of approved State CZM programs.

(a) As required by section 312(a), the Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) through (K), and adhered to the terms of any grant, loan, or cooperative agreement funded under this title (16 U.S.C. 1451–1464).

(b) *Continuing review procedures.* (1) Each State will submit a financial assistance application or work program, whichever is applicable, on a timetable negotiated with the Assistant Administrator, describing the tasks to be undertaken by the State for the purpose of implementing and enforcing its approved CZM program.

(2) For the purpose of evaluation, the States will submit performance reports as specified in the Special Award Conditions, or, if the State is not receiving an award, as negotiated with the Assistant Administrator. The reports will address all areas identified in each State's Performance Report Guidelines.

(3) The Assistant Administrator will collect information on the State CZM programs on a continuing basis. At the beginning of each evaluation, the Assistant Administrator will analyze available information, identify information gaps, and formulate any additional information needs that will be the subject of a supplemental information request to the State.

(4) The Assistant Administrator may conduct a site visit as a part of the evaluation.

(5) Draft findings of the evaluation will be transmitted to the State. The State will have a minimum of two weeks from receipt of the draft findings to review them and provide comments to the Assistant Administrator. This review time may be extended upon request from the State.

(6) Within two weeks from receipt of the draft findings, a State may request a meeting with the Assistant Administrator to discuss the draft findings and the State's comments.

(7) The Assistant Administrator will issue final findings to the State CZM program manager and the head of the State CZM agency within 120 days of the last public meeting in the State. Copies of the final findings will be sent to all persons and organizations who participated in the evaluation. Participants may be asked to complete a card or sign-in sheet provided by the evaluation team indicating that they wish to receive the final findings. Notice of the availability of the final findings will also be published in the FEDERAL REGISTER.

(8) The final findings will contain a section entitled ''Response to Written Comments.'' This section will include a summary of all written comments received during the evaluation and NOAA's response to the comments. If

appropriate, NOAA's response will indicate whether NOAA agrees or disagrees with the comment and how the comment has been addressed in the final findings.

(9) The Assistant Administrator may conduct issue or problem-specific evaluations between scheduled evaluations of approved State CZM programs. Such issue or problem-specific evaluations will be conducted to follow-up on potentially serious problems or issues identified in the most recent scheduled evaluation or to evaluate evidence of potentially serious problems or issues that may arise during day-to-day monitoring of State performance of grants tasks or other program implementation activities in the interim between scheduled evaluations. If the Assistant Administrator conducts an issue or problem specific evaluation, he/she will comply with the procedures and public participation requirements of §§ 923.133 and 923.134.

(c) *Requirements for continuing review of approved State CZM programs*—(1) *Scope of continuing reviews.* The continuing review of a State's approved CZM program will include an evaluation of the extent to which the State has:

(i) Implemented and enforced the program approved by the Secretary;

(ii) Addressed the coastal management needs identified in section 303(2) (A)–(K) (16 U.S.C. 1452); and

(iii) Adhered to the terms of financial assistance awards.

(2) *Procedure for assessing adherence to the approved CZM program.* (i) In reviewing adherence of a State to its approved CZM program, the Assistant Administrator will evaluate all aspects of the ''approved CZM program'' as defined in § 923.132(d). The evaluation will examine the extent to which:

(A) The State is implementing and enforcing its approved CZM program;

(B) The management agency is effectively playing a leadership role in coastal issues, monitoring the actions of appropriate State and local agencies for compliance with the approved CZM program, and assuring the opportunity for full participation of all interested entities in CZM program implementation; and

(C) The management agency is effectively carrying out the provisions of Federal consistency.

(ii) The findings concerning the State's adherence to its approved CZM program will be used in negotiating the next financial assistance award or work program, whichever is applicable.

(3) Procedure for assessing how the State has addressed the coastal management needs identified in section 303(2) (A)–(K). The assessment of the extent to which the State has addressed the coastal management needs identified in section 303(2) (A)–(K) will occur as follows:

(i) The State, in its performance report, will provide the Assistant Administrator with a listing of all actions it is taking during the performance report period to address the national coastal management needs and how these actions relate to conditions in the State and the objectives and priorities in the State CZM program.

(ii) The Assistant Administrator, in the evaluation findings, will assess the extent to which the State's actions are targeted to meeting identified ''needs'' and the effectiveness of the actions in addressing those needs. Based on this assessment, the Assistant Administrator will make findings and recommendations of the extent to which each State is addressing the coastal management needs identified in section 303.

(iii) The findings concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award.

(4) *Procedure for assessing adherence to the terms of financial assistance awards.* (i) Adherence to financial and administrative terms of each financial assistance award will be determined by the NOAA Grants Office and the Department of Commerce Inspector General. Adherence to programmatic terms of each financial assistance award will be determined by the Assistant Administrator and the NOAA Grants Office. These determinations will be made in accordance with the requirements outlined in these regulations, the findings of a financial audit of the award, and the following criteria:

(A) Compliance with the statute, regulations, and applicable OMB circulars;

(B) Submission of required reports and satisfactory completion of work products as described in the approved application and within the timeframe specified;

(C) Compliance with Standard Terms and Conditions and Special Award Conditions within the specified timeframes;

(D) Use of award funds only for approved projects; and

(E) Substantive modification of approved projects only with the prior agreement of NOAA.

(ii) The findings concerning adherence to the terms of financial assistance awards will be used in negotiating the next financial assistance award, if any.

(d) *Requirements for continuing review of State coastal energy impact programs*—(1) *Scope of continuing reviews.* The continuing review of State coastal energy impact programs will include the following elements:

(i) An evaluation of the State's adherence to the terms of financial assistance awards;

(ii) An evaluation of the relationship between coastal energy impact projects and the approved CZM program;

(iii) A description of energy activities in coastal areas and the impact resulting from these activities; and

(iv) An evaluation of the effectiveness of the coastal energy impact program in dealing with these consequences.

(2) *Procedure for assessing adherence to the terms of financial assistance awards.* See § 923.133(c)(4).

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

§ 923.134 Public participation.

(a) As required by section 312(b) of the Act, in evaluating a coastal State's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days notice of such public meetings by placing a notice in the FEDERAL REGISTER, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process.

(b) *Requirements.* (1) The Assistant Administrator will publish a Notice of Intent to Evaluate in the FEDERAL REGISTER at least 45 days before the public meeting(s). The notice will include a Statement of the availability of the State's performance report and the supplemental information request.

(2) Each State will issue a notice of the public meeting(s) in its evaluation by placing a notice in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held and by taking other reasonable action to communicate with persons and organizations known to be interested in the evaluation, such as sending a notice of the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 45 days before the date of the public meeting(s). The State will provide a copy of such notice to the Assistant Administrator. States are encouraged to republish the newspaper notice at least 15 days before the date of the public meeting(s). The State will inform the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings will be published in the FEDERAL REGISTER. The notice will state that copies of the final findings will be available to the public upon written request. Copies of the final findings will be sent to persons and organizations who participated in the evaluation, in accordance with 923.133(b)(7).

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

§ 923.135 Enforcement.

(a) *Procedures and criteria for invoking and lifting interim sanctions.* (1) As required by section 312(c) of the Act:

(i) The Secretary may suspend payment of any portion of financial assistance extended to any coastal State, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal State is failing to adhere to—

(A) The management program or a State plan developed to manage a national estuarine reserve established under section 315 of the Act (16 U.S.C. 1461), or a portion of the program or plan approved by the Secretary; or

(B) The terms of any grant or cooperative agreement funded under this title (16 U.S.C. 1451–1464).

(ii) Financial assistance may not be suspended under paragraph (a)(1)(i) of this section unless the Secretary provides the Governor of the coastal State with—

(A) Written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

(B) Written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal State to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(iii) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.

(2) *Requirements.* (i) The Assistant Administrator will identify the need for interim sanctions through the continuing review process. The Assistant Administrator will use the criteria at § 923.135(a)(3) in determining when to invoke interim sanctions.

(ii) The Assistant Administrator will issue the State a preliminary finding of non-adherence with the approved CZM program, or a portion thereof, and/or with a term or terms of a grant or cooperative agreement. This preliminary finding of non-adherence may be contained in the draft evaluation findings, or in a preliminary notification letter to the State CZM program manager. If the preliminary finding is contained in a preliminary notification letter, the Assistant Administrator will comply with the applicable public participation requirements of section 312(b) and NOAA's regulations at § 923.134. The draft evaluation findings or preliminary notification letter containing a preliminary finding of non-adherence will explain that if the finding of non-adherence is issued, the State is subject to suspension of financial assistance and, if the State fails to take the actions specified pursuant to section 312(c) and this part, to withdrawal of program approval and financial assistance.

(iii) The State will be given 30 days from receipt of the draft evaluation findings or preliminary notification letter to comment on and rebut the preliminary finding of non-adherence. During this 30-day period, the State may request up to 15 additional days to respond, for a maximum of 45 days from receipt of the draft evaluation findings or preliminary notification letter.

(iv) After considering the State's comments, the Assistant Administrator will decide whether or not to issue a final finding of non-adherence. If the Assistant Administrator decides to issue a final finding of non-adherence, he/she will do so in the final evaluation findings issued pursuant to section 312(b) or in a final notification letter as provided by paragraph (a)(2)(ii) of this section. The Assistant Administrator may invoke interim sanctions provided by section 312(c) immediately or at any time after issuing the final evaluation findings or final notification letter containing the finding of non-adherence, but not later than the next regularly scheduled evaluation.

(v) If the Assistant Administrator decides to invoke interim sanctions, he/she will do so by sending the final evaluation findings or final notification letter to the Governor of the State and the State CZM program manager. The final evaluation findings or final notification letter will contain the information required in section 312(c)(2) (A) and (B). This information will include the amount of financial assistance to be suspended and redirected, the actions the State should take in order to have the suspension withdrawn, how the suspended funds shall be expended

to take the required actions, and a schedule for taking the required actions. The final evaluation findings or final notification letter will also contain the length of the suspension, which may not last for less than 6 months or more than 36 months. The Assistant Administrator will establish the length of the suspension based on the amount of time that is reasonably necessary for the State to take the required actions. If the State can take the required actions faster than expected, the suspension can be withdrawn early (but not in less than six months).

(vi) The State must respond to the final evaluation findings or final notification letter by developing a proposed work program to accomplish the required actions on the schedule set forth in the final evaluation findings or final notification letter. The State may propose an alternative approach to accomplishing the required actions and/or an alternative schedule. The Assistant Administrator's approval of the State's work program will signify his/her agreement with the approach and schedule for accomplishing the actions necessary to withdraw the suspension.

(vii) The Assistant Administrator will monitor State performance under the work program. This may involve additional direction to the State through the grant administration process and/or a visit to the State by appropriate NOAA program staff, evaluation staff and/or other experts to work with the State on a specific problem or issue. The Assistant Administrator will consider proposals to revise the work program on a case-by-case basis, providing that the State will still be able to accomplish the necessary actions within a maximum of 36 months.

(viii) The State must document that it has taken the required actions on the schedule established under this section. The State must provide its documentation in writing to the Assistant Administrator. The Assistant Administrator may conduct a follow-up evaluation or otherwise revisit the State at his/her discretion.

(ix) If the Assistant Administrator determines that the required actions have been taken, the Assistant Administrator will promptly notify the Governor and the State program manager, in writing, that NOAA has withdrawn the suspension of financial assistance. If, however, the State does not take the required actions, then the Assistant Administrator will invoke the final sanction provisions of section 312(d) on program termination and withdrawal of all financial assistance.

(3) *Criteria for invoking interim sanctions.* (i) The Assistant Administrator may consider the following indicators of non-adherence to an approved State CZM program in determining whether to invoke interim sanctions.

(A) *Ineffective or inconsistent implementation of legally enforceable policies included in the CZM program.* Indicators of ineffective or inconsistent implementation could include: evidence of non-compliance with core authorities by the regulated community; insufficient monitoring and inspecting of coastal development to ensure that it conforms to program requirements and applicable conditions; or inadequate enforcement action when development is found not to be in compliance with the program or permit under which it is authorized or is found to be an unpermitted activity. In applying this indicator, NOAA will consider any available evidence of the impacts of ineffective or inconsistent implementation on coastal resources.

(B) *Inadequate monitoring of the actions of State and local agencies for compliance with the program.* Indicators of inadequate monitoring of these agencies could include: evidence of noncompliance of networked agencies with the CZM program, unresolved conflicts between agencies regarding what constitutes compliance with the program, or lack of a mechanism to ensure that all State agencies will adhere to the program or to approved local coastal programs pursuant to NOAA's regulations at 15 CFR 923.40 (and pursuant to new section 306(d)(15), after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance).

(C) *Non-compliance of local coastal programs with the approved State program.* Indicators of non-compliance could include: Local permitting or zoning decisions that are inconsistent with State standards or criteria, widespread

granting of variances such as to render a zoning program ineffective in meeting State standards or criteria, changes to local comprehensive plans or zoning maps that are inconsistent with State standards or criteria, or inadequate monitoring and enforcement, as described in paragraph (a)(3)(i)(A) of this section.

(D) *Ineffective implementation of Federal consistency authority*. Indicators of ineffective implementation could include: Not reviewing Federal activities, Federal licenses and permits, including offshore oil and gas exploration and development, and Federal financial assistance to State and local governments for consistency with the approved CZM program or employing review procedures that are not in accordance with State and NOAA regulations.

(E) *Inadequate opportunity for intergovernmental cooperation and public participation in management program implementation*. Indicators of inadequate opportunity could include: not carrying out procedures necessary to insure adequate consideration of the national interest in facilities which are necessary to meet requirements which are other than local in nature, not implementing effectively mechanisms for continuing consultation and coordination, not providing required notice that a management program decision would conflict with a local zoning ordinance, decision or other action pursuant to section 306(d)(3)(B)(i) and 15 CFR 923.57, or not providing opportunities for public participation in permitting processes, consistency determinations and other similar decisions pursuant to new section 306(d)(14) after November 5, 1993 and after states have been given reasonable opportunity to comply with NOAA's implementing guidance.

(F) *Non-adherence to the terms of a grant or cooperative agreement, including the schedule for funded activities*. The Assistant Administrator will also consider the extent to which priorities for expenditure of Federal funds reflect an appropriate priority for activities necessary to implement and enforce core program authorities effectively.

(G) Not submitting changes to the approved program for Federal approval on a schedule developed pursuant to 15 CFR 923.81(a) and 923.84(b)(1)(i) or developing and implementing changes to the approved program without Federal approval which are inconsistent with the Act or the approved program or which result in a reduced level of protection of coastal resources.

(ii) The Assistant Administrator may consider whether an indication of nonadherence is of recent origin (in which case the State may be given a reasonable opportunity to correct it) or has been repeatedly brought to the State's attention without corrective action in determining whether to invoke interim sanctions.

(b) *Withdrawal of program approval and financial assistance*. (1) As required by sections 312(d) and 312(e) of the Act:

(i) The Secretary shall withdraw approval of the management program of any coastal State and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State has failed to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(ii) Management program approval and financial assistance may not be withdrawn under paragraph (b)(1)(i) of this section, unless the Secretary gives the coastal State notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under paragraph (b)(1)(i) of this section, the Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Secretary.

(2) *Requirements*. (i) If the Assistant Administrator determines that the State has not taken the actions required in §923.135(a)(2), the Assistant Administrator will provide the Governor and the State CZM program manager with written notice of this finding and NOAA's obligation to withdraw program approval and financial assistance under this title. The State will be given 30 days from receipt of this notice to respond with evidence that it has taken the actions specified pursuant to §923.135(a)(2). During this 30-day period, the State may request up to 30

additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) If the State does not respond satisfactorily within the time allowed, the agency will notify the State of intent to take the proposed action. This notice will be published in the FEDERAL REGISTER and will inform the State of its right to a public hearing.

(iii) If the State does not request a public hearing or submit satisfactory evidence that it has taken the actions specified pursuant to §923.135(a)(2) within 30 days of publication of this notice, and the Assistant Administrator determines that the State has failed to take the actions specified pursuant to §923.135(a)(2), the Assistant Administrator will withdraw program approval and financial assistance and will notify the State in writing of the decision and the reasons for it. The notification will set forth actions that must be taken by the State which would cause the Assistant Administrator to cancel the withdrawal.

(iv) If the State requests a public hearing within 30 days of publication of the notice of intent to withdraw program approval and financial assistance, the Assistant Administrator will publish 30 days advance notice of the hearing in the FEDERAL REGISTER and the newspaper(s) of largest circulation in the State's coastal zone. The hearing will be held in a location convenient to the citizens of the State's coastal zone and a record of the hearing will be maintained. Within 30 days of the completion of the hearing, the agency will make the determination as set forth in paragraph (b)(2)(iii) of this section.

(3) If program approval and financial assistance are withdrawn pursuant to this section, a notice will be placed in the FEDERAL REGISTER and Federal consistency under section 307 of the Act will cease to apply to the State's CZM program.

[47 FR 21021, May 17, 1982, as amended at 57 FR 31114, July 14, 1992. Redesignated and amended at 61 FR 33818, June 28, 1996]

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

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AUTHORITY: 16 U.S.C. 1451 *et seq.*

SOURCE: 65 FR 77154, Dec. 8, 2000, unless otherwise noted.

Subpart A—General Information

§ 930.1 Overall objectives.

The objectives of this part are:

(a) To describe the obligations of all parties who are required to comply with the federal consistency requirement of the Coastal Zone Management Act;

(b) To implement the federal consistency requirement in a manner which strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs and the importance of federal activities (the term ''federal action'' includes all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.);

(c) To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the federal consistency requirement of the Act are satisfied. Federal agencies, State agencies, and applicants should coordinate as early as possible in developing a proposed federal action, and may mutually agree to intergovernmental coordination efforts to meet the requirements of these regulations, provided that public participation requirements are met and applicable State management program enforceable policies are considered. State agencies should participate in the administrative processes of federal agencies concerning federal actions that may be subject to state review under subparts C, D, E, F and I of this part.

(d) To interpret significant terms in the Act and this part;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the enforceable policies of approved management programs;

(f) To provide procedures which the Secretary, in cooperation with the Executive Office of the President, may use to mediate serious disagreements which arise between Federal and State agencies during the administration of approved management programs; and

(g) To provide procedures which permit the Secretary to review federal license or permit activities, or federal assistance activities, to determine whether they are consistent with the objectives or purposes of the Act, or are necessary in the interest of national security.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

§ 930.2 Public participation.

State management programs shall provide an opportunity for public participation in the State agency's review of a Federal agency's consistency determination or an applicant's or person's consistency certification.

§ 930.3 Review of the implementation of the federal consistency requirement.

As part of the responsibility to conduct a continuing review of approved management programs, the Director of the Office of Ocean and Coastal Resource Management (Director) shall review the performance of each State's implementation of the federal consistency requirement. The Director shall evaluate instances where a State agency is believed to have either failed to object to inconsistent federal actions, or improperly objected to consistent federal actions. This evaluation shall be incorporated within the Director's general efforts to ascertain instances where a State has not adhered to its approved management program and such lack of adherence is not justified.

§ 930.4 Conditional concurrences

(a) Federal agencies, applicants, persons and applicant agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under subpart C or in a Federal agency's approval under subparts D, E, F or I of this part, would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also

inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable subpart and notify, pursuant to §930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from the Federal agency that the application will not be approved as amended by the State agency's conditions; and

(2) The Federal agency (for subpart C), applicant (for subparts D and I), person (for subpart E) or applicant agency (for subpart F) shall modify the applicable plan, project proposal, or application to the Federal agency pursuant to the State agency's conditions. The Federal agency, applicant, person or applicant agency shall immediately notify the State agency if the State agency's conditions are not acceptable; and

(3) The Federal agency (for subparts D, E, F and I) shall approve the amended application (with the State agency's conditions). The Federal agency shall immediately notify the State agency and applicant or applicant agency if the Federal agency will not approve the application as amended by the State agency's conditions.

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable subpart.

§930.5 State enforcement action.

The regulations in this part are not intended in any way to alter or limit other legal remedies, including judicial review or State enforcement, otherwise available. State agencies and Federal agencies should first use the various remedial action and mediation sections of this part to resolve their differences or to enforce State agency concurrences or objections.

§930.6 State agency responsibility.

(a) This section describes the responsibilities of the ''State agency'' described in §930.11(o). A designated State agency is required to uniformly and comprehensively apply the enforceable policies of the State's management program, efficiently coordinate all State coastal management requirements, and to provide a single point of contact for Federal agencies and the public to discuss consistency issues. Any appointment by the State agency of the State's consistency responsibilities to a designee agency must be described in the State's management program. In the absence of such description, all consistency determinations, consistency certifications and federal assistance proposals shall be sent to and reviewed by the State agency. A State may have two State agencies designated pursuant to §306(d)(6) of the Act where the State has two geographically separate federally-approved management programs.

(b) The State agency is responsible for commenting on and concurring with or objecting to Federal agency consistency determinations and negative determinations (*see* subpart C of this part), consistency certifications for federal licenses, permits, and Outer Continental Shelf plans (*see* subparts D, E and I of this part), and reviewing the consistency of federal assistance activities proposed by applicant agencies (*see* subpart F of this part). The State agency shall be responsible for securing necessary review and comment from other State, regional, or local government agencies, and, where applicable, the public. Thereafter, only the State agency is authorized to comment officially on or concur with or object to a federal consistency determination or negative determination, a consistency certification, or determine the consistency of a proposed federal assistance activity.

(c) If described in a State's management program, the issuance or denial of relevant State permits can constitute the State agency's consistency concurrence or objection if the State

agency ensures that the State permitting agencies or the State agency review individual projects to ensure consistency with all applicable State management program policies and that applicable public participation requirements are met. The State agency shall monitor such permits issued by another State agency.

Subpart B—General Definitions

§ 930.10 Index to definitions for terms defined in part 930.

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[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

§ 930.11 Definitions.

(a) *Act.* The term ''Act'' means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1464).

(b) *Any coastal use or resource.* The phrase ''any coastal use or resource'' means any land or water use or natural resource of the coastal zone. Land and water uses, or coastal uses, are defined in sections 304(10) and (18) of the act, respectively, and include, but are not limited to, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects. Natural resources include biological or physical resources that are found within a State's coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. Coastal uses and resources also includes uses and resources appropriately described in a management program.

(c) *Assistant Administrator.* The term ''Assistant Administrator'' means the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.

(d) *Associated facilities.* The term ''associated facilities'' means all proposed facilities which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (e.g., activity, development project, license, permit, or assistance), and without which the federal action, as proposed, could not be conducted. The proponent of a federal action shall consider whether the federal action and its associated facilities affect any coastal use or resource and, if so, whether these interrelated activities satisfy the requirements of the applicable subpart (subparts C, D, E, F or I).

(e) *Coastal Zone.* The term ''coastal zone'' has the same definition as provided in § 304(1) of the Act.

(f) *Director.* The term ''Director'' means the Director of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, NOAA.

(g) *Effect on any coastal use or resource (coastal effect).* The term ''effect on any coastal use or resource'' means any reasonably foreseeable effect on any coastal use or resource resulting from a Federal agency activity or federal license or permit activity (including all

types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.) Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.

(h) *Enforceable policy*. ''The term ''enforceable policy'' means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone,'' 16 U.S.C. 1453(6a), and which are incorporated in a management program as approved by OCRM either as part of program approval or as a program change under 15 CFR part 923, subpart H. An enforceable policy shall contain standards of sufficient specificity to guide public and private uses. Enforceable policies need not establish detailed criteria such that a proponent of an activity could determine the consistency of an activity without interaction with the State agency. State agencies may identify management measures which are based on enforceable policies, and, if implemented, would allow the activity to be conducted consistent with the enforceable policies of the program. A State agency, however, must base its objection on enforceable policies.

(i) *Executive Office of the President*. The term ''Executive Office of the President'' means the office, council, board, or other entity within the Executive Office of the President which shall participate with the Secretary in seeking to mediate serious disagreements which may arise between a Federal agency and a coastal State.

(j) *Federal agency*. The term ''Federal agency'' means any department, agency, board, commission, council, independent office or similar entity within the executive branch of the federal government, or any wholly owned federal government corporation.

(k) *Management program*. The term ''management program'' has the same definition as provided in section 304(12) of the Act, except that for the purposes of this part the term is limited to those management programs adopted by a coastal State in accordance with the provisions of section 306 of the Act, and approved by the Assistant Administrator.

(l) *OCRM*. The term ''OCRM'' means the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (''NOAA''), U.S. Department of Commerce.

(m) *Secretary*. The term ''Secretary'' means the Secretary of Commerce and/or designee.

(n) *Section*. The term ''Section'' means a section of the Coastal Zone Management Act of 1972, as amended.

(o) *State agency*. The term ''State agency'' means the agency of the State government designated pursuant to section 306(d)(6) of the Act to receive and administer grants for an approved management program, or a single designee State agency appointed by the 306(d)(6) State agency.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

Subpart C—Consistency for Federal Agency Activities

§ 930.30 Objectives.

The provisions of this subpart are intended to assure that all Federal agency activities including development projects affecting any coastal use or resource will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for Federal agency activities having interstate coastal effects.

§ 930.31 Federal agency activity.

(a) The term ''Federal agency activity'' means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. The term ''Federal agency activity'' includes a range of activities where a Federal agency makes a proposal for action initiating an activity or series of activities when coastal effects are reasonably foreseeable, e.g., a Federal agency's proposal to physically alter coastal resources, a plan that is used to direct future agency actions, a proposed rulemaking that alters uses of the coastal zone. ''Federal agency activity'' does not include the issuance of a federal license or permit to an applicant or person (see subparts D and E of this part) or the granting of federal assistance to an applicant agency (see subpart F of this part).

(b) The term federal ''development project'' means a Federal agency activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and includes the acquisition, use, or disposal of any coastal use or resource.

(c) The Federal agency activity category is a residual category for federal actions that are not covered under subparts D, E, or F of this part.

(d) A general permit proposed by a Federal agency is subject to this subpart if the general permit does not involve case-by-case or individual issuance of a license or permit by a Federal agency. When proposing a general permit, a Federal agency shall provide a consistency determination to the relevant management programs and request that the State agency(ies) provide the Federal agency with review, and if necessary, conditions, based on specific enforceable policies, that would permit the State agency to concur with the Federal agency's consistency determination. State agency concurrence shall remove the need for the State agency to review individual uses of the general permit for consistency with the enforceable policies of management programs. Federal agencies shall, pursuant to the consistent to the maximum extent practicable standard in § 930.32, incorporate State conditions into the general permit. If the State agency's conditions are not incorporated into the general permit or a State agency objects to the general permit, then the Federal agency shall notify potential users of the general permit that the general permit is not available for use in that State unless an applicant under subpart D of this part or a person under subpart E of this part, who wants to use the general permit in that State provides the State agency with a consistency certification under subpart D of this part and the State agency concurs. When subpart D or E of this part applies, all provisions of the relevant subpart apply.

(e) The terms ''Federal agency activity'' and ''Federal development project'' also include modifications of any such activity or development project which affect any coastal use or resource, provided that, in the case of modifications of an activity or development project which the State agency has previously reviewed, the effect on any coastal use or resource is substantially different than those previously reviewed by the State agency.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 826, Jan. 5, 2006]

§ 930.32 Consistent to the maximum extent practicable.

(a)(1) The term ''consistent to the maximum extent practicable'' means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

(2) Section 307(e) of the Act does not relieve Federal agencies of the consistency requirements under the Act. The Act was intended to cause substantive changes in Federal agency decision-making within the context of the discretionary powers residing in such agencies. Accordingly, whenever legally permissible, Federal agencies shall consider the enforceable policies of management programs as requirements to be adhered to in addition to existing Federal agency statutory mandates. If a Federal agency asserts that full consistency with the management program is prohibited, it shall clearly describe, in writing, to the State agency the statutory provisions,

legislative history, or other legal authority which limits the Federal agency's discretion to be fully consistent with the enforceable policies of the management program.

(3) For the purpose of determining consistent to the maximum extent practicable under paragraphs (a)(1) and (2) of this section, federal legal authority includes Federal appropriation Acts if the appropriation Act includes language that specifically prohibits full consistency with specific enforceable policies of management programs. Federal agencies shall not use a general claim of a lack of funding or insufficient appropriated funds or failure to include the cost of being fully consistent in Federal budget and planning processes as a basis for being consistent to the maximum extent practicable with an enforceable policy of a management program. The only circumstance where a Federal agency may rely on a lack of funding as a limitation on being fully consistent with an enforceable policy is the Presidential exemption described in section 307(c)(1)(B) of the Act (16 U.S.C. 1456(c)(1)(B)). In cases where the cost of being consistent with the enforceable policies of a management program was not included in the Federal agency's budget and planning processes, the Federal agency should determine the amount of funds needed and seek additional federal funds. Federal agencies should include the cost of being fully consistent with the enforceable policies of management programs in their budget and planning processes, to the same extent that a Federal agency would plan for the cost of complying with other federal requirements.

(b) A Federal agency may deviate from full consistency with an approved management program when such deviation is justified because of an emergency or other similar unforeseen circumstance (''exigent circumstance''), which presents the Federal agency with a substantial obstacle that prevents complete adherence to the approved program. Any deviation shall be the minimum necessary to address the exigent circumstance. Federal agencies shall carry out their activities consistent to the maximum extent practicable with the enforceable policies of a management program, to the extent that the exigent circumstance allows. Federal agencies shall consult with State agencies to the extent that an exigent circumstance allows and shall attempt to seek State agency concurrence prior to addressing the exigent circumstance. Once the exigent circumstances have passed, and if the Federal agency is still carrying out an activity with coastal effects, Federal agencies shall comply with all applicable provisions of this subpart to ensure that the activity is consistent to the maximum extent practicable with the enforceable policies of management programs. Once the Federal agency has addressed the exigent circumstance or completed its emergency response activities, it shall provide the State agency with a description of its actions and their coastal effects.

(c) A classified activity that affects any coastal use or resource is not exempt from the requirements of this subpart, unless the activity is exempted by the President under section 307(c)(1)(B) of the Act. Under the consistent to the maximum extent practicable standard, the Federal agency shall provide to the State agency a description of the project and coastal effects that it is legally permitted to release or does not otherwise breach the classified nature of the activity. Even when a Federal agency may not be able to disclose project information, the Federal agency shall conduct the classified activity consistent to the maximum extent practicable with the enforceable policies of management programs. The term classified means to protect from disclosure national security information concerning the national defense or foreign policy, provided that the information has been properly classified in accordance with the substantive and procedural requirements of an executive order. Federal and State agencies are encouraged to agree on a qualified third party(ies) with appropriate security clearance(s) to review classified information and to provide non-classified comments regarding the activity's reasonably foreseeable coastal effects.

§ 930.33 Identifying Federal agency activities affecting any coastal use or resource.

(a) Federal agencies shall determine which of their activities affect any coastal use or resource of States with approved management programs.

(1) Effects are determined by looking at reasonably foreseeable direct and indirect effects on any coastal use or resource. An action which has minimal or no environmental effects may still have effects on a coastal use (e.g., effects on public access and recreational opportunities, protection of historic property) or a coastal resource, if the activity initiates an event or series of events where coastal effects are reasonably foreseeable. Therefore, Federal agencies shall, in making a determination of effects, review relevant management program enforceable policies as part of determining effects on any coastal use or resource.

(2) If the Federal agency determines that a Federal agency activity has no effects on any coastal use or resource, and a negative determination under § 930.35 is not required, then the Federal agency is not required to coordinate with State agencies under section 307 of the Act.

(3)(i) *De minimis* Federal agency activities. Federal agencies are encouraged to review their activities, other than development projects within the coastal zone, to identify *de minimis* activities, and request State agency concurrence that these de minimis activities should not be subject to further State agency review. *De minimis* activities shall only be excluded from State agency review if a Federal agency and State agency have agreed. The State agency shall provide for public participation under section 306(d)(14) of the Act when reviewing the Federal agency's *de minimis* activity request. If the State agency objects to the Federal agency's *de minimis* finding then the Federal agency must provide the State agency with either a negative determination or a consistency determination pursuant to this subpart. OCRM is available to facilitate a Federal agency's request.

(ii) *De minimis* activities are activities that are expected to have insignificant direct or indirect (cumulative and secondary) coastal effects and which the State agency concurs are *de minimis*.

(4) *Environmentally beneficial activities.* The State agency and Federal agencies may agree to exclude environmentally beneficial Federal agency activities (either on a case-by-case basis or for a category of activities) from further State agency consistency review. Environmentally beneficial activity means an activity that protects, preserves, or restores the natural resources of the coastal zone. The State agency shall provide for public participation under section 306(d)(14) of the Act for the State agency's consideration of whether to exclude environmentally beneficial activities.

(5) General consistency determinations, phased consistency determinations, and national or regional consistency determinations under § 930.36 are also available to facilitate federal-State coordination.

(b) Federal agencies shall consider all development projects within the coastal zone to be activities affecting any coastal use or resource. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they affect any coastal use or resource.

(c) Federal agency activities and development projects outside of the coastal zone, are subject to Federal agency review to determine whether they affect any coastal use or resource.

(d) Federal agencies shall broadly construe the effects test to provide State agencies with a consistency determination under § 930.34 and not a negative determination under § 930.35 or other determinations of no effects. Early coordination and cooperation between a Federal agency and the State agency can enable the parties to focus their efforts on particular Federal agency activities of concern to the State agency.

§ 930.34 Federal and State agency coordination.

(a)(1) Federal agencies shall provide State agencies with consistency determinations for all Federal agency activities affecting any coastal use or resource. To facilitate State agency review, Federal agencies should coordinate with the State agency prior to providing the determination.

(2) *Use of existing procedures.* Federal agencies are encouraged to coordinate and consult with State agencies through use of existing procedures in order to avoid waste, duplication of effort, and to reduce Federal and State agency administrative burdens. Where necessary, these existing procedures should be modified to facilitate coordination and consultation under the Act.

(b) *Listed activities.* State agencies are strongly encouraged to list in their management programs Federal agency activities which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. Listed Federal agency activities shall be described in terms of the specific type of activity involved (e.g., federal reclamation projects). In the event the State agency chooses to describe Federal agency activities that occur outside of the coastal zone, which the State agency believes will have reasonably foreseeable coastal effects, it shall also describe the geographic location of such activities (e.g., reclamation projects in coastal floodplains).

(c) *Unlisted activities.* State agencies should monitor unlisted Federal agency activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, and the FEDERAL REGISTER) and should notify Federal agencies of unlisted Federal agency activities which Federal agencies have not subjected to a consistency review but which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. The provisions in paragraphs (b) and (c) of this section are recommended rather than mandatory procedures for facilitating federal-State coordination of Federal agency activities which affect any coastal use or resource. State agency notification to the Federal agency (by listed or unlisted notification) is neither a substitute for nor does it eliminate Federal agency responsibility to comply with the consistency requirement, and to provide State agencies with consistency determinations for all development projects in the coastal zone and for all other Federal agency activities which the Federal agency finds affect any coastal use or resource, regardless of whether the State agency has listed the activity or notified the Federal agency through case-by-case monitoring.

(d) *State guidance and assistance to Federal agencies.* As a preliminary matter, a decision that a Federal agency activity affects any coastal use or resource should lead to early consultation with the State agency (*i.e.*, before the required 90-day period). Federal agencies should obtain the views and assistance of the State agency regarding the means for determining that the proposed activity will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of a management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the Federal agency, the State agency shall identify any enforceable policies applicable to the proposed activity based upon the information provided to the State agency at the time of the request.

§ 930.35 Negative determinations for proposed activities.

(a) If a Federal agency determines that there will not be coastal effects, then the Federal agency shall provide the State agencies with a negative determination for a Federal agency activity:

(1) Identified by a State agency on its list, as described in §930.34(b), or through case-by-case monitoring of unlisted activities; or

(2) Which is the same as or is similar to activities for which consistency determinations have been prepared in the past; or

(3) For which the Federal agency undertook a thorough consistency assessment and developed initial findings on the coastal effects of the activity.

(b) *Content of a negative determination.* A negative determination may be submitted to State agencies in any written form so long as it contains a brief description of the activity, the activity's location and the basis for the Federal agency's determination that the activity will not affect any coastal use or resource. In determining effects, Federal agencies shall follow § 930.33(a)(1), including an evaluation of the relevant enforceable policies of a management program and include the evaluation in the negative determination. The level of detail in the Federal agency's analysis may vary depending on the scope and complexity of the activity and issues raised by the State agency, but shall be sufficient for the State agency to evaluate whether coastal effects are reasonably foreseeable.

(c) A negative determination under paragraph (a) of this section shall be provided to the State agency at least 90 days before final approval of the activity, unless both the Federal agency and the State agency agree to an alternative notification schedule. A State agency is not obligated to respond to a negative determination. If a State agency does not respond to a Federal agency's negative determination within 60 days, State agency concurrence with the negative determination shall be presumed. State agency concurrence shall not be presumed in cases where the State agency, within the 60-day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. If a State agency objects to a negative determination, asserting that coastal effects are reasonably foreseeable, the Federal agency shall consider submitting a consistency determination to the State agency or otherwise attempt to resolve any disagreement within the remainder of the 90-day period. If a Federal agency, in response to a State agency's objection to a negative determination, agrees that coastal effects are reasonably foreseeable, the State agency and Federal agency should attempt to agree to complete the consistency review within the 90-day period for the negative determination or consider an alternative schedule pursuant to § 930.36(b)(1). Federal agencies should consider postponing final Federal agency action, beyond the 90-day period, until a disagreement has been resolved. State agencies are not required to provide public notice of the receipt of a negative determination or the resolution of an objection to a negative determination, unless a Federal agency submits a consistency determination pursuant to § 930.34.

(d) *General negative determinations.* In cases where Federal agencies will be performing a repetitive activity that a Federal agency determines will not have reasonably foreseeable coastal effects, whether performed separately or cumulatively, a Federal agency may provide a State agency(ies) with a general negative determination, thereby avoiding the necessity of issuing separate negative determinations for each occurrence of the activity. A general negative determination must adhere to all requirements for negative determinations under § 930.35. In addition, a general negative determination must describe in detail the activity covered by the general negative determination and the expected number of occurrences of the activity over a specific time period. If a Federal agency issues a general negative determination, it may periodically assess whether the general negative determination is still applicable.

(e) In the event of a serious disagreement between a Federal agency and a State agency regarding a determination related to whether a proposed activity affects any coastal use or resource, either party may seek the Secretarial mediation or OCRM mediation services provided for in subpart G.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.36 Consistency determinations for proposed activities.

(a) Federal agencies shall review their proposed Federal agency activities which affect any coastal use or resource in order to develop consistency determinations which indicate whether such activities will be undertaken in a

manner consistent to the maximum extent practicable with the enforceable policies of approved management programs. Federal agencies should consult with State agencies at an early stage in the development of the proposed activity in order to assess whether such activities will be consistent to the maximum extent practicable with the enforceable policies of such programs.

(b) *Timing of consistency determinations.* (1) Federal agencies shall provide State agencies with a consistency determination at the earliest practicable time in the planning or reassessment of the activity. A consistency determination should be prepared following development of sufficient information to reasonably determine the consistency of the activity with the management program, but before the Federal agency reaches a significant point of decisionmaking in its review process, *i.e.*, while the Federal agency has the ability to modify the activity. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal agency activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

(2) Federal and State agencies may mutually agree upon procedures for extending the notification requirement beyond 90 days for activities requiring a substantial review period, and for shortening the notification period for activities requiring a less extensive review period, provided that public participation requirements are met.

(c) *General consistency determinations.* In cases where Federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Federal agency may develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A Federal agency may provide a State agency with a general consistency determination only in situations where the incremental actions are repetitive and do not affect any coastal use or resource when performed separately. A Federal agency and State agency may mutually agree on a general consistency determination for de minimis activities (*see* § 930.33(a)(3)) or any other repetitive activity or category of activity(ies). If a Federal agency issues a general consistency determination, it shall thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

(d) *Phased consistency determinations.* In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project or other activity from planning to completion, the Federal agency shall provide the State agency with one consistency determination for the entire activity or development project. In cases where federal decisions related to a proposed development project or other activity will be made in phases based upon developing information that was not available at the time of the original consistency determination, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (e.g., planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project or other activity continues to be consistent to the maximum extent practicable with the management program.

(e) *National or regional consistency determinations.* (1) A Federal agency may provide States with consistency determinations for Federal agency activities that are national or regional in scope (e.g., rulemaking, national plans), and that affect any coastal use or resource of more than one State. Many States share common coastal management issues and have similar enforceable policies, e.g., protection of a particular coastal resource. The Federal agency's national or regional consistency determination should, at a minimum, address the common denominator of these policies, *i.e.*, the common coastal effects and management issues, and thereby address different States' policies with one discussion and determination. If a Federal agency decides not to use this section, it must issue

consistency determinations to each State agency pursuant to § 930.39.

(2) Federal agency activities with coastal effects shall be consistent to the maximum extent practicable with the enforceable policies of each State's management program. Thus, the Federal agency's national or regional consistency determination shall contain sections that would apply to individual States to address coastal effects and enforceable policies unique to particular States, if common coastal effects and enforceable policies cannot be addressed under paragraph (e)(1). Early coordination with coastal States will enable the Federal agency to identify particular coastal management concerns and policies. In addition, the Federal agency could address the concerns of each affected State by providing for State conditions for the proposed activity. Further, the consistency determination could identify the coordination efforts and describe how the Federal agency responded to State agency concerns.

§ 930.37 Consistency determinations and National Environmental Policy Act (NEPA) requirements.

A Federal agency may use its NEPA documents as a vehicle for its consistency determination or negative determination under this subpart. However, a Federal agency's federal consistency obligations under the Act are independent of those required under NEPA and are not necessarily fulfilled by the submission of a NEPA document. State agencies shall not require Federal agencies to submit NEPA documents as information required pursuant to § 930.39. If a Federal agency includes its consistency determination or negative determination in a NEPA document, the Federal agency shall ensure that the NEPA document includes the information and adheres to the timeframes required by this subpart. Federal agencies and State agencies should mutually agree on how to best coordinate the requirements of NEPA and the Act.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.38 Consistency determinations for activities initiated prior to management program approval.

(a) A consistency determination is required for ongoing Federal agency activities other than development projects initiated prior to management program approval, which are governed by statutory authority under which the Federal agency retains discretion to reassess and modify the activity. In these cases the consistency determination must be made by the Federal agency at the earliest practicable time following management program approval, and the State agency must be provided with a consistency determination no later than 120 days after management program approval for ongoing activities which the State agency lists or identifies through monitoring as subject to consistency with the management program.

(b) A consistency determination is required for major, phased federal development project decisions described in § 930.36(d) which are made following management program approval and are related to development projects initiated prior to program approval. In making these new decisions, Federal agencies shall consider effects on any coastal use or resource not fully evaluated at the outset of the project. This provision shall not apply to phased federal decisions which were specifically described, considered and approved prior to management program approval (e.g., in a final environmental impact statement issued pursuant to NEPA).

§ 930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. The statement must be based upon an evaluation of the relevant enforceable policies of the management program. A description of this evaluation shall be included in the consistency determination, or provided to the State agency simultaneously with the consistency determination if the evaluation is contained in another document. Where a

Federal agency is aware, prior to its submission of its consistency determination, that its activity is not fully consistent with a management program's enforceable policies, the Federal agency shall describe in its consistency determination the legal authority that prohibits full consistency as required by §930.32(a)(2). Where the Federal agency is not aware of any inconsistency until after submission of its consistency determination, the Federal agency shall submit its description of the legal authority that prohibits full consistency to the State agency as soon as possible, or before the end of the 90-day period described in §930.36(b)(1). The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied.

(b) Federal agencies shall be guided by the following in making their consistency determinations. The activity its effects on any coastal use or resource, associated facilities (e.g., proposed siting and construction of access road, connecting pipeline, support buildings, and the effects of the associated facilities (e.g., erosion, wetlands, beach access impacts), must all be consistent to the maximum extent practicable with the enforceable policies of the management program.

(c) In making their consistency determinations, Federal agencies shall ensure that their activities are consistent to the maximum extent practicable with the enforceable, policies of the management program. However, Federal agencies should give consideration to management program provisions which are in the nature of recommendations.

(d) When Federal agency standards are more restrictive than standards or requirements contained in the management program, the Federal agency may continue to apply its stricter standards. In such cases the Federal agency shall inform the State agency in the consistency determination of the statutory, regulatory or other basis for the application of the stricter standards.

(e) *State permit requirements.* Federal law, other than the CZMA, may require a Federal agency to obtain a State permit. Even when Federal agencies are not required to obtain State permits, Federal agencies shall still be consistent to the maximum extent practicable with the enforceable policies that are contained in such State permit programs that are part of a management program.

§930.40 Multiple Federal agency participation.

Whenever more than one Federal agency is involved in a Federal agency activity or its associated facilities affecting any coastal use or resource, or is involved in a group of Federal agency activities related to each other because of their geographic proximity, the Federal agencies may prepare one consistency determination for all the federal activities involved. In such cases, Federal agencies should consider joint preparation or lead agency development of the consistency determination. In either case, the consistency determination shall be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies and shall comply with the requirements of §930.39.

§930.41 State agency response.

(a) A State agency shall inform the Federal agency of its concurrence with or objection to the Federal agency's consistency determination at the earliest practicable time, after providing for public participation in the State agency's review of the consistency determination. The Federal agency may presume State agency concurrence if the State agency's response is not received within 60 days from receipt of the Federal agency's consistency determination and supporting information required by §930.39(a). The 60-day review period begins when the State agency receives the consistency determination and supporting information

required by § 930.39(a). If the information required by § 930.39(a) is not included with the determination, the State agency shall notify the Federal agency in writing within 14 days of receiving the determination and supporting information that the 60-day review period has not begun, identify missing information required by § 930.39(a), and that the 60-day review period will begin when the missing information is received by the State agency. If the State agency has not notified the Federal agency that information required by § 930.39(a) is missing within the 14 day notification period, then the 60-day review period shall begin on the date the State agency received the consistency determination and accompanying information. The State agency's determination of whether the information required by § 930.39(a) is complete is not a substantive review of the adequacy of the information provided. Thus, if a Federal agency has submitted a consistency determination and information required by § 930.39(a), then the State agency shall not assert that the 60-day review period has not begun because the information contained in the items required by § 930.39(a) is substantively deficient. The failure to submit information not required by 930.39(a) shall not be a basis for asserting that the 60-day review period has not begun.

(b) State agency concurrence shall not be presumed in cases where the State agency, within the 60-day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. In considering whether a longer or additional extension period is appropriate, the Federal agency should consider the magnitude and complexity of the information contained in the consistency determination.

(c) Final Federal agency action shall not be taken sooner than 90 days from the receipt by the State agency of the consistency determination unless the State concurs or concurrence is presumed, pursuant to paragraphs (a) and (b), with the activity, or unless both the Federal agency and the State agency agree to an alternative period.

(d) *Time limits on concurrences.* A State agency cannot unilaterally place an expiration date on its concurrence. If a State agency believes that an expiration date is necessary, State and Federal agencies may agree to a time limit. If there is no agreement, later phases of, or modifications to, the activity that will have effects not evaluated at the time of the original consistency determination will require either a new consistency determination, a supplemental consistency determination under § 930.46, or a phased review under § 930.36(d) of this subpart.

(e) *State processing fees.* The Act does not require Federal agencies to pay State processing fees. State agencies shall not assess a Federal agency with a fee to process the Federal agency's consistency determination unless payment of such fees is required by other federal law or otherwise agreed to by the Federal agency and allowed by the Comptroller General of the United States. In no case may a State agency stay the consistency review period or base its objection on the failure of a Federal agency to pay a fee.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.42 Public participation.

(a) Management programs shall provide for public participation in the State agency's review of consistency determinations. Public participation, at a minimum, shall consist of public notice for the area(s) of the coastal zone likely to be affected by the activity, as determined by the State agency.

(b) *Timing of public notice.* States shall provide timely public notice after the consistency determination has been received by the State agency, except in cases where earlier public notice on the consistency determination by the Federal agency or the State agency meets the requirements of this section. A public comment period shall be provided by the State sufficient to give the public an opportunity to develop and provide comments on whether the project is consistent with management program enforceable policies and still allow the State agency to issue its concurrence or objection within the 60 day State response period.

(c) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency with the enforceable policies of the management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information, e.g., a State agency web site; and

(4) Specify a contact for submitting comments to the State agency.

(d) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official State gazette, a local newspaper serving areas of coastal zone likely to be affected by the activity, individual State mailings, public notice through a management program newsletter, and electronic notices, e.g., web sites. However, electronic notices, e.g., web sites, shall not be the sole source of a public notification, but may be used in conjunction with other means. Web sites may be used to provide a location for the public to obtain additional information. States shall not require that the Federal agency provide public notice. Federal and State agencies are encouraged to issue joint public notices, and hold joint public hearings, to minimize duplication of effort and to avoid unnecessary delays, so long as the joint notice meets the other requirements of this section.

§ 930.43 State agency objection.

(a) In the event the State agency objects to the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the objection and supporting information. The State agency response shall describe:

(1) How the proposed activity will be inconsistent with specific enforceable policies of the management program; and

(2) The specific enforceable policies (including citations).

(3) The State agency should also describe alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. Failure to describe alternatives does not affect the validity of the State agency's objection.

(b) If the State agency's objection is based upon a finding that the Federal agency has failed to supply sufficient information, the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal agency activity with the enforceable policies of the management program.

(c) State agencies shall send to the Director a copy of objections to Federal agency consistency determinations.

(d) In the event of an objection, Federal and State agencies should use the remaining portion of the 90-day notice period (*see* § 930.36(b)) to attempt to resolve their differences. If resolution has not been reached at the end of the 90-day period, Federal agencies should consider using the dispute resolution mechanisms of this part and postponing final federal action until the problems have been resolved. At the end of the 90-day period the Federal agency shall not proceed with the activity over a State agency's objection unless:

(1) the Federal agency has concluded that under the ''consistent to the maximum extent practicable'' standard described in section 930.32 consistency with the enforceable policies of the management program is prohibited by existing law applicable to the Federal agency and the Federal agency has clearly described, in writing, to the State agency the legal impediments to full consistency (See §§ 930.32(a) and 930.39(a)), or

(2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects.

(e) If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency, or to follow an alternative suggested by the State agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

§ 930.44 Availability of mediation for disputes concerning proposed activities.

In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed federal activity affecting any coastal use or resource, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G.

§ 930.45 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program.

(b) The State agency may request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a Federal agency activity, including those activities where the State agency's concurrence was presumed, which was:

(1) Previously determined to be consistent to the maximum extent practicable with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent to the maximum extent practicable with the enforceable policies of the management program; or

(2) Previously determined not to be a Federal agency activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, the activity affects any coastal use or resource and is not consistent to the maximum extent practicable with the enforceable policies of the management program. The State agency's request shall include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G of this part.

§ 930.46 Supplemental coordination for proposed activities.

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The Federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

Subpart D—Consistency for Activities Requiring a Federal License or Permit

§ 930.50 Objectives.

The provisions of this subpart are intended to ensure that any required federal license or permit activity affecting any coastal use or resource is conducted in a manner consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal license or permit activities having interstate coastal effects.

§ 930.51 Federal license or permit.

(a) The term ''federal license or permit'' means any authorization that an applicant is required by law to obtain in order to conduct activities affecting any land or water use or natural resource of the coastal zone and that any Federal agency is empowered to issue to an applicant. The term ''federal license or permit'' does not include OCS plans, and federal license or permit activities described in detail in OCS plans, which are subject to subpart E of this part, or leases issued pursuant to lease sales conducted by a Federal agency (e.g., outer continental shelf (OCS) oil and gas lease sales conducted by the Minerals Management Service or oil and gas lease sales conducted by the Bureau of Land Management). Lease sales conducted by a Federal agency are Federal agency activities under subpart C of this part.

(b) The term also includes the following types of renewals and major amendments which affect any coastal use or resource:

(1) Renewals and major amendments of federal license or permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which are filed after and are subject to management program changes not in existence at the time of original State agency review; and

(3) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which will cause an effect on any coastal use or resource substantially different than those originally reviewed by the State agency.

(c) The term ''major amendment'' of a federal license or permit activity means any subsequent federal approval that the applicant is required to obtain for modification to the previously reviewed and approved activity and where the activity permitted by issuance of the subsequent approval will affect any coastal use or resource, or, in the case of a major amendment subject to §930.51(b)(3), affect any coastal use or resource in a way that is substantially different than the description or understanding of effects at the time of the original activity.

(d) The term ''renewals'' of a federal license or permit activity means any subsequent re-issuance, re-approval or extension of an existing license or permit that the applicant is required to obtain for an activity described under paragraph (b) of this section.

(e) The determination of substantially different coastal effects under paragraphs (b)(3), and (c) of this section is made on a case-by-case basis by the Federal agency after consulting with the State agency, and applicant. The Federal agency shall give considerable weight to the opinion of the State agency. The terms ''major amendment,'' ''renewals'' and ''substantially different'' shall be construed broadly to ensure that the State agency has the opportunity to review activities and coastal effects not previously reviewed.

(f) *This subpart applies to active applications.* If an applicant withdraws its application to the Federal agency, then the consistency process is terminated. If the applicant reapplies to the Federal agency, then a new consistency review process will start. If a Federal agency stops or stays the Federal license or permit application process, then the consistency review period will be stopped or stayed for the same amount of time as for the Federal application process.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.52 Applicant.

The term ''applicant'' means any individual, public or private corporation,

partnership, association, or other entity organized or existing under the laws of any nation, State, or any State, regional, or local government, who, following management program approval, either files an application for a required individual federal license or permit, or who files a consistency certification for a required general federal license or permit under § 930.31(d) to conduct an activity affecting any coastal use or resource. The term ''applicant'' does not include Federal agencies applying for federal licenses or permits. Federal agency activities requiring federal licenses or permits are subject to subpart C of this part.

§ 930.53 Listed federal license or permit activities.

(a) State agencies shall develop a list of federal license or permit activities which affect any coastal use or resource, including reasonably foreseeable effects, and which the State agency wishes to review for consistency with the management program. The list shall be included as part of the management program, and the federal license or permit activities shall be described in terms of the specific licenses or permits involved (e.g., Corps of Engineers 404 permits, Coast Guard bridge permits). In the event the State agency chooses to review federal license or permit activities, with reasonably foreseeable coastal effects, outside of the coastal zone, it must generally describe the geographic location of such activities.

(1) The geographic location description should encompass areas outside of the coastal zone where coastal effects from federal license or permit activities are reasonably foreseeable. The State agency should exclude geographic areas outside of the coastal zone where coastal effects are not reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its coastal effects. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas. Federal lands located within the boundaries of a State's coastal zone are automatically included within the geographic location description; State agencies do not have to describe these areas. State agencies do have to describe the geographic location of listed activities occurring on federal lands located beyond the boundaries of a State's coastal zone.

(2) For listed activities occurring outside of the coastal zone for which a State has not generally described the geographic location of review, States must follow the conditions for review of unlisted activities under § 930.54 of this subpart.

(b) *General concurrences for minor activities.* To avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource, the State agency, after developing conditions allowing concurrence for such activities, may issue a general public notice (*see* § 930.61) and general concurrence allowing similar minor work in the same geographic area to proceed without prior State agency review. In such cases, the State agency must set forth in the management program license and permit list the minor federal license or permit activities and the relevant conditions which are covered by the general concurrence. Minor federal license or permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification requirement of this subpart. Except in cases where the State agency indicates otherwise, copies of federal license or permit applications for activities subject to a general concurrence must be sent by the applicant to the State agency to allow the State agency to monitor adherence to the conditions required by such concurrence. Confidential and proprietary material within such applications may be deleted.

(c) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval by the Director pursuant to the program change requirements found at 15 CFR part 923, subpart H.

(1) Consultation with the affected Federal agency means, at least 60 days prior to submitting a program change request to OCRM, a State agency shall notify in writing the relevant regional or field Federal agency staff and the head of the affected Federal agency, and request comments on the listing change. The notification shall describe the proposed change and identify the regional Federal agency staff the State has contacted for consultation.

(2) A State agency must include in its program change request to OCRM a description of any comments received from the affected Federal agency.

(d) No federal license or permit described on an approved list shall be issued by a Federal agency until the requirements of this subpart have been satisfied. Federal agencies shall inform applicants for listed licenses or permits of the requirements of this subpart.

§ 930.54 Unlisted federal license or permit activities.

(a)(1) With the assistance of Federal agencies, State agencies should monitor unlisted federal license or permit activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, FEDERAL REGISTER notices). State agencies shall notify Federal agencies, applicants, and the Director of unlisted activities affecting any coastal use or resource which require State agency review within 30 days from notice of the license or permit application, that has been submitted to the approving Federal agency, otherwise the State agency waives its right to review the unlisted activity. The waiver does not apply in cases where the State agency does not receive notice of the federal license or permit application.

(2) Federal agencies or applicants should provide written notice of the submission of applications for federal licenses or permits for unlisted activities to the State agency. Notice to the State agency may be constructive if notice is published in an official federal public notification document or through an official State clearinghouse (*i.e.,* the FEDERAL REGISTER, draft or final NEPA EISs that are submitted to the State agency, or a State's intergovernmental review process). The notice, whether actual or constructive, shall contain sufficient information for the State agency to learn of the activity, determine the activity's geographic location, and determine whether coastal effects are reasonably foreseeable.

(b) The State agency's notification shall also request the Director's approval to review the unlisted activity and shall contain an analysis that supports the State agency's assertion that coastal effects are reasonably foreseeable. Following State agency notification to the Federal agency, applicant and the Director, the Federal agency shall not issue the license or permit until the requirements of this subpart have been satisfied, unless the Director disapproves the State agency's request to review the activity.

(c) The Federal agency and the applicant have 15 days from receipt of the State agency notice to provide comments to the Director regarding the State agency's request to review the activity. The sole basis for the Director's approval or disapproval of the State agency's request will relate to whether the proposed activity's coastal effects are reasonably foreseeable. The Director shall issue a decision, with supporting comments, to the State agency, Federal agency and applicant within 30 days from receipt of the State agency notice. The Director may extend the decision deadline beyond 30 days due to the complexity of the issues or to address the needs of the State agency, the Federal agency, or the applicant. The Director shall consult with the State agency, the Federal agency and the applicant prior to extending the decision deadline, and shall limit the extension to the minimum time necessary to make its decision. The Director shall notify the relevant parties of the expected length of an extension.

(d) If the Director disapproves the State agency's request, the Federal agency may approve the license or permit application and the applicant need not comply with the requirements of this subpart. If the Director approves the State agency's request, the Federal agency and applicant must comply with the consistency certification procedures of this subpart.

(e) Following an approval by the Director, the applicant shall amend the federal application by including a consistency certification and shall provide the State agency with a copy of the certification along with necessary data and information (*see* §§ 930.58, 930.62 and 930.63). For the purposes of this section, concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months from the original Federal agency notice to the State agency (*see* paragraph (a) of this section) or within three months from receipt of the applicant's consistency certification and necessary data and information, whichever period terminates last.

(f) The unlisted activity procedures in this section are provided to ensure that State agencies are afforded an opportunity to review federal license or permit activities with reasonably foreseeable coastal effects. Prior to bringing the issue before the Director, the concerned parties should discuss coastal effects and consistency. The applicant can avoid delay by simply seeking the State agency's expeditious concurrence rather than waiting for the Director's decision. If an applicant, of its own accord or after negotiations with the State agency, provides a consistency certification and necessary data and information to the State agency, the review shall be deemed to have received the Director's approval, and all of the provisions of this subpart shall apply and the State agency need not request the Director's approval. If an applicant for an unlisted activity has not subjected itself to the consistency process within the 30 day notification period contained in paragraph (a) of this section, the State agency must adhere to the unlisted activity review requirements of this section to preserve its right to review the activity.

§ 930.55 Availability of mediation for license or permit disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a listed or unlisted federal license or permit activity is subject to the federal consistency requirement, either party may request the OCRM mediation or Secretarial mediation services provided for in subpart G of this part; notice shall be provided to the applicant. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding approval of a license or permit application for an activity on an approved management program list (*see* § 930.53) or individually approved by the Director (*see* § 930.54) pending satisfaction of the requirements of this subpart. Similarly, the existence of a serious disagreement will not prevent the Federal agency from approving a license or permit activity which has not received Director approval.

§ 930.56 State agency guidance and assistance to applicants.

As a preliminary matter, any applicant for a federal license or permit selected for review by a State agency should obtain the views and assistance of the State agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the applicant, the State agency shall identify any enforceable policies applicable to the proposed activity, based upon the information submitted to the State agency.

§ 930.57 Consistency certifications.

(a) Following appropriate coordination and cooperation with the State agency, all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information.

(b) The applicant's consistency certification shall be in the following form: ''The proposed activity complies with the enforceable policies of (name of State) approved management program and will be conducted in a manner consistent with such program.''

§ 930.58 Necessary data and information.

(a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

(1) A copy of the application for the federal license or permit and

(i) All material relevant to a State's management program provided to the Federal agency in support of the application; and

(ii) To the extent not included in paragraphs (a)(1) or (a)(1)(i) of this section, a detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal;

(2) Information specifically identified in the management program as required necessary data and information for an applicant's consistency certification. The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities. Necessary data and information may include completed State or local government permit applications which are required for the proposed activity, but shall not include the issued State or local permits. NEPA documents shall not be considered necessary data and information when a Federal statute requires a Federal agency to initiate the CZMA federal consistency review prior to its completion of NEPA compliance. States shall not require that the consistency certification and/or the necessary data and information be included in NEPA documents. Required data and information may not include confidential and proprietary material; and

(3) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the management program. Applicants shall demonstrate that the activity will be consistent with the enforceable policies of the management program. Applicants shall demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal effects for which the management program does not contain enforceable or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by this section.

(c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal effects of the proposal.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 827, Jan. 5, 2006]

§ 930.59 Multiple permit review.

(a) Applicants shall, to the extent practicable, consolidate related federal license or permit activities affecting any coastal use or resource for State agency review. State agencies shall, to the extent practicable, provide applicants with a ''one-stop'' multiple permit review for consolidated permits to minimize duplication of effort and to avoid unnecessary delays.

(b) A State agency objection to one or more of the license or permit activities submitted for consolidated review shall not prevent the applicant from receiving Federal agency approval for those license or permit activities found to be consistent with the management program.

§ 930.60 Commencement of State agency review.

(a) The State agency's six-month review period (*see* § 930.62(a)) of an applicant's consistency certification begins on the date the State agency receives

the consistency certification required by § 930.57 and all the necessary data and information required by § 930.58(a).

(1) If an applicant fails to submit a consistency certification, the State agency shall notify the applicant and the Federal agency, within 30 days of receipt of the incomplete submission, that a consistency certification satisfying § 930.57 was not received and that the State agency's six-month review period will commence on the date of receipt of the missing certification, subject to paragraph (a)(2) of this section.

(2) If an applicant fails to submit all necessary data and information required by § 930.58(a), the State agency shall notify the applicant and the Federal agency, within 30 days of receipt of the incomplete submission, that necessary data and information described in § 930.58(a) was not received and that the State agency's six-month review period will commence on the date of receipt of the missing necessary data and information, subject to the requirement in paragraph (a) of this section that the applicant has also submitted a consistency certification. The State agency may waive the requirement in paragraph (a) of this section that all necessary data and information described in § 930.58(a) be submitted before commencement of the State agency's six-month consistency review. In the event of such a waiver, the requirements of § 930.58(a) must be satisfied prior to the end of the six-month consistency review period or the State agency may object to the consistency certification for insufficient information.

(3) Within 30 days of receipt of the consistency certification and/or necessary data and information that was deemed missing, pursuant to paragraphs (a)(1) or (2) of this section, the State agency shall notify the applicant and Federal agency that the certification and necessary data and information required pursuant to § 930.58 is complete, the date the certification and/or necessary data and information deemed missing was received, and, that the State agency's consistency review commenced on the date of receipt. In the event of a State waiver under paragraph (a)(2) of this section, receipt of the necessary data and information deemed missing shall not alter the date the consistency review period commenced.

(b) State agencies and applicants (and persons under subpart E of this part) may mutually agree in writing to stay the six-month consistency review period. Such an agreement shall be in writing and state a specific date on when the stay will end. The State agency shall provide a copy of the written agreement to the Federal agency and the Federal agency shall not presume State agency concurrence with an applicant's consistency certification when such a written agreement to stay the six-month consistency review period is in effect. The State agency shall not stop, stay, or otherwise alter the consistency review period without such a written agreement with the applicant.

(c) The State agency's determination that a certification and necessary data and information under paragraph (a) of this section is complete is not a substantive review of the adequacy of the information received. If an applicant has submitted all necessary data and information required by § 930.58, then a State agency's or Federal agency's assertion that the submitted information is substantively deficient, or a State agency's or Federal agency's request for clarification of the information provided, or information or data requested that is in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

[71 FR 827, Jan. 5, 2006]

§ 930.61 Public participation.

(a) Following receipt of the material described in § 930.60 the State agency shall ensure timely public notice of the proposed activity. Public notice shall be provided for the area(s) of the coastal zone likely to be affected by the proposed activity, as determined by the State agency. At the discretion of the State agency, public participation may include one or more public hearings. The State agency shall not require an applicant or a Federal agency to hold a public hearing. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings

and final decision-making to the minimum time necessary to reasonably inform the public, obtain sufficient comment, and develop a decision on the matter.

(b) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency under the policies of the management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information; and

(4) Specify a contact for submitting comments to the management program.

(c) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official State gazette, a local newspaper serving areas of the coastal zone likely to be affected by the activity, individual State mailings, public notice through a management program newsletter, and electronic notices, e.g., web sites. However, electronic notices, e.g., web sites, shall not be the sole source of a public notification, but may be used in conjunction with other means. Web sites may be used to provide a location for the public to obtain additional information. The State agency may require the applicant to provide the public notice. State agencies shall not require that the Federal agency provide public notice. The State agency may rely upon the public notice provided by the Federal agency reviewing the application for the federal license or permit (e.g., notice of availability of NEPA documents) if such notice satisfies the minimum requirements set forth in paragraphs (a) and (b) of this section.

(d) Federal and State agencies are encouraged to issue joint public notices, and hold joint public hearings, whenever possible to minimize duplication of effort and to avoid unnecessary delays.

§ 930.62 State agency concurrence with a consistency certification.

(a) At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification. The State agency may issue a general concurrence for minor activities (*see* § 930.53(b)). Concurrence by the State agency shall be conclusively presumed if the State agency's response is not received within six months following commencement of State agency review.

(b) If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the applicant and the Federal agency of the status of the matter and the basis for further delay.

(c) If the State agency issues a concurrence or is conclusively presumed to concur with the applicant's consistency certification, the Federal agency may approve the federal license or permit application. Notwithstanding State agency concurrence with a consistency certification, the federal permitting agency may deny approval of the federal license or permit application. Federal agencies should not delay processing applications pending receipt of a State agency's concurrence. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant and the State agency.

(d) During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt, if necessary, to agree upon conditions, which, if met by the applicant, would permit State agency concurrence. The parties shall also consult with the Federal agency responsible for approving the federal license or permit to ensure that proposed conditions satisfy federal as well as management program requirements (*see also* § 930.4).

§ 930.63 State agency objection to a consistency certification.

(a) If the State agency objects to the applicant's consistency certification within six months following commencement of review, it shall notify the applicant, Federal agency and Director of the objection. A State agency may assert alternative bases for its objection, as described in paragraphs (b) and (c) of this section.

(b) State agency objections that are based on sufficient information to evaluate the applicant's consistency certification shall describe how the proposed activity is inconsistent with specific enforceable policies of the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(c) A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § 930.58 or other information necessary for the State agency to determine consistency. If the State agency objects on the grounds of insufficient information, the objection shall describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(d) *Alternatives.* If a State agency proposes an alternative(s) in its objection letter, the alternative(s) shall be described with sufficient specificity to allow the applicant to determine whether to, in consultation with the State agency: adopt an alternative; abandon the project; or file an appeal under subpart H. Application of the specificity requirement demands a case specific approach. More complicated activities or alternatives generally need more information than less-complicated activities or alternatives. See § 930.121(c) for further details regarding alternatives for appeals under subpart H of this part.

(e) A State agency objection shall include a statement to the following effect:

Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the [Name of State] management program and the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

§ 930.64 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification, the Federal agency shall not issue the federal license or permit except as provided in subpart H of this part.

§ 930.65 Remedial action for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federal license or permit activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal license or permit activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program; or

(2) Previously determined not to be an activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally described and, as a result, the activity affects any coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant and the Director. Remedial actions shall be linked to coastal effects substantially different than originally described.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant is failing to comply substantially with the management program, the governor or State agency may file a written objection with the Director. If the Director finds that the applicant is conducting an activity that is substantially different from the approved activity, the applicant shall submit an amended or new consistency certification and supporting information to the Federal agency and to the State agency, or comply with the originally approved certification.

(e) An applicant shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally described by the applicant and, as a result, the activity is no longer being conducted in a manner consistent with the enforceable policies of the management program. The Director may make a finding that an applicant is conducting an activity substantially different from the approved activity only after providing 15 days for the applicant and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§ 930.66 Supplemental coordination for proposed activities.

(a) For federal license or permit proposed activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, applicants shall further coordinate with the State agency and prepare a supplemental consistency certification if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

(b) The State agency may notify the applicant, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant to implement the proposed activity consistent with the management program. State agency notification under subsection (b) does not remove the requirement under subsection (a) for applicants to notify State agencies.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

§ 930.70 Objectives.

The provisions of this subpart are intended to ensure that all federal license or permit activities described in detail in OCS plans and which affect any coastal use or resource are conducted in a manner consistent with approved management programs.

§ 930.71 Federal license or permit activity described in detail.

The term ''federal license or permit activity described in detail'' means any activity requiring a federal license or permit, as defined in § 930.51, which the

Secretary of the Interior determines must be described in detail within an OCS plan.

§ 930.72 Person.

The term ''person'' means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State; the federal government; any State, regional, or local government; or any entity of such federal, State, regional or local government, who submits to the Secretary of the Interior, or designee following management program approval, an OCS plan which describes in detail federal license or permit activities.

§ 930.73 OCS plan.

(a) The term ''OCS plan'' means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), and the regulations under that Act, which is submitted to the Secretary of the Interior or designee following management program approval and which describes in detail federal license or permit activities.

(b) The requirements of this subpart do not apply to federal license or permit applications filed after management program approval for activities described in detail in OCS plans approved by the Secretary of the Interior or designee prior to management program approval.

§ 930.74 OCS activities subject to State agency review.

Except for States which do not anticipate coastal effects resulting from OCS activities, management program lists required pursuant to § 930.53 shall include a reference to OCS plans which describe in detail federal license or permit activities affecting any coastal use or resource.

§ 930.75 State agency assistance to persons.

As a preliminary matter, any person intending to submit to the Secretary of the Interior an OCS plan which describes in detail federal license or permit activities affecting any coastal use or resource should obtain the views and assistance of the State agency regarding the means for ensuring that such activities will be conducted in a manner consistent with the management program. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document. Upon request by such persons, the State agency shall identify any enforceable policies applicable to the proposed activities, based upon the information submitted to the State agency.

§ 930.76 Submission of an OCS plan, necessary data and information and consistency certification.

Any person submitting any OCS plan to the Secretary of the Interior or designee shall:

(a) Any person submitting any OCS plan to the Secretary of the Interior or designee shall submit to the Secretary of the Interior or designee:

(1) A copy of the OCS plan;

(2) The consistency certification;

(3) The necessary data and information required pursuant to § 930.58; and

(4) The information submitted pursuant to the Department of the Interior's OCS operating regulations (*see* 30 CFR 250.203 and 250.204) and OCS information program regulations (*see* 30 CFR part 252).

(b) The Secretary of the Interior or designee shall furnish the State agency with a copy of the information submitted under paragraph (a) of this section (excluding confidential and proprietary information).

(c) The person's consistency certification shall be in the following form:

> The proposed activities described in detail in this plan comply with (name of State(s)) approved management program(s) and will be conducted in a manner consistent with such program(s).

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

§ 930.77 Commencement of State agency review and public notice.

(a)(1) Except as provided in § 930.60(a), State agency review of the person's consistency certification begins at the time the State agency receives the certification and information required

pursuant to §930.76(a) and (b). If a person has submitted the documents required by §930.76(a) and (b), then a State agency's assertion that the information contained in the submitted documents is substantively deficient, or a State agency's request for clarification of the information provided, or information and data in addition to that required by §930.76 shall not delay or otherwise change the date on which State agency review begins.

(2) To assess consistency, the State agency shall use the information submitted pursuant to §930.76. If a State agency wants to augment the necessary data and information required by §930.76 to start the six-month review period for OCS plans, then the State can only do so if it amends its management program to include the information under §930.58(a)(2).

(3) After the State agency's review begins, if the State agency requests additional information, it shall describe in writing to the person and to the Secretary of the Interior or its designee the reasons why the information provided under §930.76 is not adequate to complete its review, and the nature of the information requested and the necessity of having such information to determine consistency with the enforceable policies of the management program. The State agency shall make its request for additional information no later than three months after commencement of the State agency's review period. The State agency shall not request additional information after the three-month notification period described in §930.78(a). However, the State agency may request additional information after the three-month notification period if the person or the Secretary of the Interior or its designee changes the OCS plan after the three-month notification period such that the plan describes activities or coastal effects not previously described and for which information was not previously provided pursuant to §930.76.

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with §930.61.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 828, Jan. 5, 2006]

§930.78 State agency concurrence or objection.

(a) At the earliest practicable time, the State agency shall notify in writing the person, the Secretary of the Interior or designee and the Director of its concurrence with or objection to the consistency certification. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decisionmaking to the minimum time necessary to reasonably inform the public, obtain sufficient comment, and develop a decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the person, the Secretary of the Interior or designee and the Director of the status of review and the basis for further delay in issuing a final decision. Notice shall be in written form and postmarked no later than three months following the commencement of the State agency's review. Concurrence by the State agency shall be conclusively presumed if the notification required by this subparagraph is not provided.

(b) Concurrence by the State agency shall be conclusively presumed if the State agency's response to the consistency certification is not received within six months following commencement of State agency review.

(c) If the State agency objects to one or more of the federal license or permit activities described in detail in the OCS plan, it must provide a separate discussion for each objection in accordance with §930.63.

§930.79 Effect of State agency concurrence.

(a) If the State agency issues a concurrence or is conclusively presumed to concur with the person's consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time federal applications are actually filed for the federal licenses or permits to which such concurrence applies.

(b) Unless the State agency indicates otherwise, copies of federal license or permit applications for activities described in detail in an OCS plan which

has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§ 930.80 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification related to federal license or permit activities described in detail in an OCS plan, the Federal agency shall not issue any of such licenses or permits except as provided in subpart H of this part.

§ 930.81 Multiple permit review.

(a) A person submitting a consistency certification for federal license or permit activities described in detail in an OCS plan is strongly encouraged to work with other Federal agencies in an effort to include, for consolidated State agency review, consistency certifications and supporting data and information applicable to OCS-related federal license or permit activities affecting any coastal use or resource which are not required to be described in detail in OCS plans but which are subject to State agency consistency review (e.g., Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities). In the event the person does not consolidate such OCS-related permit activities with the State agency's review of the OCS plan, such activities will remain subject to individual State agency review under the requirements of subpart D of this part.

(b) A State agency objection to one or more of the OCS-related federal license or permit activities submitted for consolidated review shall not prevent the person from receiving Federal agency approval:

(1) For those OCS-related license or permit activities found by the State agency to be consistent with the management program; and

(2) For the license or permit activities described in detail in the OCS plan provided the State agency concurs with the consistency certification for such plan. Similarly, a State agency objection to the consistency certification for an OCS plan shall not prevent the person from receiving Federal agency approval for those OCS-related license or permit activities determined by the State agency to be consistent with the management program.

§ 930.82 Amended OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and/or if, pursuant to subpart H of this part, the Secretary does not determine that each of the objected to federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, and if the person still intends to conduct the activities described in the OCS plan, the person shall submit an amended plan to the Secretary of the Interior or designee along with a consistency certification and data and information necessary to support the amended consistency certification. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed federal license or permit activities described in detail in the amended plan will be conducted in a manner consistent with the management program. When satisfied that the person has met the requirements of the OCSLA and this subpart, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding confidential and proprietary information), necessary data and information and consistency certification.

[71 FR 829, Jan. 5, 2006]

§ 930.83 Review of amended OCS plans; public notice.

After receipt of a copy of the amended OCS plan, consistency certification, and necessary data and information, State agency review shall begin. The requirements of §§ 930.77, 930.78, and 930.79, apply to the review of amended OCS plans, except that the applicable time period for purposes of concurrence

by conclusive presumption shall be three months instead of six months.

§ 930.84 Continuing State agency objections.

If the State agency objects to the consistency certification for an amended OCS plan, the prohibition in § 930.80 against Federal agency approval of licenses or permits for activities described in detail in such a plan applies, further Secretarial review pursuant to subpart H of this part may take place, and the development of an additional amended OCS plan and consistency certification may be required pursuant to §§ 930.82 through 930.83.

§ 930.85 Failure to substantially comply with an approved OCS plan.

(a) The Department of the Interior and State agencies shall cooperate in their efforts to monitor federally licensed or permitted activities described in detail OCS plans to make certain that such activities continue to conform to both federal and State requirements.

(b) If a State agency claims that a person is failing to substantially comply with an approved OCS plan subject to the requirements of this subpart, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the Minerals Management Service region involved. Such claim shall include a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim shall be sent to the person.

(c) If a person fails to substantially comply with an approved OCS plan, as determined by Minerals Management Service, pursuant to the Outer Continental Shelf Lands Act and applicable regulations, the person shall come into compliance with the approved plan or shall submit an amendment to such plan or a new plan to Minerals Management Service. When satisfied that the person has met the requirements of the OCSLA and this subpart, and the Secretary of the Interior or designee has made the determination required under 30 CFR 250.203(n)(2) or § 250.204(q)(2), as applicable, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding proprietary information), necessary data and information and consistency certification. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

Subpart F—Consistency for Federal Assistance to State and Local Governments

§ 930.90 Objectives.

The provisions of this subpart are intended to ensure that federal assistance to applicant agencies for activities affecting any coastal use or resource is granted only when such activities are consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal assistance activities having interstate coastal effects.

§ 930.91 Federal assistance.

The term ''federal assistance'' means assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

§ 930.92 Applicant agency.

The term ''applicant agency'' means any unit of State or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for federal assistance.

§ 930.93 Intergovernmental review process.

The term ''intergovernmental review process'' describes the procedures established by States pursuant to E.O. 12372, ''Intergovernmental Review of Federal Programs,'' and implementing

regulations of the review of federal financial assistance to applicant agencies.

§ 930.94 State review process for consistency.

(a) States with approved management programs should review applications from applicant agencies for federal assistance in accordance with E.O. 12372 and implementing regulations.

(b) The applicant agency shall submit an application for federal assistance to the State agency for consistency review, through the intergovernmental review process or by direct submission to the State agency, for any proposed federal assistance activity that is listed in the management program as a type of activity that will have a reasonably foreseeable effect on any coastal use or resource and occurring within the coastal zone (*see* § 930.95(a)) or within a described geographic area outside of the coastal zone (*see* § 930.95(b)).

(c) *Applicant agency evaluation.* The applicant agency shall provide to the State agency, in addition to the federal application, a brief evaluation on the relationship of the proposed activity and any reasonably foreseeable coastal effects to the enforceable policies of the management program.

§ 930.95 Guidance provided by the State agency.

(a) State agencies should include within the management program a listing of specific types of federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change.

(b) In the event the State agency chooses to review applications for federal assistance activities outside of the coastal zone but with reasonably foreseeable coastal effects, the State agency shall develop a federal assistance provision within the management program generally describing the geographic area (e.g., coastal floodplains) within which federal assistance activities will be subject to review. This provision, and any refinements, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the coastal nonpoint pollution control program, or other ecologically identifiable areas.

(c) The State agency shall provide copies of any federal assistance list or geographic provision, and any refinements, to Federal agencies and units of applicant agencies empowered to undertake federally assisted activities within the coastal zone or described geographic area.

(d) For review of unlisted federal assistance activities, the State agency shall follow the same procedures as it would follow for review of listed federal assistance activities outside of the coastal zone or the described geographic area. (*See* § 930.98.)

§ 930.96 Consistency review.

(a)(1) If the State agency does not object to the proposed activity, the Federal agency may grant the federal assistance to the applicant agency. Notwithstanding State agency consistency approval for the proposed project, the Federal agency may deny assistance to the applicant agency. Federal agencies should not delay processing (so long as they do not approve) applications pending receipt of a State agency approval or objection. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant agency and the State agency.

(2) During the period when the State agency is reviewing the activity, the applicant agency and the State agency should attempt, if necessary, to agree upon conditions which, if met by the applicant agency, would permit State agency approval. The parties shall also consult with the Federal agency responsible for providing the federal assistance to ensure that proposed conditions satisfy federal requirements as

well as management program requirements.

(b) If the State agency objects to the proposed project, the State agency shall notify the applicant agency, Federal agency and the Director of the objection pursuant to § 930.63.

§ 930.97 Federal assisting agency responsibility.

Following receipt of a State agency objection, the Federal agency shall not approve assistance for the activity except as provided in subpart H of this part.

§ 930.98 Federally assisted activities outside of the coastal zone or the described geographic area.

State agencies should monitor proposed federal assistance activities outside of the coastal zone or the described geographic area (e.g., by use of the intergovernmental review process, review of NEPA documents, FEDERAL REGISTER) and shall immediately notify applicant agencies, Federal agencies, and any other agency or office which may be identified by the State in its intergovernmental review process pursuant to E.O. 12372 of proposed activities which will have reasonably foreseeable coastal effects and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Director. The Director, in his/her discretion, may review the State agency's decision to review the activity. The Director may disapprove the State agency's decision to review the activity only if the Director finds that the activity will not affect any coastal use or resource. The Director shall be guided by the provisions in § 930.54(c). For purposes of this subpart, State agencies must inform the parties of objections within the time period permitted under the intergovernmental review process, otherwise the State agency waives its right to object to the proposed activity.

§ 930.99 Availability of mediation for federal assistance disputes.

In the event of a serious disagreement between a Federal agency and the State agency regarding whether a federal assistance activity is subject to the consistency requirement either party may request the OCRM mediation or Secretarial mediation services provided for in subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases where the Director has disapproved a State agency decision to review an activity.

§ 930.100 Remedial action for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federal assistance activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal assistance activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program, or

(2) Previously determined not to be a project affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result the project affects a coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant agency and the Director.

(d) If, after 30 days following a request for remedial action, the State

agency still maintains that the applicant agency is failing to comply substantially with the management program, the State agency may file a written objection with the Director. If the Director finds that the applicant agency is conducting an activity that is substantially different from the approved activity, the State agency may reinitiate its review of the activity, or the applicant agency may conduct the activity as it was originally approved.

(e) An applicant agency shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally determined by the State agency and, as a result, the activity is no longer being conducted in a manner consistent with the management program. The Director may make a finding that an applicant agency is conducting an activity substantially different from the approved activity only after providing a reasonable opportunity for the applicant agency and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§ 930.101 Supplemental coordination for proposed activities.

(a) For federal assistance activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, the applicant agency shall further coordinate with the State agency if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

(b) The State agency may notify the applicant agency, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant agency to implement the proposed activity consistent with the management program. State agency notification under paragraph (b) of this section does not remove the requirement under paragraph (a) of this section for applicant agencies to notify State agencies.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

Subpart G—Secretarial Mediation

§ 930.110 Objectives.

The purpose of this subpart is to describe mediation procedures which Federal and State agencies may use to attempt to resolve serious disagreements which arise during the administration of approved management programs.

§ 930.111 OCRM mediation.

The availability of mediation does not preclude use by the parties of alternative means for resolving their disagreement. In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally. OCRM shall be available to assist the parties in these efforts.

§ 930.112 Request for Secretarial mediation.

(a) The Secretary or other head of a Federal agency, or the Governor or the State agency, may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the

disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, to the Assistant Administrator, and to the Director.

(b) Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.

§ 930.113 Public hearings.

(a) If the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing and shall provide timely public notice of the hearing.

(b) At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to public data and information related to the serious disagreement.

(c) Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. A party may also provide the hearing officer with written comments. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

§ 930.114 Secretarial mediation efforts.

(a) Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

(b) Secretarial mediation efforts shall last only so long as the Federal and State agencies agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

§ 930.115 Termination of mediation.

Mediation shall terminate:

(a) At any time the Federal and State agencies agree to a resolution of the serious disagreement,

(b) If one of the agencies withdraws from mediation,

(c) In the event the agencies fail to reach a resolution of the disagreement within 15 days following Secretarial conference efforts, and the agencies do not agree to extend mediation beyond that period, or

(d) For other good cause.

§ 930.116 Judicial review.

The availability of the mediation services provided in this subpart is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided for in this subpart.

Subpart H—Appeal to the Secretary for Review Related to the Objectives of the Act and National Security Interests

§ 930.120 Objectives.

This subpart sets forth the procedures by which the Secretary may find that a federal license or permit activity, including those described in detail in an OCS plan, or a federal assistance activity, which a State agency has found to be inconsistent with the enforceable policies of the management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

§ 930.121 Consistent with the objectives or purposes of the Act.

A federal license or permit activity, or a federal assistance activity, is ''consistent with the objectives or purposes of the Act'' if it satisfies each of the following three requirements:

(a) The activity furthers the national interest as articulated in § 302 or § 303 of the Act, in a significant or substantial manner,

(b) The national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively.

(c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program. The Secretary may consider but is not limited to considering previous appeal decisions, alternatives described in state objection letters and alternatives and other information submitted during the appeal. The Secretary shall not consider an alternative unless the State agency submits a statement, in a brief or other supporting material, to the Secretary that the alternative would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

§ 930.122 Necessary in the interest of national security.

A federal license or permit activity, or a federal assistance activity, is ''necessary in the interest of national security'' if a national defense or other national security interest would be significantly impaired were the activity not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

§ 930.123 Definitions.

(a) The ''appellant'' is the applicant, person or applicant agency submitting an appeal to the Secretary pursuant to this subpart.

(b) For the purposes of this subpart, the ''Federal agency'' is the agency whose proposed issuance of a license or permit or grant of assistance is the subject of the appeal to the Secretary.

(c) The term ''energy project'' means projects related to the siting, construction, expansion, or operation of any facility designed to explore, develop, produce, transmit or transport energy or energy resources that are subject to review by a coastal State under subparts D, E, F or I of this part.

(d) The term ''consolidated record'' means the record of all decisions made or actions taken by the lead Federal permitting agency or by another Federal or State administrative agency or officer, maintained by the lead Federal permitting agency, with the cooperation of Federal and State administrative agencies, related to any federal authorization for the permitting, approval or other authorization of an energy project.

(e) The term ''lead Federal permitting agency'' means the Federal agency required to: issue a federal license or permit under subparts D or I of this part; approve an OCS plan under subpart E of this part; or provide federal

financial assistance under subparts F or I of this part for an energy project.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 829, Jan. 5, 2006]

§ 930.124 Computation of time.

The first day of any period of time allowed or prescribed by these rules, shall not be included in the computation of the designated period of time. The last day of the time period computed shall be included unless it is a Saturday, Sunday or a Federal holiday, in which case the period runs until the next day which is not one of the aforementioned days.

§ 930.125 Notice of appeal and application fee to the Secretary.

(a) To obtain Secretarial review of a State agency objection, the appellant shall file a notice of appeal with the Secretary within 30 days of receipt of a State agency objection.

(b) The appellant's notice of appeal shall include a statement explaining the appellant's basis for appeal of the State agency's objection under §§ 930.121 and/or 930.122 of this title, including any procedural arguments pursuant to § 930.129(b). Bases for appeal (including procedural arguments) not identified in the appellant's notice of appeal shall not be considered by the Secretary.

(c) The appellant's notice of appeal shall be accompanied by payment of an application fee or a request for a waiver of such fees. An appeal involving a project valued in excess of $1 million shall be considered a major appeal and the application fee is $500.00. All other appeals shall be considered minor appeals and the application fee is $200.00.

(d) The appellant shall send the Notice of appeal to the Secretary, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230; a copy of the notice of appeal to the objecting State agency; and to the Assistant General Counsel for Ocean Services (GCOS), 1305 East West Highway, Room 6111 SSMC 4, Silver Spring, Maryland 20910.

(e) No extension of time will be permitted for the filing of a notice of appeal.

(f) The Secretary shall waive any or all fees if the Secretary concludes upon review of the appellant's fee waiver request that such fees impose an economic hardship on appellant. The request for a waiver and demonstration of economic hardship shall accompany the notice of appeal. If the Secretary denies a request for a waiver and the appellant wishes to continue with the appeal, the appellant shall submit the appropriate fees to the Secretary within 10 days of receipt of the Secretary's denial. If the fees are not received by the 10th day, then the Secretary shall dismiss the appeal.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 830, Jan. 5, 2006; 71 FR 75865, Dec. 19, 2006]

§ 930.126 Consistency appeal processing fees.

The Secretary shall collect as a processing fee such other fees from the appellant as are necessary to recover the full costs of administering and processing appeals to the Secretary under section 307(c) of the Act. All processing fees shall be assessed and collected no later than 60 days after publication of the FEDERAL REGISTER Notice closing the decision record. Failure to submit processing fees shall be grounds for extending the time for issuance of a decision pursuant to section 319(a)(2) of the Act (16 U.S.C. 1465(a)(2)) and § 930.130 of this subpart.

§ 930.127 Briefs and supporting materials.

(a) Within 30 days of submitting the notice of appeal, as specified in § 930.125, the appellant shall submit to the Secretary its principal brief accompanied by the appendix described in paragraph (c) of this section. Within 60 days of the appellant's filing of the notice of appeal, the State agency shall submit to the Secretary its principal brief accompanied by a supplemental appendix, if any, described in paragraph (c) of this section. Not later than 20 days after appellant's receipt of the State agency's brief, appellant may submit to the Secretary a reply brief accompanied by a supplemental appendix, if any, described in paragraph (c) of this section.

(b) A principal brief shall not exceed 30 double-spaced pages; appellant's reply brief shall not exceed 15 double-spaced pages. Any table of contents,

table of citations, or certifications of mailing and/or service do not count toward the page limitations.

(c) The appellant must prepare and file an appendix with its brief containing:

(1) Its consistency certification;

(2) The State agency's objection; and

(3) All such supporting documentation and material as the appellant deems necessary for consideration by the Secretary. The State agency (or appellant on reply) shall cite to appellant's appendix or may file a supplemental appendix to include additional documentation and material as the State agency (or appellant on reply) deems necessary for consideration by the Secretary that was not included in appellant's appendix (or the State agency's supplemental appendix). The parties are encouraged to discuss the contents of appellant's appendix in order to include in the appendix as much of the supporting documentation and material as any party deems necessary for consideration by the Secretary. In an appeal for an energy project, supporting documentation and material shall be limited to the parts of the consolidated record described in paragraph (i)(1) of this section to which the appellant or the State agency wishes to direct the Secretary's attention.

(d)(1) Both the appellant and State agency shall send two copies of their briefs and supporting materials to the Office of General Counsel for Ocean Services (GCOS), NOAA, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910. One copy must be in an electronic format compatible (to the extent practicable) with the website maintained by the Secretary to provide public information concerning appeals under the CZMA.

(2) The appellant and State agency shall serve on each other at least one copy of their briefs, supporting materials, and all requests and communications submitted to the Secretary, at the same time that materials are submitted to the Secretary.

(3) Each submission to the Secretary shall be accompanied by a certification of mailing and/or service on the other party. Service may be done by mail or hand delivery. Materials or briefs submitted to the Secretary not in compliance with this subpart may be disregarded and not entered into the Secretary's decision record of the appeal.

(e)(1) The Secretary has broad authority to implement procedures governing the consistency appeal process to ensure efficiency and fairness to all parties. The appeal decision record is composed of the briefs and supporting materials submitted by the State agency and appellant, public comments and the comments, if any, submitted by interested Federal agencies. As noted in § 930.128(c)(1), the Secretary gives deference to the views of interested Federal agencies when commenting in their areas of expertise and takes notice of relevant administrative decisions, including licenses or permits, related to an appellant's proposed activity when submitted to the appeal decision record. The Secretary determines the content of the appeal decision record. The Secretary may determine, on the Secretary's own initiative, that additional information is necessary to the Secretary's decision, including documents prepared by Federal agencies pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and may request such information.

(2) To promote efficient use of time and resources, the Secretary may, upon the Secretary's own initiative, require the appellant and the State agency to submit briefs and supporting materials relevant only to procedural or jurisdictional issues presented in the Notice of Appeal or identified by the Secretary. Following a decision of the procedural or jurisdictional issues, the Secretary may require briefs on substantive issues raised by the appeal if necessary.

(3) The Secretary may require the appellant and the State agency to submit briefs in addition to those described in paragraphs (a) and (e) of this section as necessary.

(4) Any briefs not requested or required by the Secretary may be disregarded and not entered into the Secretary's decision record of the appeal.

(f) The appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion.

(g) The Secretary may extend the time for submission, and length, of

briefs and supporting materials for good cause.

(h) Where a State agency objection is based in whole or in part on a lack of information, the Secretary shall limit the record on appeal to information previously submitted to the State agency and relevant comments thereon, except as provided for in §930.129(b) and (c).

(i) Appeal Decision Record for Energy Projects. The provisions of this paragraph apply only to appeals for energy projects.

(1) The Secretary shall use the consolidated record maintained by the lead Federal permitting agency as the initial record for an appeal under this subpart for energy projects.

(2) The appellant's notice of appeal required by §930.125(a) and (b) must be accompanied by two copies of the consolidated record maintained by the lead Federal permitting agency. One copy of the consolidated record must be in an electronic format compatible (to the extent practicable) with the website maintained by the Secretary to provide public information concerning appeals under the CZMA. Notwithstanding §930.125(e), the Secretary may extend the time for filing a notice of appeal in connection with an energy project for good cause shown to allow appellant additional time to prepare the consolidated record for filing.

(3) The appellant and the State agency shall submit briefs as required by paragraphs (a), (b) and (c) of this section.

(4) Supplemental information may be accepted and included in the decision record by the Secretary only as allowed by §930.130(a)(2).

[71 FR 830, Jan. 5, 2006, as amended at 71 FR 75865, Dec. 19, 2006]

§930.128 Public notice, comment period, and public hearing.

(a) The Secretary shall provide public notice of the appeal within 30 days after the receipt of the Notice of Appeal by publishing a Notice in the FEDERAL REGISTER and in a publication of general circulation in the immediate area of the coastal zone likely to be affected by the proposed activity.

(b) Except in the case of appeals involving energy projects, the Secretary shall provide a 30-day period for the public and interested Federal agencies to comment on the appeal. Notice of the public and Federal agency comment period shall be provided in the Notice required in paragraph (a) of this section.

(c)(1) The Secretary shall accord greater weight to those Federal agencies whose comments are within the subject areas of their technical expertise.

(2) The Secretary may, on the Secretary's own initiative or upon written request, for good cause shown, reopen the period for Federal agency comments before the closure of the decision record.

(d) Except in the case of appeals involving energy projects, the Secretary may hold a public hearing in response to a request or on the Secretary's own initiative. A request for a public hearing must be filed with the Secretary within 30 days of the publication of the Notice in the FEDERAL REGISTER required in paragraph (a) of this section. If a hearing is held by the Secretary, it shall be noticed in the FEDERAL REGISTER and guided by the procedures described within §930.113. If a hearing is held by the Secretary, the FEDERAL REGISTER notice for the hearing shall reopen the public and Federal agency comment period and shall close such comment period 10 days after the hearing.

[71 FR 831, Jan. 5, 2006]

§930.129 Dismissal, remand, stay, and procedural override.

(a) The Secretary may dismiss an appeal for good cause. A dismissal is the final agency action. Good cause shall include, but is not limited to:

(1) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(2) Failure of the appellant to submit a brief or supporting materials within the required period;

(3) Failure of the appellant to pay a required fee;

(4) Denial by the Federal agency of the federal license, permit or assistance application; or

(5) Failure of the appellant to base the appeal on grounds that the proposed activity is either consistent with

the objectives or purposes of the Act, or necessary in the interest of national security.

(b) If the State agency's consistency objection is not in compliance with section 307 of the Act and the regulations contained in subparts D, E, F, or I of this part, the Secretary shall override the State's objection. The Secretary may make this determination as a threshold matter.

(c) The Secretary may stay the processing of an appeal in accordance with § 930.130.

(d) The Secretary may remand an appeal to the State agency for reconsideration of the project's consistency with the enforceable policies of the State's management program if significant new information relevant to the State agency's objection, not previously provided to the State agency during its consistency review, is submitted to the Secretary. The Secretary shall determine a time period for the remand to the State agency. The time period for remand must be completed within the period described in § 930.130 for the development of the Secretary's decision record. If the State agency responds that it still objects to the activity, then the Secretary shall continue to process the appeal. If the State agency concurs that the activity is consistent with the enforceable policies of the State's management program, then the Secretary shall declare the appeal moot and notify the Federal agency that the activity may be federally approved.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 831, Jan. 5, 2006]

§ 930.130 Closure of the decision record and issuance of decision.

(a)(1) With the exception of paragraph (a)(2) of this section, the Secretary shall close the decision record not later than 160 days after the date that the Secretary's Notice of Appeal is published in the FEDERAL REGISTER under § 930.128(a). After closing the decision record, the Secretary shall immediately publish a notice in the FEDERAL REGISTER stating that the decision record has been closed. The notice shall also state that the Secretary shall not consider additional information, briefs or comments.

(2) The Secretary may stay the closing of the decision record during the 160-day period described in paragraph (a)(1) of this section:

(i) For a specific period mutually agreed to in writing by the appellant and the State agency; or

(ii) As the Secretary determines necessary to receive, on an expedited basis:

(A) Any supplemental information specifically requested by the Secretary to complete a consistency review under the Act; or

(B) Any clarifying information submitted by a party to the proceeding related to information in the consolidated record compiled by the lead Federal permitting agency.

(3) The Secretary may only stay the 160-day period described in paragraph (a)(1) of this section for a period not to exceed 60 days.

(b) Not later than 60 days after the date of publication of a FEDERAL REGISTER notice stating when the decision record for an appeal has been closed, the Secretary shall issue a decision or publish a notice in the FEDERAL REGISTER explaining why a decision cannot be issued at that time. The Secretary shall issue a decision not later than 15 days after the date of publication of a FEDERAL REGISTER notice explaining why a decision cannot be issued within the 60-day period.

(c) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

(d) In reviewing an appeal, the Secretary shall find that a proposed federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information in the decision record supports this conclusion.

(e)(1) If the Secretary finds that the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the Federal agency may approve the activity.

(2) If the Secretary does not make either of these findings, the Federal agency shall not approve the activity.

[65 FR 77154, Dec. 8, 2000, as amended at 71 FR 831, Jan. 5, 2006]

§ 930.131 Review initiated by the Secretary.

(a) The Secretary may, on her own initiative, choose to consider whether a federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security. Secretarial review shall only be initiated after the completion of State agency review pursuant to the relevant subpart. The Secretary's decision to review the activity may result from an independent concern regarding the activity or a request from interested parties. If the Secretary decides to initiate review, notification shall be sent to the applicant, person or applicant agency, and to the relevant Federal and State agencies. The notice shall include a statement describing the reasons for the review.

(b) With the exception of application and processing fees, all other provisions under this subpart governing the processing and administering of appeals will apply to Secretarial reviews initiated under this section.

Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

§ 930.150 Objectives.

(a) A federal activity may affect coastal uses or resources of a State other than the State in which the activity will occur. Effective coastal management is fostered by ensuring that activities having such reasonably foreseeable interstate coastal effects are conducted consistent with the enforceable policies of the management program of each affected State.

(b) The application of the federal consistency requirement to activities having interstate coastal effects is addressed by this subpart in order to encourage cooperation among States in dealing with activities having interstate coastal effects, and to provide States, local governments, Federal agencies, and the public with a predictable framework for evaluating the consistency of these federal activities under the Act.

§ 930.151 Interstate coastal effect.

The term ''interstate coastal effect'' means any reasonably foreseeable effect resulting from a federal action occurring in one State of the United States on any coastal use or resource of another State that has a federally approved management program. Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions. The term ''affects'' means have an effect on. Effects on any coastal use or resource may also be referred to as ''coastal effects.''

§ 930.152 Application.

(a) This subpart applies to federal actions having interstate coastal effects, and supplements the relevant requirements contained in 15 CFR part 930, subparts C (Consistency for Federal Agency Activities), D (Consistency for Activities Requiring a Federal License or Permit), E (Consistency for OCS Exploration, Development and Production Activities) and F (Consistency for Federal Assistance to State and Local Governments). Except as otherwise provided by this subpart, the requirements of other relevant subparts of part 930 apply to activities having interstate coastal effects.

(b) Federal consistency is a requirement on federal actions affecting any coastal use or resource of a State with a federally-approved management program, regardless of the activities' locations (including States without a federally approved management program). The federal consistency requirement

does not alter a coastal State's jurisdiction. The federal consistency requirement does not give States the authority to review the application of laws, regulations, or policies of any other State. Rather, the Act allows a management program to review federal actions and may preclude federal action as a result of a State objection, even if the objecting State is not the State in which the activity will occur. Such objections to interstate activities under subparts D, E and F may be overridden by the Secretary pursuant to subpart H of this part.

§ 930.153 Coordination between States in developing coastal management policies.

Coastal States are encouraged to give high priority to:

(a) Coordinating State coastal management planning, policies, and programs with respect to contiguous areas of such States;

(b) Studying, planning, and implementing unified coastal management policies with respect to such areas; and

(c) Establishing an effective mechanism, and adopting a federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to activities having interstate coastal effects.

§ 930.154 Listing activities subject to routine interstate consistency review.

(a) *Geographic location of listed activities.* Each coastal State intending to conduct a consistency review of federal activities occurring in another State shall:

(1) List those Federal agency activities, federal license or permit activities, and federal assistance activities that the State intends to routinely review for consistency; and

(2) Generally describe the geographic location for each type of listed activity.

(b) In establishing the geographic location of interstate consistency review, each State must notify and consult with the State in which the listed activity will occur, as well as with relevant Federal agencies.

(c) *Demonstrate effects.* In describing the geographic location for interstate consistency reviews, the State agency shall provide information to the Director that coastal effects from listed activities occurring within the geographic area are reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas.

(d) *Director approval.* State agencies shall submit their lists and geographic location descriptions developed under this section to the Director for approval as a routine program change under subpart H of 15 CFR part 923. Each State submitting this program change shall include evidence of consultation with States in which the activity will occur, evidence of consultation with relevant Federal agencies, and any agreements with other States and Federal agencies regarding coordination of activities.

(e) *State failure to list interstate activities.* A coastal State that fails to list federal activities subject to interstate review, or to describe the geographic location for these activities, under paragraphs (a) through (d) of this section, may not exercise its right to review activities occurring in other States, until the State meets the listing requirements. The listing of activities subject to interstate consistency review, and the description of the geographic location for those listed activities, should ensure that coastal States have the opportunity to review relevant activities occurring in other States. States may amend their lists and geographic location descriptions pursuant to the requirements of this subpart and subpart H of 15 CFR part 923. States which have complied with paragraphs (a) through (d) of this section may also use the procedure at § 930.54 to review unlisted activities. States will have a transition period of 18 months from the date this rule takes

effect. In that time a State may review an interstate activity pursuant to § 930.54 of this part. After the transition period States must comply with this subpart in order to review interstate activities.

§ 930.155 Federal and State agency coordination.

(a) Identifying activities subject to the consistency requirement. The provisions of this subpart are neither a substitute for nor eliminate the statutory requirement of federal consistency with the enforceable policies of management programs for all activities affecting any coastal use or resource. Federal agencies shall submit consistency determinations to relevant State agencies for activities having coastal effects, regardless of location, and regardless of whether the activity is listed.

(b) *Notifying affected States.* Federal agencies, applicants or applicant agencies proposing activities listed for interstate consistency review, or determined by the Federal agency, applicant or applicant agency to have an effect on any coastal use or resource, shall notify each affected coastal State of the proposed activity. State agencies may also notify Federal agencies and applicants of listed and unlisted activities subject to State agency review and the requirements of this subpart.

(c) *Notice of intent to review.* Within 30 days from receipt of the consistency determination or certification and necessary data and information, or within 30 days from receipt of notice of a listed federal assistance activity, each State intending to review an activity occurring in another State must notify the applicant or applicant agency (if any), the Federal agency, the State in which the activity will occur (either the State's management program, or if the State does not have a management program, the Governor's office), and the Director, of its intent to review the activity for consistency. The State's notice to the parties must be received by the 30th day after receipt of the consistency determination or certification. If a State fails, within the 30 days, to notify the applicant or applicant agency (if any), the Federal agency, the State in which the activity will occur, and the Director, of its intent to review the activity, then the State waives its right to review the activity for consistency. The waiver does not apply where the State intending to review the activity does not receive notice of the activity.

§ 930.156 Content of a consistency determination or certification and State agency response.

(a) The Federal agency or applicant is encouraged to prepare one determination or certification that will satisfy the requirements of all affected States with approved management programs.

(b) State agency responses shall follow the applicable requirements contained in subparts C, D, E and F of this part.

§ 930.157 Mediation and informal negotiations.

The relevant provisions contained in subpart G of this part are available for resolution of disputes between affected States, relevant Federal agencies, and applicants or applicant agencies The parties to the dispute are also encouraged to use alternative means for resolving their disagreement. OCRM shall be available to assist the parties in these efforts.

PARTS 932–933 [RESERVED]

SUBCHAPTER C—REGULATIONS OF THE NATIONAL WEATHER SERVICE

PART 946—MODERNIZATION OF THE NATIONAL WEATHER SERVICE

Sec.
946.1 Purpose.
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946.6 Change in operations—transferring responsibility and moving field offices.
946.7 Preparation of proposed certification for restructuring.
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APPENDIX A TO PART 946—NATIONAL WEATHER SERVICE MODERNIZATION CRITERIA
APPENDIX B TO PART 946—AIRPORT TABLES

AUTHORITY: Title VII of Pub. L. 102–567, 106 Stat. 4303 15 U.S.C. 313 note

SOURCE: 58 FR 64091, Dec. 3, 1993, unless otherwise noted.

§ 946.1 Purpose.

(a) This part sets forth the procedures for certification by the Secretary of Commerce that the closure, consolidation, automation or relocation of any field office of the National Weather Service (NWS) pursuant to the implementation of the Strategic Plan for the Modernization of the NWS will not result in any degradation of weather services. Section 706 of Pub. L. 102–567 requires that no such field office be closed, consolidated, automated, or relocated until such certification is made. This part distinguishes these modernization activities which require certification from those changes in operations at a field office which do not require certification.

(b) This part, including specifically these sections which specify when certifications are required, is intended to promote confidence that public safety is being adequately considered during the modernization process. While some of the terms used in these regulations may be identical to those used by the Office of Personnel Management, the General Services Administration, or by NOAA in personnel regulations, this part does not affect or supersede those regulations. In particular, a determination that the move of a field office is not a ''relocation'' for purposes of these regulations does not affect an employee's rights to relocation assistance, discontinued service retirement, severance pay, or grade and pay retention.

§ 946.2 Definitions.

Automate (or automation) means to replace employees performing surface observations at a field office with automated weather service observation equipment. For the purposes of this definition, an employee performing surface observations at a field office is replaced when that office, after installing such equipment, reduces or eliminates its responsibility for taking surface observations and removes the employee from that field office, or formally requests the employee to cease performing all observational responsibilities at that office. Automate does not include temporarily reducing the hours of operation during which a field office is responsible for surface observations or augmenting/backing up an ASOS when such reduction results from an unplanned decrease in staff.

Category 1 radar means an existing NWS radar which is to be replaced by a NEX-RAD on the same site or on an adjacent site from which the two radars cannot operate concurrently. A Category 1 radar must be dismantled when the existing tower prevents building a replacement NEX-RAD on the same site or operationally demonstrating and commissioning a replacement NEX-RAD on an adjacent site by physically blocking its beam. A Category 1 radar must be turned off when it prevents operationally demonstrating and commissioning a replacement NEX-RAD on an adjacent site by creating substantial electromagnetic interference.

Change operations at a field office means to transfer service responsibility, commission weather observation systems, decommission a NWS radar, move an entire field office to a new location inside the local commuting and service area, or significantly change the staffing level of a field office except where the staffing change constitutes a consolidation or automation or where there is an unplanned decrease in staff.

Close (or closure) means to remove all weather services, equipment, and personnel from a filed office. It does not include a consolidation, automation, or relocation or a move of a field office to another location within the current local commuting and service area.

Commission means to officially charge a new observational technology (e.g, NEXRAD and ASOS) with responsibility for providing weather data within a defined service area or to charge a new weather office support system (e.g, AWIPS) with responsibility for supporting office operations.

Committee means the Modernization Transition Committee established by sec. 707 of Pub. L. 102–567.

Consolidate (or consolidation) means to remove some positions from a field office (without closing that office) after those responsibilities have been reduced or eliminated by the commissioning of one or more NEXRADS, the decommissioning of the radar operated by that office, if any, and the combination of that office's responsibilities with those of another field office. Consolidate does not include temporarily reducing the hours during which a field office is responsible for operating a radar when such reduction results from an unplanned decrease in staff.

Decommission (or permanently decommission) means to permanently withdraw existing official responsibility for providing weather data or weather office support from an existing technology which includes turning off the technology. It does not include temporarily withdrawing responsibility for providing radar data where this action results from:

(1) System failure;

(2) The need to dismantle a Category 1 radar to allow the construction of or the operational demonstration and commissioning of a replacement NEXRAD; or

(3) The need to turn off a Category 1 radar to allow the operational demonstration and commissioning of a replacement NEX-RAD.

Field office means a National Weather Service Office (WSO) or a National Weather Service Forecast Office (WSFO).

Inventory of services means all of those weather services from those listed on the menu of services that are provided to the public by a field office in its service area prior to a transition action.

Local Commuting Area means the population center (or two or more neighboring ones) served by an existing field office and includes those surrounding localities that can reasonably be considered part of this single area for transportation purposes. The Local Commuting Area for any field office located in a Metropolitan Area defined by the Office of Management and Budget for statistical purposes shall be the Metropolitan Statistical Area or Primary Metropolitan Statistical Area.

Menu of services means the basic weather services provided by NWS field offices as listed in §946.4.

National Implementation Plan means the plan submitted to Congress as part of the budget justification documents for Fiscal Year 1994 and for each subsequent fiscal year until the modernization is complete.

Regional Director means the Director of one of the six geographical regions of the NWS.

Relocate (or relocation) means to move an entire field office, including all personnel positions, equipment and service responsibility to a location outside the current local commuting or service area of that field office.

Responsible Meteorologist means an employee of the NWS in charge of the office that will be responsible for providing weather services to the area affected by a closure, consolidation, automation, or relocation of a field office.

Restructure means to close, consolidate, automate, or relocate a field office.

Secretary means the Secretary of Commerce or his or her delegate.

Service area means the geographical area for which an existing field office provides weather services or conducts observations.

Strategic Plan means the 10 year strategic plan for the modernization of NWS which was submitted to the Congress by the Secretary on March 10, 1989.

Unplanned decrease in staff means a temporary reduction in the number of employees available for duty at a field office resulting from employee retirement, resignation, extended sick leave or emergency leave, or voluntary acceptance of training or of a position outside that field office.

Weather service means a service or product provided to a service area by a field office.

[58 FR 64091, Dec. 3, 1993, as amended at 59 FR 44314, Aug. 29, 1994]

§ 946.3 Notification of changes in operations and restructuring.

(a) Beginning with the Fiscal Year 1994 budget submission to Congress and until the modernization is complete, the NWS will submit to Congress annually a National Implementation Plan. The NWS may amend a Plan prior to the submission of the next Plan to include modifications provided that notification of any additional proposed changes in operations or identification of any additional proposed restructuring actions shall be provided to Congress at least 90 days prior to the date of the action.

(b) The NWS will neither change operations at, nor restructure, any field office after September 30, 1993, pursuant to the implementation of the Strategic Plan unless it has provided notification of the relevant action in the most current edition of the National Implementation Plan, or an amendment thereof, and has complied with all requirements of these regulations.

§ 946.4 Menu of services.

The following are the basic weather services provided by NWS field offices:

(a) Surface Observations

(b) Upper Air Observations

(c) Radar Observations

(d) Public Forecasts, Statements, and Warnings

(e) Aviation Forecasts, Statements, and Warnings

(f) Marine Forecasts, Statements, and Warnings

(g) Hydrologic Forecasts and Warnings

(h) Fire Weather Forecasts and Warnings

(i) Agricultural Forecasts and Advisories

(j) NOAA Weather Radio Broadcasts

(k) Climatological Services

(l) Emergency Management Support

(m) Special Products and Service Programs

§ 946.5 Change in operations—commissioning and decommissioning.

(a) Before commissioning any new NEXRAD or ASOS weather observation system, the NWS shall prepare a Commissioning Report documenting that the system involved will perform to the Government's specifications; the system has been tested on site and performs reliably; satisfactory maintenance support is in place; sufficient staff with adequate training are available to operate the system; technical coordination with weather service users has been completed; and the system satisfactorily supports field office operations.

(b) The Report required by paragraph (a) of this section shall be based on the scientific and technical criteria set forth in the NWS' NEXRAD and ASOS Commissioning Plans, as appropriate, which criteria shall be published in the FEDERAL REGISTER as the final commissioning criteria in accordance with sec. 704(b)(1) of the Act. In the case of an ASOS commissioning, the Report shall also document that the NWS has consulted with the Federal Aviation Administration (FAA) and has determined that the weather services provided after commissioning will continue to be in full compliance with the applicable FAA flight aviation rules.

(c) Before decommissioning any NWS radar, the NWS shall prepare a Decommissioning Report documenting that all replacement radars needed to provide equal coverage have been commissioned; confirmation of services with users has been completed; and that the radar being decommissioned is no

longer needed to support field office operations. The Decommissioning Report shall be based on the scientific and technical criteria contained in the NWS' Radar Decommissioning Plan, which criteria shall be published in the FEDERAL REGISTER as the final decommissioning criteria in accordance with the requirements of sec. 704(b)(1) of the Act.

(d) If the final commissioning criteria significantly modify the criteria upon which the previous commissioning of a NEXRAD and/or ASOS were based, the NWS shall confirm that the relevant system conforms with the final criteria adopted. The NWS shall not decommission any NWS radar until the final criteria have been adopted.

§ 946.6 Change in operations—transferring responsibility and moving field offices.

(a) After providing any notification required by § 946.3(b), NWS may change operations at a field office to implement the Strategic Plan, including:

(1) Transferring official responsibility for taking radar observations to a NEXRAD Weather Service Forecast Office (NWSFO) or a NEXRAD Weather Service Office (NWSO) that is being established as a future Weather Forecast Office following commissioning of the NEXRAD at the new office;

(2) Transferring official responsibility for taking observations from a Category 1 radar to a backup radar or radars prior to constructing and/or operating a replacement NEXRAD. Before transferring responsibility, the Responsible Meteorologist shall document that technical coordination with users has been completed and that the transition to the replacement NEXRAD can be completed expeditiously;

(3) Transferring its service responsibility for issuing watches, warnings, forecasts and other products to a NWSFO or NWSO;

(4) Significantly reducing its staffing level by transferring or reassigning personnel to support the service responsibilities transferred under paragraph (a)(3) of this section provided that the field office continues to assign the appropriate number of positions established by the NWS Operations Manual to carry out its observation responsibilities; and

(5) Moving an entire field office to a location within the local commuting and service area of that office.

(b) A field office may not significantly reduce its staffing level assigned to support any observation responsibility, including those responsibilities transferred under paragraph (a)(2) of this section and those retained under paragraph (a)(4) of this section, until the Secretary has certified that the automation and/or consolidation will not degrade service in accordance with § 946.7.

§ 946.7 Preparation of proposed certification for restructuring.

(a) Whenever it becomes appropriate to restructure a field office identified in the National Implementation Plan, but prior to taking such action, the Responsible Meteorologist shall make a determination that there will be no degradation of service based on the final criteria published in the FEDERAL REGISTER in accordance with sec. 704 of the Act and recommend a proposed certification. The proposed certification may address all related restructuring actions that occur as part of a coordinated step described in the National Implementation Plan.

(b) The proposed certification shall include:

(1) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(2) A detailed comparison of the inventory of services provided within the service area prior to such action and the services to be provided after such action;

(3) Any recent or expected modernization of NWS operations which will enhance services to the affected area;

(4) An identification of any area within any state which will not receive NEXRAD coverage at an elevation of 10,000 feet;

(5) Evidence based upon operational demonstration of modernized NWS operations which support a determination that no degradation in service will result;

(6) Any report of the Committee issued under sec. 707(c) of the Act; and

(7) The Responsible Meteorologist's determination that there will be no degradation of service.

(c) If the restructuring proposed to be certified involves the commissioning of a NEXRAD, the Responsible Meteorologist shall also consider the following evidence from operational demonstration of modernized operations in reaching the conclusion that no degradation of service will result:

(1) The Commissioning Report containing the elements described in § 946.5(a);

(2) The Decommissioning Report containing the elements described in § 946.5(c); and

(3) The Confirmation of Services Report prepared by the NWS in accordance with paragraph (e) of this section.

(d) If the restructuring proposed to be certified involves the commissioning of an ASOS unit, the Responsible Meteorologist shall also consider the following evidence from operational demonstration of modernized operations in reaching the conclusion that no degradation of service will result:

(1) The Commissioning Report containing the elements described in § 946.5(a);

(2) The NWS Surface Observation Modernization Report documenting that manual observations being discontinued are no longer needed to provide mission field services; based on the final scientific and technical criteria (including all requirements and procedures) published in the FEDERAL REGISTER in accordance with section 704(b)(2) of the act; and

(3) The Confirmation of Services Report prepared by the NWS in accordance with paragraph (e) of this section.

(e) The Confirmation of Services Report required by paragraphs (c) and (d) of this section shall include a list of those users who have been contacted during the confirmation process, to document that services have not been degraded. These users shall include the appropriate media and emergency managers in the service area and the appropriate federal and state agencies including specifically the FAA if the restructuring involves a field office located at an airport and consultation with the FAA has not been conducted in accordance with § 946.5(b). This Report shall be based on the scientific and technical criteria set forth in the Internal and External Communication and Coordination Plan for the Modernization and Associated Restructuring of the National Weather Service, which criteria shall be included in the final certification criteria published in the FEDERAL REGISTER in accordance with sec. 704(b)(2) of the Act.

(f) If the restructuring proposed to be certified involves the relocation of a field office, the Responsible Meteorologist shall also consider the following evidence in reaching the conclusion that no degradation of service will result:

(1) Evidence based upon operational demonstration during earlier modernization actions in which an entire field office was moved from one location to another including specifically the impact of such moves on services;

(2) A checklist of all operational tests and inspections that will be performed at the new location to ensure that the relocated equipment is fully operational;

(3) A list of all users notified prior to the relocation, and a list of the contacts that will be made with the relevant users to confirm operational status after the relocation; and

(4) Comments received from notified users and those received during the public comment period.

§ 946.8 Review of proposed certification for restructuring.

The Responsible Meteorologist shall transmit the proposed certification and the accompanying documentation to the Regional Director for review. The Regional Director may amend or supplement the documentation provided subsequent readers can easily identify his or her amendments or supplements. If the Regional Director agrees with the proposed certification, he or she shall endorse the proposed certification, and transmit it along with all the accompanying documentation to the Secretary. A copy of any proposed certification shall be provided to the Committee upon request of the Committee.

§ 946.9 Certification of restructuring.

(a) The Secretary shall publish each proposed certification in the FEDERAL REGISTER at least 60 days prior to certification. If, after consideration of the public comments received, the Secretary agrees that the proposed restructuring will not result in any degradation of service to the service area, he or she shall so certify by submitting a certification report to Congress. Upon transmittal of the certification by the secretary, NWS shall promptly publish the certification in the FEDERAL REGISTER stating where copies of the certification and the accompanying documents may be obtained.

(b) The Responsible Meteorologist may restructure only after the certification has been submitted to Congress.

(c) Any field office for which restructuring has been certified under this section shall also be subject to additional certification if that office is closed during stage 2 of the modernization. No field office will close before January 1, 1996.

§ 946.10 Liaison officer.

Prior to restructuring a field office, the Responsible Meteorologist shall designate at least one person in the affected service area to act as a liaison officer for at least a 2-year period whose duties shall be:

(a) Provide timely information regarding the activities of the NWS which may affect service to the community including specifically modernization and restructuring activities; and

(b) Work with area users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

APPENDIX A TO PART 946—NATIONAL WEATHER SERVICE MODERNIZATION CRITERIA

I. Modernization Criteria for Actions Not Requiring Certification

(A) Commissioning of New Weather Observation Systems

(1) Automated Surface Observation Systems (ASOS)

Purpose: Successful commissioning for full operational use requires a demonstration, by tests and other means, that the ASOS equipment, as installed in the field office, meets its technical requirements; that the prescribed operating, maintenance, and logistic support elements are in place; that operations have been properly staffed with trained personnel and that the equipment can be operated with all other installed mating elements of the modernized NWS system.

NOTE: It may be necessary to incorporate work-arounds to complete some of the items listed below in a timely and cost-effective manner. A work-around provides for an alternative method of meeting a commissioning criteria through the application of a pre-approved operational procedure implemented on a temporary basis, for example, by human augmentation of the observation for the occurrence of freezing rain, until such time as a freezing rain sensor has been accepted for operational use with ASOS. The ASOS Plan referenced below includes a process for recommending, approving, and documenting work arounds and requires that they be tracked as open items until they can be eliminated by implementation of the originally intended capability.

References: The criteria and evaluation elements for commissioning are set forth and further detailed in the NWS-Sponsored Automated Surface Observing System (ASOS) Site Component Commissioning Plan (the ASOS Plan), more specifically in Addendum I, Appendix D of the ASOS Site Component Commissioning Evaluation Package (the ASOS Package).

Criteria: a. ASOS Acceptance Test: The site component acceptance test, which includes objective tests to demonstrate that the ASOS, as installed at the given site, meets its technical specifications, has been successfully completed in accordance with item 1a, p. D–2 of Appendix D of the ASOS Package.

b. Sensor Siting: Sensor sitings provide representative observations in accordance with Appendix C of the ASOS Package, Guidance for Evaluating Representativeness of ASOS Observations and item 1b, p. D–2 of Appendix D of the ASOS Package.

c. Initialization Parameters: Initialization parameters are in agreement with source information provided by the ASOS Program Office, in accordance with item 1c, pp. D–2 & D–3 of Appendix D of the ASOS Package.

d. Sensor Performance Verification: Sensor performance has been verified in accordance with the requirements stated in the ASOS Site Technical Manual and item 1d, p. D–3 of the ASOS Package.

e. Field Modification Kits/Firmware Installed: All critical field modification kits and firmware for the site as required by attachments 3a & b (pp. D–45 & D–46) or memorandum issued to the regions, have been installed on the ASOS in accordance with item 1e, p. D–4 of Appendix of the ASOS Package.

f. Operations and Maintenance Documentation: A full set of operations and maintenance documentation is available in accordance with items 2a-h, pp. D–5 & D–6 of Appendix D of the ASOS Package.

g. Notification of and Technical Coordination with Users: All affected users have been notified of the initial date for ASOS operations and have received a technical coordination package in accordance with item 2i, pp. D–6 & D–7 of Appendix D of the ASOS Package.

h. Availability of Trained Operations Personnel: Adequate operations staff are available, training materials are available, and required training has been completed, per section 3.2.3.1 of the ASOS Plan, in accordance with items 3a-c, p. D–8 of Appendix D of the ASOS package.

i. Maintenance Capability: Proper maintenance personnel and support systems and arrangements are available in accordance with items 4a-e, pp. D–9 & D–10 of Appendix D of the ASOS Package.

j. Performance of Site Interfaces: The equipment can be operated in all of its required modes and in conjunction with all of its interfacing equipment per the detailed checklists of items 5a-b, pp. D–11 & D–19 of Appendix D of the ASOS Package.

k. Support of Associated NWS Forecasting and Warning Services: The equipment provides proper support of NWS forecasting and warning services and archiving, including operation of all specified automatic and manually augmented modes per the checklist, items 6a-e, pp. D–20 to D–29, of Appendix D of the ASOS Package.

l. Service Backup Capabilities: Personnel, equipment, and supporting services are available and capable of providing required backup readings and services in support of operations when primary equipment is inoperable in accordance with items 7a-g, pp. D–30 to D–32, of Appendix D of the ASOS Package.

m. Augmentation Capabilities: Personnel are available and trained to provide augmentation of ASOS observations in accordance with augmentation procedures, items 8a-c, p. D–33 of Appendix D of the ASOS Package.

n. Representativeness of Observations: Observations are representative of the hydrometeorological conditions of the observing location as determined by a period of observation of at least 60 days prior to commissioning in accordance with Appendix C and item 6e, pp. D–27 to D–29 of Appendix D of the ASOS Package.

(2) WSR–88D Radar System

Purpose: Successful commissioning for full operational use requires a demonstration, by tests and other means, that the WSR–88D radar system, as installed in the field office, meets its technical requirements; that the prescribed operating, maintenance, and logistic support elements are in place; that operations have been properly staffed with trained personnel; and that the equipment can be operated with all other installed mating elements of the modernized NWS system.

NOTE: It may be necessary to incorporate work-arounds to complete some of the items listed below in a timely and cost-effective manner. A work-around provides for an alternative method of meeting a commissioning criteria through the application for a pre-approved operational procedure implemented on a temporary basis. The WSR–88D Plan referenced below includes a process for recommending, approving, and documenting work arounds and requires that they be tracked as open items until they can be eliminated by implementation of the originally intended capability.

Reference: The criteria and evaluation elements for commissioning are set forth and further detailed in the NWS-Sponsored WSR–88D Site Component Commissioning Plan (the 88D Plan) and an Attachment to that Plan, called the WSR–88D Site Component Commissioning Evaluation Package (the WSR–88D Package).

Criteria: a. WSR–88D Radar Acceptance Test: The site component acceptance test, which includes objective tests to demonstrate that the WSR–88D radar, as installed at the given site, meets its technical specifications, has been successfully completed in accordance with items 1a-f, p. A–2 of Appendix A of the WSR–88D Package.

b. Availability of Trained Operations and Maintenance Personnel: Adequate operations and maintenance staffs are available, training materials are available, and required training has been completed in accordance with items 2a-h, pp. A–3 & A–4 of Appendix A of the WSR–88D Package.

c. Satisfactory Operation of System Interfaces: The system can be operated in all of its required modes and in conjunction with all of its interfacing equipment in accordance with items 3a-e, p. A–5 of Appendix A of the WSR–88D Package.

d. Satisfactory Support of Associated NWS Forecasting and Warning Services: The system provides proper support of NWS forecasting and warning services, including at least 96 percent availability of the radar coded message for a period of 30 consecutive days prior to commissioning in accordance with items 4a-kk, pp. A–6 to A–17 of Appendix A of the WSR–88D Package.

e. Service Backup Capabilities: Service backup capabilities function properly when the primary system is inoperable in accordance with items 5a-e, p. A–18 of Appendix A of the WSR–88D Package.

f. Documentation for Operations and Maintenance: A full set of operations and maintenance documentation is available in accordance with items 6a-n, pp. A–19 to A–25 of Appendix A of the WSR–88D Package.

g. Spare Parts and Test Equipment: A full complement of spare parts and test equipment is available on site in accordance with items 7a-e, p. A–26, of Appendix A of the WSR–88D Package.

(B) Decommissioning an Outdated NWS Radar

Purpose: Successful decommissioning of an old radar requires assurance that the existing radar is no longer needed to support delivery of services and products and local office operations.

References: The criteria and evaluation elements for decommissioning are set forth and further detailed in the NWS-Sponsored Network and Local Warning Radars (Including Adjunct Equipment) Site Component Decommissioning Plan (the Plan), more specifically in Appendix B to that Plan, called the Site Component Decommissioning Evaluating Package, and in Section 3.3 of the Internal and External Communication and Coordination Plan for the Modernization and Associated Restructuring of the Weather Service.

Criteria: a. Replacing WSR–88D(s) Commissioning/User Service Confirmation: The replacing WSR–88D(s) have been commissioned and user confirmation of services has been successfully completed, *i.e.,* all valid user complaints related to actual system performance have been satisfactorily resolved, in accordance with items 1a-c, p. B–10 of Appendix B of the Plan.

b. Operation Not Dependent on Existing Radar: The outdated radar is not required for service coverage, in accordance with items 2a-c, p. B–11 of Appendix B of the Plan.

c. Notification of Users: Adequate notification of users has been provided, in accordance with items 3a-f, pp. B–12 & B–13 of Appendix B of the Plan.

d. Disposal of Existing Radar: Preparations for disposal of the old existing radar have been completed, in accordance with items 4a-d, pp. B–14 & B–15 of Appendix B of the Plan.

(C) Evaluating Staffing Needs for Field Offices in Affected Areas

References: The criteria and evaluation elements are set forth and further detailed in the ASOS and WSR–88D Evaluation Packages and in the Human Resources and Position Management Plan for the National Weather Service Modernization and Associated Restructuring (the Human Resources Plan).

Criteria: 1. Availability of Trained Operations and Maintenance Personnel at a NEXRAD Weather Service Forecast Office or NEXRAD Weather Service Office: Adequate operations and maintenance staffs are available to commission a WSR–88D, specifically criterion b. set forth in section I.A.2. of this Appendix which includes meeting the Stage 1 staffing levels set forth in chapter 3 of the Human Resources Plan.

2. Availability of Trained Operations and Maintenance Personnel at any field office receiving an ASOS: Adequate operations and maintenance staff are available to meet the requirements for commissioning an ASOS, specifically criteria h and i set forth in section I.A.1 of this Appendix.

II. Criteria for Modernization Actions Requiring Certification

(A) Modernization Criteria Common to all Types of Certifications (Except as Noted)

1. Notification: Advanced notification and the expected date of the proposed certification have been provided in the National Implementation Plan.

2. Local Weather Characteristics and Weather Related Concerns: A description of local weather characteristics and weather related concerns which affect the weather services provided to the affected service area is provided.

3. Comparison of Services: A comparison of services before and after the proposed action demonstrates that all services currently provided to the affected service area will continue to be provided with no degradation of services.

4. Recent or Excepted Modernization of NWS Operations in the Affected Service Area: A description of recent or expected modernization of NWS operations in the affected service area is provided.

5. NEXRAD Network Coverage: NEXRAD network coverage or gaps in coverage at 10,000 feet over the affected service area are identified.

6. Air Safety Appraisal (applies only to relocation and closure of field offices at an airport): Verification that there will be no degradation of service that affects aircraft safety has been made by conducting an air safety appraisal in consultation with the Federal Aviation Administration.

7. Evaluation of Services to In-state Users (applies only to relocation and closure of the only field office in a state): Verification that there will be no degradation of weather services provided to the state has been made by evaluating the effect on weather services provided to in-State users.

8. Liaison Officer: Arrangements have been made to retain a Liaison Officer in the affected service area for at least two years to provide timely information regarding the activities of the NWS which may affect service to the community, including modernization and restructuring; and to work with area weather service users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

9. Meteorologist-In-Charge's (MIC) Recommendation to Certify: The MIC of the future WFO that will have responsibility for the affected service area has recommended certification in accordance with 15 CFR 946.7(a).

10. Regional Director's Certification: The cognizant Regional Director has approved the MIC's recommended certification of no degradation of service to the affected service area in accordance with 15 CFR 946.8.

(B) Modernization Criteria Unique to Consolidation Certifications

1. WSR–88D Commissioning: All necessary WSR–88D radars have been successfully commissioned in accordance with the criteria set forth in section I.A.2. of this Appendix.

2. User Confirmation of Services: All valid user complaints related to actual system performance have been satisfactorily resolved in accordance with section 3.3 of the Internal and External Communication and Coordination Plan for the Modernization and Associated Restructuring of the National Weather Service.

3. Decommissioning of Existing Radar: The existing radar, if any, has been successfully decommissioned in accordance with the criteria set forth in section I.B. of this Appendix.

(C) Modernization Criteria Unique to Relocation Certifications

1. Approval of Proposed Relocation Checklist: The cognizant regional director has approved a proposed relocation checklist setting forth the necessary elements in the relocation process to assure that all affected users will be given advanced notification of the relocation, that delivery of NWS services and products will not be interrupted during the office relocation, and that the office to be relocated will resume full operation at the new facility expeditiously so as to minimize the service backup period.

Specific Elements: a. Notification of and Technical Coordination with Users: The proposed relocation checklist provides for the notification of and technical coordination with all affected users.

b. Identification and Preparation of Backup Sites: The proposed relocation checklist identifies the necessary backup sites and the steps necessary to prepare to use backup sites to ensure service coverage during the move and checkout period.

c. Start of Service Backup: The proposed relocation checklist provides for invocation of service backup by designated sites prior to office relocation.

d. Systems, Furniture and Communications: The proposed relocation checklist identifies the steps necessary to move all systems and furniture to the new facility and to install communications at the new facility.

e. Installation and Checkout: The proposed relocation checklist identifies all steps to install and checkout systems and furniture and to connect to communications at the new facility.

f. Validation of Systems Operability and Service Delivery: The proposed relocation checklist provides for validation of system operability and service delivery from the new facility.

2. Publishing of the Proposed Relocation Checklist and Evidence form Completed Moves: The proposed relocation checklist and the evidence from other similar office moves that have been completed, have been published in the FEDERAL REGISTER for public comment. The evidence from the other office moves indicates that they have been successfully completed.

3. Resolution of Public Comments Received: All responsive public comments received from publication, in the FEDERAL REGISTER, of the checklists and of the evidence from completed moves are satisfactorily answered.

(D) Modernization Criteria Unique to Automation Certifications

1. Compliance with flight aviation rules (applies on airports only): Consultation with the Federal Aviation Administration (FAA) has verified that the weather services provided after the commissioning of the relevant ASOS unit(s) will be in full compliance with applicable Federal Aviation Regulations promulgated by the FAA.

2. ASOS Commissioning: The relevant ASOS unit(s) have been successfully commissioned in accordance with the criteria set forth in section I.A.1 of Appendix A to the Weather Service Modernization Regulations, 15 CFR part 946.

3. User Confirmation of Services: Any valid user complaints related to actual system performance received since commissioning of the ASOS have been satisfactorily resolved

and the issues addressed in the MIC's recommendation for certification.

4. Aviation Observation Requirement: At sites subject to automation certification, all surface observations and reports required for aviation services can be generated by an ASOS augmented as necessary by non-NWS personnel.

a. The ASOS observation will be augmented/backed-up to the level specified in Appendix B as described in the Summary Chart of the FAA's Weather Observation Service Standards.

b. The transition checklist has been signed by the appropriate Region Systems Operations Division Chief (applies to service level A, B and C airports only).

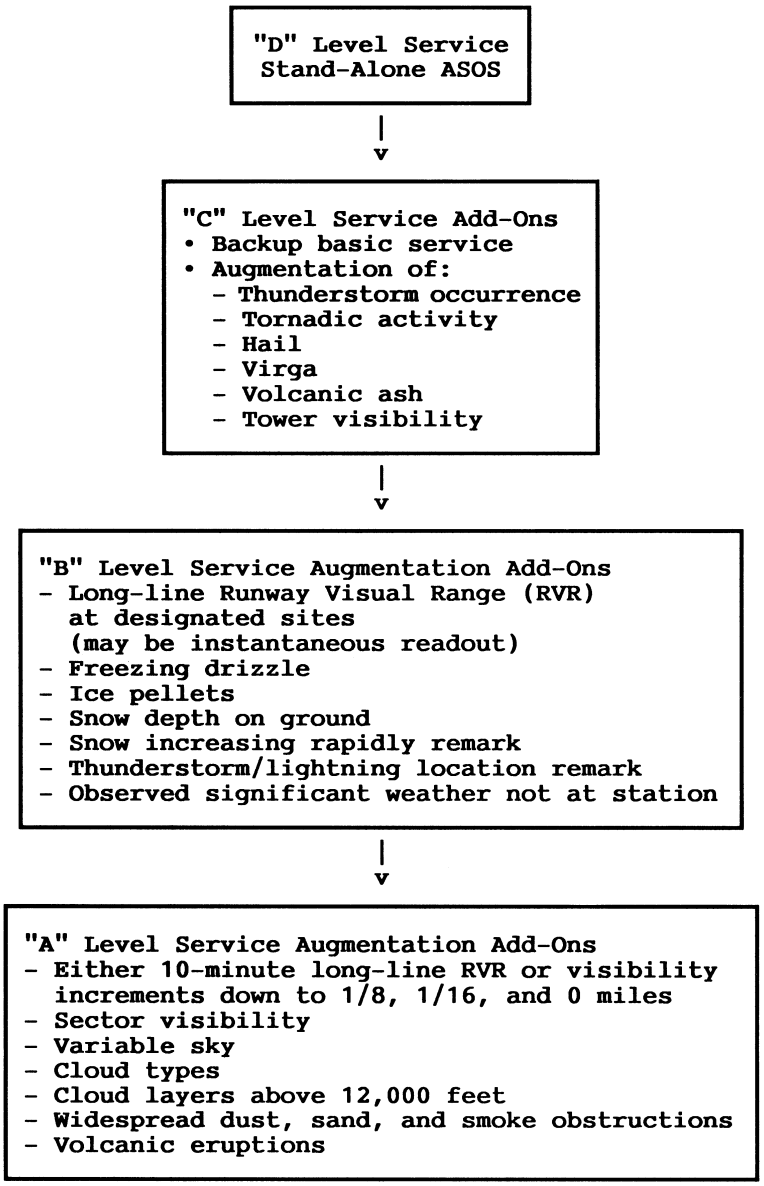
c. Thunderstorm occurrence is reported in the ASOS observation through the use of a lightning sensor (applies to service level D airports only, excluding Homer, Alaska).

d. Freezing rain occurrence is reported in the ASOS observation through the use of a freezing rain sensor. Among service level D airports, this criterion is not applicable to Ely, Nevada and Lander, Wyoming.

5. Pilot Education and Outreach Completed: The Air Safety Foundation has conducted a pilot education and outreach effort to educate pilots on the use of automated observations and measure their understanding and acceptance of automated observing systems, and the MTC has had an opportunity to review the results of this effort (applies to service level D airports only).

6. General Surface Observation Requirement: The total observations available are adequate to support the required inventory of services to users in the affected area. All necessary hydrometeorological data and information are available through ASOS as augmented in accordance with this section, through those elements reported as supplementary data by the relevant Weather Forecast Office(s), or through other complementary sources. The adequacy of the total surface observation is addressed in the MTC's recommendation for certification.

Summary of FAA's Weather Observation Service Standards



(E) Modernization Criteria Unique to Closure Certifications

1. Consolidation Certification: If the field office proposed for closure has or will be consolidated, as defined in §946.2 of the basic modernization regulations, this action has been completed as evidenced by the approved

certification or can be completed as evidenced by all of the documentation that all of the requirements of sections II.A. and II.B of this Annex have been completed.

2. Automation Certification: If the field office proposed for closure has or will be automated, as defined in §946.2 of the basic modernization regulations, this action has been completed as evidenced by the approved certification or can be completed as evidenced by documentation that all of the requirements of sections II.A. and II.C. of this Annex has been completed.

3. Remaining Services and/or Observations: All remaining service and/or observational responsibilities, if applicable to the field office proposed for closure, have been transmitted as addressed in the MIC's recommendation for certification.

4. User Confirmation of Services: Any valid user complaints received related to provision of weather services have been satisfactorily resolved and the issues addressed in the MIC's recommendation for certification.

5. Warning and Forecast Verification: Warning and forecast verification statistics, produced in accordance with the Closure Certification Verification Plan, have been utilized in support of the MIC's recommendation for certification.

[59 FR 9923, Mar. 2, 1994, as amended at 61 FR 39865, July 31, 1996; 61 FR 53311, Oct. 11, 1996; 62 FR 38903, July 21, 1997]

APPENDIX B TO PART 946—AIRPORT TABLES

"A" Level Service Airports:	
*Akron, OH	CAK
*Albany, NY	ALB
*Atlanta, GA	ATL
*Baltimore, MD	BWI
*Boston, MA	BOS
Charlotte, NC	CLT
*Chicago-O'Hare (AV), IL	ORD
Cincinnati, OH	CVG
Columbus, OH	CMH
*Dayton, OH	DAY
*Des Moines, IA	DSM
*Detroit, MI	DTW
*Fairbanks, AK	FAI
*Fresno, CA	FAT
*Greensboro, NC	GSO
*Hartford, CT	BDL
Indianapolis, IN	IND
*Kansas City, MO	MCI
*Lansing, MI	LAN
Las Vegas, NV	LAS
Los Angeles (AV), CA	LAX
*Louisville, KY	SDF
*Milwaukee, WI	MKE
*Minneapolis, MN	MSP
*Newark, NJ	EWR
*Oklahoma City, OK	OKC
Phoenix, AZ	PHX
*Portland, OR	PDX
*Providence, RI	PVD
*Raleigh, NC	RDU
*Richmoind, VA	RIC
*Rochester, NY	ROC
*Rockford, IL	RFD
*San Antonio, TX	SAT
San Diego, CA	SAN
*San Francisco, CA	SFO
*Spokane, WA	GEG
*Syracuse, NY	SYR
Tallahassee, FL	TUL
Tulsa, OK	TUL
"B" Level Service Airports:	
*Baton Rouge, LA	BTR
*Billings, MT	BIL
*Charleston, WV	CRW
*Chattanooga, TN	CHA
Colorado Springs, CO	COS
Daytona Beach, FL	DAB
El Paso, TX	ELP
Flint, MI	FNT
Fort Wayne, IN	FWA
Honolulu, HI	HNL
*Huntsville, AL	HSV
*Knoxville, TN	TYS
*Lincoln, NE	LNK
Lubbock, TX	LBB
*Madison, WI	MSN
*Moline, IL	MLI
*Montgomery, AL	MGM
*Muskegon, MI	MKG
*Norfolk, VA	ORF
Peoria, IL	PIA
*Savannah, GA	SAV
*South Bend, IN	SBN
Tucson, AZ	TUS
*West Palm Beach, FL	PBI
*Youngstown, OH	YNG
"C" Level Service Airports:	
Abilene, TX	ABI
Allentown, PA	ABE
Asheville, NC	AVL
Athens, GA	AHN
Atlantic City, NJ	ACY
Augusta, GA	AGS
Austin, TX	AUS
Bakersfield, CA	BFL
Bridgeport, CT	BDR
Bristol, TN	TRI
Casper, WY	CPR
Columbia, MO	COU
Columbus, GA	CSG
Dubuque, IA	DBQ
Elkins, WV	EKN
Erie, PA	ERI
Eugene, OR	EUG
Evansville, IN	EVV
Fargo, ND	FAR
Fort Smith, AR	FSM
Grand Island, NE	GRI
Helena, MT	HLN
Huntington, WV	HTS
Huron, SD	HON
Kahului, HI	OGG
Key West, FL	EYW
Lewiston, ID	LWS
Lexington, KY	LEX

Lynchburg, VA	LYH
Macon, GA	MCN
Mansfield, OH	MFD
Meridian, MS	MEI
Olympia, WA	OLM
Port Arthur, TX	BPT
Portland, ME	PWM
Rapid City, SD	RAP
Redding, CA	RDD
Reno, NV	RNO
Roanoke, VA	ROA
Rochester, MN	RST
Salem, OR	SLE
Santa Maria, CA	SMX
Sioux City, IA	SUX
Springfield, IL	SPI
Stockton, CA	SCK
Toledo, OH	TOL
Waco, TX	ACT
Waterloo, IA	ALO
Wilkes-Barre, PA	AVP
Williamsport, PA	IPT
Wilmington, DE	ILG
Worcester, MA	ORH
Yakima, WA	YKM
"D" Level Service Airports:	
Alamosa, CO	ALS
Alpena, MI	APN
Astoria, OR	AST
Beckley, WV	BKW
Caribou, ME	CAR
Concordia, KS	CNK
Concord, NH	CON
Ely, NV	ELY
Havre, MT	HVR
Homer, AK	HOM
Houghton Lake, MI	HTL
International Falls, MN	INL
Kalispell, MT	FCA
Lander, WY	LND
Norfolk, NE	OFK
Sault Ste. Marie, MI	SSM
Scottsbluff, NE	BFF
Sheridan, WY	SHR
St. Cloud, MN	STC
Tupelo, MS	TUP
Valentine, NE	VTN
Victoria, TX	VCT
Wichita, Falls, TX	SPS
Williston, ND	ISN
Winnemucca, NV	WMC

*Long-line RVR designated site.

[62 FR 38905, July 21, 1997]

SUBCHAPTER D—GENERAL REGULATIONS OF THE ENVIRONMENTAL DATA SERVICE

PART 950—ENVIRONMENTAL DATA AND INFORMATION

Sec.

950.1 Scope and purpose.
950.2 Environmental Data and Information Service (EDIS).
950.3 National Climatic Center (NCC).
950.4 National Oceanographic Data Center (NODC).
950.5 National Geophysical and Solar-Terrestrial Data Center (NGSDC).
950.6 Environmental Science Information Center (ESIC).
950.7 Center for Environmental Assessment Services (CEAS).
950.8 Satellite Data Services Division (SDSD).
950.9 Computerized Environmental Data and Information Retrieval Service.
APPENDIX A TO PART 950—SCHEDULE OF USER FEES FOR ACCESS TO NOAA ENVIRONMENTAL DATA

AUTHORITY: (5 U.S.C. 552, 553). Reorganization Plan No. 4 of 1970.

SOURCE: 44 FR 54468, Sept. 20, 1979, unless otherwise noted.

§ 950.1 Scope and purpose.

This part describes the Environmental Data and Information Service (EDIS), a major program element of the National Oceanic and Atmospheric Administration, and EDIS management of environmental data and information.

§ 950.2 Environmental Data and Information Service (EDIS).

The Environmental Data and Information Service is the first Federal organization created specifically to manage environmental data and information. EDIS acquires, processes, archives, analyzes, and disseminates worldwide environmental (atmospheric, marine, solar, and solid Earth) data and information for use by commerce, industry, the scientific and engineering communities, and the general public, as well as by Federal, State, and local governments. It also provides experiment design and data management support to large-scale environmental experiments; assesses the impact of environmental fluctuations on food production, energy production and consumption, environmental quality, and other economic systems; and manages or provides functional guidance for NOAA's scientific and technical publication and library activities. In addition, EDIS operates related World Data Center-A subcenters and participates in other international data and information exchange programs. To carry out this mission, EDIS operates a network of specialized service centers and a computerized environmental data and information retrieval service.

§ 950.3 National Climatic Center (NCC).

The National Climatic Center acquires, processes, archives, analyzes, and disseminates climatological data; develops analytical and descriptive products to meet user requirements; and provides facilities for the World Data Center-A (Meteorology). It is the collection center and custodian of all United States weather records, the largest of the EDIS centers, and the largest climatic center in the world.

(a) Climatic data available from NCC include:

(1) Hourly Surface Observations from Land Stations (ceiling, sky cover, visibility, precipitation or other weather phenomena, obstructions to vision, pressure, temperature, dew point, wind direction, wind speed, gustiness).

(2) Three-Hourly and Six-Hourly Surface Observations from Land Stations, Ocean Weather Stations, and Moving Ships (variable data content).

(3) Upper Air Observations (radiosondes, rawinsondes, rocketsondes, low-level soundings, pilot-balloon winds, aircraft reports).

(4) Radar Observations (radar log sheets, radar scope photography).

(5) Selected Maps and Charts (National Meteorological Center products).

(6) Derived and Summary Data (grid points, computer tabulations, digital summary data).

(7) Special Collections (Barbados Oceanographic and Meteorological Experiment meteorological data, Global

Atmospheric Research Program basic data set, solar radiation data, many others).

(b) Queries should be addressed to: National Climatic Center, National Oceanic and Atmospheric Administration, Asheville, NC 28801, tel. 704–258–2850, Ext. 683.

§ 950.4 National Oceanographic Data Center (NODC).

The National Oceanographic Data Center acquires, processes, archives, analyzes, and disseminates oceanographic data; develops analytical and descriptive products to meet user requirements; and provides facilities for the World Data Center-A (Oceanography). It was the first NODC established and houses the world's largest usuable collection of marine data.

(a) Oceanographic data available from NODC include:

(1) Mechanical and expendable bathytheremograph data in analog and digital form.

(2) Oceanographic station data for surface and serial depths, giving values of temperature, salinity, oxygen, inorganic phosphate, total phosphorus, nitrite-nitrogen, nitrate-nitrogen, silicate-silicon, and pH.

(3) Continuously recorded salinity-temperature-depth data in digital form.

(4) Surface current information obtained by using drift bottle or calculated from ship set and drift.

(5) Biological data, giving values of plankton standing crop, chlorophyll concentrations, and rates of primary productivity.

(6) Other marine environmental data obtained by diverse techniques, e.g., instrumented buoy data, and current meter data.

(b) Queries should be addressed to: National Oceanographic Data Center, National Oceanic and Atmospheric Administration, Washington, DC 20235, tel. 202–634–7500.

§ 950.5 National Geophysical and Solar-Terrestrial Data Center (NGSDC).

The National Geophysical and Solar-Terrestrial Data Center acquires, processes, archives, analyzes, and disseminates solid Earth and marine geophysical data as well as ionospheric, solar, and other space environment data; develops analytical, climatological, and descriptive products to meet user requirements; and provides facilities for World Data Center-A (Solid-Earth Geophysics, Solar Terrestrial Physics, and Glaciology).

(a) Geophysical and solar-terrestrial data available from NGSDC include:

(1) *Marine geology and geophysics*. Bathymetric measurement; seismic reflection profiles; gravimetric measurements; geomagnetic total field measurements; and geological data, including data on heat flow, cores, samples, and sediments.

(2) *Solar-Terrestrial physics*. Ionosphere data, including ionograms, frequency plots, riometer and field-strength strip charts, and tabulations; solar activity data; geomagnetic variation data, including magnetograms; auroral data; cosmic ray data; and airglow data.

(3) *Seismology*. Seismograms; accelerograms; digitized strong-motion accelerograms; earthquake data list (events since January 1900); earthquake data service with updates on a monthly basis.

(4) *Geomagnetic main field*. Magnetic survey data and secular-change data tables.

(b) Queries should be addressed to: National Geophysical and Solar-Terrestrial Data Center, National Oceanic and Atmospheric Administration, Boulder, CO 80303, tel. 303–499–1000, ext. 6215.

§ 950.6 Environmental Science Information Center (ESIC).

ESIC is NOAA's information specialist, librarian, and publisher. ESIC coordinates NOAA's library and information services and its participation in the national network of scientific information centers and libraries. Computerized literature searches provide information from over 80 data bases. The complete list of data bases is available on request. All ESIC information facilities provide the normal library tailored information and reference services. As NOAA's publisher of scientific and technical information, ESIC reviews, edits, and processes NOAA manuscripts for publication.

(a) Services available from ESIC include:

(1) *Reference services.* Some services are provided on a cost-recovery basis to non-NOAA individuals.

(2) *Publication copy services.* Copies of NOAA publications are provided on request from qualified users, including governments, universities, non-profit organizations, professional societies, chambers of commerce, public information media, and individuals and organizations having cooperative or exchange agreements with NOAA.

(3) *Bibliographies.* Special bibliographies are prepared on request. When provided to non-NOAA individuals, service is on a full cost-recovery basis.

(4) *Current awareness services.* Periodically provides announcements of titles of newly published NOAA scientific and technical publications.

(5) *Lending services.* Materials are loaned to other libraries and to NOAA employees.

(6) On-site use of library collections.

(7) *Publishing services.* Includes providing refereeing, reviewing, editing, and publishing services for NOAA authors of manuscripts destined for both NOAA and non-NOAA publication series.

(b) Queries should be addressed to: Environmental Science Information Center, National Oceanic and Atmospheric Administration, Rockville, MD 20852, tel. 301–443–8137.

§ 950.7 Center for Environmental Assessment Services (CEAS).

EDIS assists National decisionmakers in solving problems by providing data analyses, applications, assessments, and interpretations to meet their particular requirements. Many of these services are provided by the EDIS Center for Environmental Assessment Services (CEAS).

(a) The following are examples of CEAS projects and services:

(1) CEAS prepares data-based studies and weekly assessments of potential effects of climatic fluctuations on National and global grain production.

(2) CEAS provides environmental analyses and assessments to support efficient and effective planning, site selection, design, construction, and operation of supertanker ports and offshore drilling rigs. Such planning depends heavily upon environmental assessments.

(3) During the heating season, CEAS issues monthly and seasonal projections of natural gas demand for multi-State regions of the conterminous United States. Similar projections are made for electricity during the cooling season.

(4) CEAS has developed and makes available when needed a statistical oil spill trajectory risk model based on historical meteorological and oceanographic data.

(5) The center has analyzed the potential ecological effects of the planned disposal of huge volumes of saturated brine into Gulf waters for the National Strategic Petroleum Reserve and may be called on to provide similar services in other subject areas.

(6) CEAS provides experiment design, data analysis, and data management support to project managers and produces merged, validated multidisciplinary data sets for international and national study (such undertakings as the recent key role in the Global Atmospheric Research Program (GARP) experiments).

(7) CEAS provides special data or information as required. Currently the Center is assembling an inventory of cruises and a global oceanographic data base from observations taken during the First GARP Global Experiment (FGGE).

(b) Additional information on these or related services can be obtained by writing: Director, Center for Environmental Assessment Services, National Oceanic and Atmospheric Administration, Washington, DC 20235; or by calling (202) 634–7251.

§ 950.8 Satellite Data Services Division (SDSD).

The Satellite Data Services Division of the EDIS National Climatic Center provides environmental and earth resources satellite data to other users once the original collection purposes (*i.e.*, weather forecasting) have been satisfied. The division also provides photographs collected during NASA's SKYLAB missions.

(a) Satellite data available from SDSD include:

(1) Data from the TIROS (Television InfraRed Observational Satellite) series of experimental spacecraft; much of the imagery gathered by spacecraft of the NASA experimental NIMBUS series; full-earth disc photographs from NASA's Applications Technology Satellites (ATS) I and III geostationary research spacecraft; tens of thousands of images from the original ESSA and current NOAA series of Improved TIROS Operational Satellites; and both full-disc and sectorized images from the Synchronous Meteorological Satellites (SMS) 1 and 2, the current operational geostationary spacecraft. In addition to visible light imagery, infrared data are available from the NIMBUS, NOAA, and SMS satellites. Each day, SDSD receives about 239 negatives from the polar-orbiting NOAA spacecraft, more than 235 SMS–1 and 2 negatives, and several special negatives and movie film loops.

(2) Photographs (both color and black-and-white) taken during the three SKYLAB missions (May through June, 1973, July through September, 1973, and November 1973 through February 1974).

(b) Queries should be addressed to: Satellite Data Services Division, World Weather Building, Room 606, Washington, DC 20233, tel. 301–763–8111.

§ 950.9 Computerized Environmental Data and Information Retrieval Service.

The Environmental Data Index (ENDEX) provides rapid, automated referral to multidiscipline environmental data files of NOAA, other Federal agencies, state and local governments, and universities, research institutes, and private industry. A computerized, information retrieval service provides a parallel subject-author-abstract referral service. A telephone call to any EDIS data or information center or NOAA library will allow a user access to these services.

APPENDIX A TO PART 950—SCHEDULE OF USER FEES FOR ACCESS TO NOAA ENVIRONMENTAL DATA

Name of product/data/publication/information/service NOAA National Center for Environmental Information	Current fee	New fee
Department of Commerce Certification	$153.00	$168.00
General Certification	133.00	146.00
Paper Copy	10.00	11.00
Data Poster	15.00	15.00
Shipping Service	10.00	12.00
Rush order fee	65.00	73.00
Super Rush Order Fee	109.00	124.00
Foreign Handling Fee	47.00	55.00
NEXRAD Doppler radar Color Prints	27.00	29.00
Paper Copy from Electronic Media	10.00	11.00
Offline In-Situ Digital Data	113.00	125.00
Satellite Image Product	75.00	82.00
Offline Satellite, Radar, and Model Digital Data (average unit size is 1 terabyte)	455.00	612.00
Conventional CD–ROM/DVD	94.00	104.00
Specialized CD–ROM/DVD	204.00	226.00
CD–ROM/DVD Copy, Offline	76.00	84.00
CD–ROM/DVD Copy, Online Store	34.00	39.00
Order Handling/Quality Check	23.00	26.00
Non-Digital Order Consultation	13.00	14.00
Digital Order Consultation	31.00	34.00
Single Orbit OLS & Subset	19.00	20.00
Single Orbit OLS & Subset, Additional Orbits	7.00	7.00
Global Nighttime Lights Monthly Composite—one satellite	9,508.00	9,988.00
High Definition Geomagnetic Model	24,129.00	26,714.00
High Definition Geomagnetic Model—Real Time (HDGM–RT)	30,915.00	34,793.00
Expedited Shipping Service	New product	29.00
Research Data Series CD–ROM/DVD	20	(*)

*Indicates a product no longer offered.

[88 FR 56466, Aug. 18, 2023]

PART 960—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS

Subpart A—General

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960.3 Applicability to existing licenses.
960.4 Definitions.

Subpart B—License Application Submission and Categorization

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Subpart D—Prohibitions and Enforcement

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960.18 Grounds for adjudication by the Secretary.
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APPENDIX A TO PART 960—APPLICATION INFORMATION REQUIRED
APPENDIX B TO PART 960—APPLICATION SUBMISSION INSTRUCTIONS
APPENDIX C TO PART 960—LICENSE TEMPLATE
APPENDIX D TO PART 960—MEMORANDUM OF UNDERSTANDING

AUTHORITY: 51 U.S.C. 60124.

SOURCE: 85 FR 30806, May 20, 2020, unless otherwise noted.

Subpart A—General

§ 960.1 Purpose.

(a) The regulations in this part implement the Secretary's authority to license the operation of private remote sensing space systems under the Land Remote Sensing Policy Act of 1992, as amended, codified at 51 U.S.C. 60101 *et seq.*, and are intended to promote continued U.S. private sector innovation and leadership in the global remote sensing industry.

(b) In carrying out this part, the Secretary takes into account the following considerations:

(1) Technological changes in remote sensing;

(2) Non-technological changes in the remote sensing space industry, such as to business models and practices;

(3) The relative burden to licensees and benefits to national security and international policies of license conditions;

(4) Changes in the methods to mitigate risks to national security and international policies;

(5) International obligations of the United States;

(6) The availability of data from sources in other nations;

(7) The remote sensing regulatory environment in other nations; and

(8) The potential for overlapping regulatory burdens imposed by other U.S. Government agencies.

§ 960.2 Jurisdiction.

(a) The regulations in this part set forth the requirements for the operation of private remote sensing space systems within the United States or by a U.S. person.

(b) Instruments used primarily for mission assurance or other technical purposes, including but not limited to navigation, attitude control, monitoring spacecraft health, separation events, or payload deployments, such as traditional star trackers, sun sensors, and horizon sensors, shall not be subject to this part.

(c) In the case of a system that is used for remote sensing and other purposes, as determined by the Secretary, the scope of the license issued under this part will not extend to the operation of instruments that do not support remote sensing.

(d) The Secretary does not authorize the use of spectrum for radio communications by a private remote sensing space system.

§ 960.3 Applicability to existing licenses.

(a) After reviewing each license existing prior to July 20, 2020, on July 20, 2020, the Secretary will either:

(1) Replace the existing license with one developed in accordance with this part, retaining any applicable waivers and modifications; or

(2) If the Secretary determines that an existing licensee no longer requires a license under this part the Secretary will notify the existing licensee that the license is terminated.

(b) The replacement license or termination determination will be effective 30 days after delivery by the Secretary to existing licensees. Existing licensees who object to their existing license being replaced or terminated must notify the Secretary in writing within those 30 days, and specify their objection in the notification.

§ 960.4 Definitions.

For purposes of this part, the following terms have the following meanings:

Act means the Land Remote Sensing Policy Act of 1992, as amended, codified at 51 U.S.C. 60101, *et seq*.

Anomaly means an unexpected event or abnormal characteristic affecting the operations of a system that could indicate a significant technical malfunction or security threat. Anomalies include any significant deviation from the orbit and data collection characteristics of the system.

Appellant means a person to whom the Secretary has certified an appeal request.

Applicant means a person who submits an application to operate a private remote sensing space system.

Application means a document submitted by a person to the Secretary that contains all the information described in appendix A of this part.

Available means readily and consistently obtainable by an entity or individual other than the U.S. Government or a foreign government.

Ground sample distance or *GSD* refers to the common measurement for describing the spatial resolution of unenhanced data created from most remote sensing instruments, typically measured in meters. A resolution ''finer than'' X meters GSD means the resolution is a number lower than X. For example, 5 meters GSD is finer than 10 meters GSD.

In writing or *written* means written communication, physically or electronically signed (if applicable), transmitted via email, forms submitted on the Secretary's website, or traditional mail.

License means a license granted by the Secretary under the Act.

Licensee means a person to whom the Secretary has granted a license under the Act.

Material fact means a fact an applicant provides in the application, or a fact in Parts C or D of a license.

Memorandum of Understanding or *MOU* means the April 25, 2017 version of the ''Memorandum of Understanding Among the Departments of Commerce, State, Defense, and Interior, and the Office of the Director of National Intelligence, Concerning the Licensing and Operations of Private Remote Sensing Satellite Systems,'' which is included as appendix D of this part. In the event that any provisions of the MOU conflict with this part, this part shall govern.

Modification means any change in the text of a license after issuance.

Operate means to have decision-making authority over the functioning of a remote sensing instrument. If there are multiple entities involved, the entity with the ultimate ability to decide what unenhanced data to collect with the instrument and to execute that decision, directly or through a legal arrangement with a third party such as a ground station or platform owner, is considered to be operating that system.

Person or *private sector party* means any entity or individual other than agencies or instrumentalities of the U.S. Government.

Private remote sensing space system or *system* means an instrument that is capable of conducting remote sensing and which is not owned by an agency or instrumentality of the U.S. Government. A system must contain a remote sensing instrument and all additional components that support operating the remote sensing instrument, receipt of unenhanced data, and data preprocessing, regardless of whether

the component is owned or managed by the applicant or licensee, or by a third party through a legal arrangement with the applicant or licensee.

Remote sensing means the collection of unenhanced data by an instrument in orbit of the Earth which can be processed into imagery of surface features of the Earth.

Secretary means the Secretary of Commerce, or his or her designee.

Significant or substantial foreign agreement means a contract or legal arrangement with a foreign national, entity, or consortium involving foreign nations or entities, only if executing such contract or arrangement would require a license modification under § 960.13.

Subsidiary or affiliate means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the applicant or licensee.

Substantially the same means that one item is a market substitute for another, taking into account all applicable factors. When comparing data, factors include but are not limited to the data's spatial resolution, spectral bandwidth, number of imaging bands, temporal resolution, persistence of imaging, local time of imaging, geographic or other restrictions imposed by foreign governments, and all applicable technical system factors listed in the application in appendix A of this part.

Unenhanced data means the output from a remote sensing instrument, including imagery products, which is either unprocessed or preprocessed. Preprocessing includes rectification of system and sensor distortions in data as it is received directly from the instrument in preparation for delivery to a user, registration of such data with respect to features of the Earth, and calibration of spectral response with respect to such data, but does not include conclusions, manipulations, or calculations derived from such data, or a combination of such data with other data.

U.S. person means:

(1) Any individual who is a citizen or lawful permanent resident of the United States; and

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States or any State, the District of Columbia, Puerto Rico, American Samoa, the United States Virgin Islands, Guam, the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

Waiver means any change from the standard license text in § 960.8, § 960.9, or § 960.10, which change is included in a license upon license issuance, in response to a request by the applicant pursuant to § 960.12.

Subpart B—License Application Submission and Categorization

§ 960.5 Application submission.

(a) Before submitting an application, a person may consult informally with the Secretary to discuss matters under this part, including whether a license is likely to be required for a system.

(b) A person may submit an application for a license in accordance with the specific instructions found in appendix B of this part. The application must contain fully accurate and responsive information, as described in appendix A of this part. Responses an applicant provides to each prompt in the application constitute material facts.

(c) Within seven days of the submission, the Secretary shall determine, after consultation with the Secretaries of Defense and State, whether the submission is a complete application meeting the requirements of appendix A of this part. If the submission is a complete application, the Secretary shall immediately notify the applicant in writing. If the submission is not a complete application, the Secretary shall inform the applicant in writing of what additional information or clarification is required to complete the application.

(d) If any information the applicant submitted becomes inaccurate or incomplete at any time after submission to the Secretary but before license grant or denial, the applicant must

contact the Secretary and submit correct and updated information as instructed by the Secretary. The Secretary will determine whether the change is significant. If the Secretary determines that the change is significant, the Secretary will notify the applicant within seven days of receipt of the correct and updated information that the revision constitutes a new application submission under paragraph (b) of this section, and that the previous application is deemed to have been withdrawn.

(e) Upon request by the applicant, the Secretary shall provide an update on the status of their application review.

§ 960.6 Application categorization.

(a) Within seven days of the Secretary's notification to the applicant under § 960.5(c) that the application is complete, the Secretary shall determine, after consultation with the Secretaries of Defense and State as appropriate, the category for the system as follows:

(1) If the application proposes a system with the capability to collect unenhanced data substantially the same as unenhanced data already available from entities or individuals not licensed under this part, such as foreign entities, the Secretary shall categorize the application as Tier 1;

(2) If the application proposes a system with the capability to collect unenhanced data substantially the same as unenhanced data already available, but only from entities or individuals licensed under this part, the Secretary shall categorize the application as Tier 2; and

(3) If the application proposes a system with the capability to collect unenhanced data not substantially the same as unenhanced data already available from any domestic or foreign entity or individual, the Secretary shall categorize the application as Tier 3.

(b) If the Secretary of Defense or State disagrees with the Secretary's determination in paragraph (a) of this section, the Secretary of Defense or State may notify the Secretary and request the Secretary's reconsideration. Such a request for reconsideration may not be delegated below the Assistant Secretary level. If the Secretary of Defense or State disagrees with the Secretary's reconsideration decision, the Secretary of Defense or State may appeal that tier categorization pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU, but only at the Advisory Committee on Private Remote Sensing Space Systems level or higher. The Secretary shall categorize the system in accordance with the decision resulting from such MOU procedures.

(c) The system shall remain in the tier assigned to it under paragraph (a) in this section until such time as the Secretary determines, after consultation with the Secretaries of Defense and State as appropriate, that the system belongs in a lower-numbered tier due to the advancement of non-U.S. commercial remote sensing capabilities or due to other facts, or until the Secretary grants the licensee's request for a license modification that results in re-categorization under § 960.13. When the Secretary determines that a lower-numbered tier is appropriate due to reasons other than a modification under § 960.13, the Secretary will notify the applicant or licensee in writing that the system falls under a lower-numbered tier than the one previously assigned under this section. Upon receiving that notification, the applicant or licensee will be responsible for complying only with the license conditions applicable to the new tier.

Subpart C—Application Review and License Conditions

§ 960.7 License grant or denial.

(a) Based on the Secretary's review of the application, the Secretary must determine whether the applicant will comply with the requirements of the Act, this part, and the license. The Secretary will presume that the applicant will comply, unless the Secretary has specific, credible evidence to the contrary. If the Secretary determines that the applicant will comply, the Secretary shall grant the license.

(b) The Secretary shall make the determination in paragraph (a) of this section within 60 days of the notification under § 960.5(c), and shall notify

the applicant in writing whether the license is granted or denied.

(c) If the Secretary has not notified the applicant whether the license is granted or denied within 60 days, the applicant may submit a request that the license be granted. Within three days of this request, the Secretary shall grant the license, unless the Secretary determines with specific, credible evidence that the applicant will not comply with the requirements of the Act, this part, or the license, in which case the Secretary will deny the license, or the Secretary and the applicant mutually agree to extend this review period.

§ 960.8 Standard license conditions for all tiers.

All licenses granted under this part shall specify that the licensee shall:

(a) Comply with the Act, this part, the license, applicable domestic legal obligations, and the international obligations of the United States;

(b) Operate the system in such manner as to preserve the national security of the United States and to observe international obligations and policies, as articulated in the other conditions included in this license;

(c) Upon request, offer to the government of any country (including the United States) unenhanced data collected by the system concerning the territory under the jurisdiction of such government without delay and on reasonable terms and conditions, unless doing so would be prohibited by law or license conditions;

(d) Upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;

(e) Notify the Secretary in writing of each of the following events, no later than seven days after the event:

(1) The launch and deployment of each system component, to include confirmation that the component matches the orbital parameters and data collection characteristics of the system, as described in Part D of the license;

(2) Each disposal of an on-orbit component of the system;

(3) The detection of an anomaly; and

(4) The licensee's financial insolvency or dissolution;

(f) Request and receive approval for a license modification before taking any action that would change a material fact in the license;

(g) Certify that all material facts in the license remain accurate pursuant to the procedures in § 960.14 no later than October 15th of each year;

(h) Cooperate with compliance, monitoring, and enforcement authorities described in the Act and this part, and permit the Secretary to access, at all reasonable times and with no shorter notice than 48 hours, any component of the system for the purpose of ensuring compliance with the Act, this part, and the license; and

(i) Refrain from disseminating unenhanced data, or processed data or products derived from the licensee's system, of the State of Israel at a resolution finer than the resolution most recently specified by the Secretary in the FEDERAL REGISTER as being available from commercial sources.

§ 960.9 Additional standard license conditions for Tier 2 systems.

If the Secretary has categorized the system as Tier 2 under § 960.6, the license shall specify that the licensee shall comply with the conditions listed in § 960.8 and further shall comply with the following conditions until the Secretary notifies the licensee that the system belongs in a lower-numbered tier:

(a) Comply with limited-operations directives issued by the Secretary, in accordance with a determination made by the Secretary of Defense or the Secretary of State pursuant to the procedures in Section IV(D) of the MOU, that require licensees to temporarily limit data collection and/or dissemination during periods of increased concerns for national security and where necessary to meet international obligation or foreign policy interests; and:

(1) Be able to comply with limited-operations directives at all times. This includes:

(i) The ability to implement National Institute of Standards and Technology-approved encryption, in accordance with the manufacturer's security policy, wherein the key length is at least

256 bits, for communications to and from the on-orbit components of the system related to tracking, telemetry, and control and for transmissions throughout the system of the data specified in the limited-operations directive; and

(ii) Implementing measures, consistent with industry best practice for entities of similar size and business operations, that prevent unauthorized access to the system and identify any unauthorized access in the event of a limited-operations directive;

(2) Provide and continually update the Secretary with a point of contact and an alternate point of contact for limited-operations directives; and

(3) During any such limited-operations directive, permit the Secretary to immediately access any component of the system for the purpose of ensuring compliance with the limited-operations directive, the Act, this part, and the license.

(b) Conduct resolved imaging of other artificial resident space objects (ARSO) orbiting the Earth only with the written consent of the registered owner of the ARSO to be imaged and with notification to the Secretary at least five days prior to imaging. For purposes of this paragraph (b), ''resolved imaging'' means the imaging of another ARSO that results in data depicting the ARSO with a resolution of 3 x 3 pixels or greater.

§ 960.10 Additional standard and temporary license conditions for Tier 3 systems.

(a) If the Secretary has categorized the system as Tier 3 under § 960.6, the license shall specify that the licensee shall comply with the conditions listed in § 960.8 and further shall comply with the following conditions until the Secretary notifies the licensee that the system belongs in a lower-numbered tier for which the following conditions are not required:

(1) Comply with limited-operations directives issued by the Secretary, in accordance with a determination made by the Secretary of Defense or the Secretary of State pursuant to the procedures in Section IV(D) of the MOU, that require licensees to temporarily limit data collection and/or dissemination during periods of increased concerns for national security and where necessary to meet international obligations or foreign policy interests; and:

(i) Be able to comply with limited-operations directives at all times. This includes:

(A) The ability to implement National Institute of Standards and Technology-approved encryption, in accordance with the manufacturer's security policy, wherein the key length is at least 256 bits, for communications to and from the on-orbit components of the system related to tracking, telemetry, and control and for transmissions throughout the system of the data specified in the limited-operations directive; and

(B) Implementing measures, consistent with industry best practice for entities of similar size and business operations, that prevent unauthorized access to the system and identify any unauthorized access in the event of a limited-operations directive;

(ii) Provide and continually update the Secretary with a point of contact and an alternate point of contact for limited-operations directives; and

(iii) During any such limited-operations directive, permit the Secretary to immediately access any component of the system for the purpose of ensuring compliance with the limited-operations directive, the Act, this part, and the license.

(2) Conduct resolved imaging of other artificial resident space objects (ARSO) orbiting the Earth only with the written consent of the registered owner of the ARSO to be imaged and with notification to the Secretary at least five days prior to imaging, or as may otherwise be provided in a temporary license condition developed under paragraphs (b) and (c) of this section. For purposes of this paragraph (a)(2), ''resolved imaging'' means the imaging of another ARSO that results in data depicting the ARSO with a resolution of 3 x 3 pixels or greater.

(3) Comply with any temporary license conditions developed in accordance with paragraphs (b) and (c) of this section until their specified expiration date, including any extensions of the expiration date.

(b) To determine whether additional temporary license conditions are necessary, the Secretary shall notify the Secretaries of Defense and State of any system categorized as Tier 3 under §960.6. The Secretaries of Defense and State shall determine whether any temporary license conditions are necessary (in addition to the standard license conditions in §960.8) to meet national security concerns or international obligations and policies of the United States regarding that system. Within 21 days of receiving the notification, the Secretary of Defense or State shall notify the Secretary of any such conditions and the length of time such conditions should remain in place, which shall not exceed one year from the earlier of either when the licensee first delivers unenhanced data suitable for evaluating the system's capabilities to the Secretary (under reasonable terms and conditions or other mutually agreed arrangement with the Secretary of Defense or State), or when the Secretary of Defense or State first obtains comparably suitable data from another source, unless the length of such condition is extended in accordance with paragraph (e) of this section.

(c) The Secretary shall review the notification from the Secretary of Defense or State under paragraph (b) of this section and aim to craft the least restrictive temporary license condition(s) possible, before the expiration of the 60-day application review period under §960.7(b). In crafting such conditions the Secretary shall consult, as appropriate, with the Secretaries of Defense and State and the applicant or licensee, to determine whether the proposed condition would be consistent with applicable laws. In making this determination, the Secretary shall consider whether:

(1) The risk addressed by the proposed condition is specific and compelling;

(2) The proposed condition would be effective against the risk;

(3) The proposed condition addresses only the data proposed to be collected that are not available from any domestic or foreign source;

(4) The U.S. Government cannot currently mitigate the risk without the proposed condition;

(5) The U.S. Government cannot address the risk by some less restrictive means than the proposed condition; and

(6) The applicant or licensee can mitigate the risk by taking alternative action.

(d) When considering the factors under paragraphs (c)(1) through (6) of this section, the Secretary shall accept as final the determinations made by the Secretary of Defense or State as appropriate, in such Secretary's notification to the Secretary of the need for such conditions. If the Secretary determines that a condition proposed by the Secretary of Defense or State would be consistent with applicable law, the Secretary shall include such condition in the license, absent any elevation of a dispute under paragraph (f) of this section.

(e) The Secretary will notify the Secretaries of Defense and State 90 days before the expiration of a temporary condition imposed under this section. If, within 30 days after such notification, either the Secretary of Defense or State notifies the Secretary that an extension is needed, the Secretary shall consult with the Secretary of Defense or State about the ongoing need for the temporary condition. The Secretary may extend the expiration date of the temporary condition for a maximum of one year, and may extend the condition no more than two times unless requested by the Secretary of Defense or State. The authority to request such additional extensions shall not be delegated by the Secretary of Defense or State. Therefore, absent a request specifically from the Secretary of Defense or State, any temporary condition may exist for no more than a total of three years. The Secretary shall grant an extension if the Secretary determines that:

(1) The Secretary requesting the extension has shown that the considerations in paragraph (c) of this section justify an extension; and

(2) The Secretary has notified the affected licensee no less than 60 days before the expiration of the temporary condition that an extension is being sought.

(f) If, at any point during the procedures in this section, the Secretary,

the Secretary of Defense, or the Secretary of State objects to any determination, they may elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

§ 960.11 No additional conditions.

No other conditions shall be included in a license granted under this part, or imposed in such a license after the license has been issued, except in accordance with the provisions of § 960.13 or § 960.17.

§ 960.12 Applicant-requested waiver before license issuance.

As part of the application, the applicant may request that any condition listed in § 960.8, § 960.9, or § 960.10 be waived or adjusted. The Secretary may approve the request to waive or adjust any such condition if the Secretary determines, after consultation with the Secretaries of Defense and State as appropriate, that the Secretary may waive or adjust the condition without violating the Act or other law, and:

(a) The requirement is not applicable due to the nature of the applicant or the proposed system;

(b) The applicant will achieve the goal in a different way; or

(c) There is other good cause to waive or adjust the condition.

§ 960.13 Licensee-requested modification after license issuance.

(a) The licensee may request in writing that the Secretary modify the license after the license is issued. Such requests should include the reason for the request and relevant supporting documentation.

(b) If the Secretary determines that the requested modification of a license would result in its re-categorization from Tier 1 to Tier 2 under § 960.6, the Secretary shall notify the licensee that approval would require issuance of the conditions in § 960.9, and provide the licensee an opportunity to withdraw or revise the request.

(c) If the Secretary determines that the requested modification of a license would result in its re-categorization from Tier 1 or 2 to Tier 3 under § 960.6, the Secretary shall consult with the Secretaries of Defense or State, as appropriate, to determine whether approval of the request would require additional temporary conditions in accordance with the procedures in § 960.10. If so, the Secretary shall notify the licensee that approval would require such additional temporary conditions, and provide the licensee an opportunity to withdraw or revise the request.

(d) The Secretary shall approve or deny a modification request after consultation with the Secretaries of Defense and State as appropriate, and shall inform the licensee of the approval or denial within 60 days of the request, unless the Secretary and the applicant mutually agree to extend this review period.

§ 960.14 Routine compliance and monitoring.

(a) Annually, by the date specified in the license, the licensee will certify in writing to the Secretary that each material fact in the license remains accurate.

(b) If any material fact in the license is no longer accurate at the time the certification is due, the licensee must:

(1) Provide all accurate material facts;

(2) Explain the reason for any discrepancies between the terms in the license and the accurate material fact; and

(3) Seek guidance from the Secretary on how to correct any errors, which may include requesting a license modification.

§ 960.15 Term of license.

(a) The license term begins when the Secretary transmits the signed license to the licensee, regardless of the operational status of the system.

(b) The license is valid until the Secretary confirms in writing that the license is terminated, because the Secretary has determined that one of the following has occurred:

(1) The licensee has successfully disposed of, or has taken all actions necessary to successfully dispose of, all on-orbit components of the system, and is in compliance with all other requirements of the Act, this part, and the license;

(2) The licensee never had system components on orbit and has requested to end the license term;

(3) The license is terminated pursuant to § 960.17; or

(4) The licensee has executed one of the following transfers, subsequent to the Secretary's approval of such transfer:

(i) Ownership of the system, or the operations thereof, to an agency or instrumentality of the U.S. Government; or

(ii) Operations to a person who is not a U.S. person and who will not operate the system from the United States.

Subpart D—Prohibitions and Enforcement

§ 960.16 Prohibitions.

Any person who operates a system from the United States and any person who is a U.S. person shall not, directly or through a subsidiary or affiliate:

(a) Operate a system without a current, valid license for that system;

(b) Violate the Act, this part, or any license condition;

(c) Submit false information, interfere with, mislead, obstruct, or otherwise frustrate the Secretary's actions and responsibilities under this part in any form at any time, including in the application, during application review, during the license term, in any compliance and monitoring activities, or in enforcement activities; or

(d) Fail to obtain approval for a license modification before taking any action that would change a material fact in the license.

§ 960.17 Investigations and enforcement.

(a) The Secretary may investigate, provide penalties for noncompliance, and prevent future noncompliance, by using the authorities specified at 51 U.S.C. 60123(a).

(b) When the Secretary undertakes administrative enforcement proceedings as authorized by 51 U.S.C. 60123(a)(3) and (4), the parties will follow the procedures provided at 15 CFR part 904.

Subpart E—Appeals Regarding Licensing Decisions

§ 960.18 Grounds for adjudication by the Secretary.

(a) In accordance with the procedures in this subpart, a person may appeal the following adverse actions for adjudication by the Secretary:

(1) The denial of a license;

(2) The categorization of a system in a tier;

(3) The failure to make a final determination on a license grant or denial or a licensee's modification request within the timelines provided in this part;

(4) The imposition of a license condition;

(5) The denial of a licensee-requested license modification; and

(6) The replacement of an existing license with a license granted under § 960.3(a)(1) or termination of an existing license under § 960.3(a)(2).

(b) The only acceptable grounds for appeal of the actions in paragraph (a) of this section are as follows:

(1) The Secretary's action was arbitrary, capricious, or contrary to law; or

(2) The action was based on a clear factual error.

(c) No appeal is allowed to the extent that there is involved the conduct of military or foreign affairs functions.

§ 960.19 Administrative appeal procedures.

(a) A person wishing to appeal an action specified at § 960.18(a) may do so within 21 days of the action by submitting a written request to the Secretary.

(b) The request must include a detailed explanation of the reasons for the appeal, citing one of the grounds specified in § 960.18(b).

(c) Upon receipt of a request under paragraph (a) of this section, the Secretary shall review the request to certify that it meets the requirements of this subpart and chapter 7 of title 5 of the United States Code. If it does, the Secretary shall coordinate with the appellant to schedule a hearing before a hearing officer designated by the Secretary. If the Secretary does not certify the request, the Secretary shall

notify the person in writing that no appeal is allowed, and this notification shall constitute a final agency action.

(d) The hearing shall be held in a timely manner. It shall provide the appellant and the Secretary an opportunity to present evidence and arguments.

(e) Hearings may be closed to the public, and other actions taken as the Secretary deems necessary, to prevent the disclosure of any information required by law to be protected from disclosure.

(f) At the close of the hearing, the hearing officer shall recommend a decision to the Secretary addressing all factual and legal arguments.

(g) Based on the record of the hearing and the recommendation of the hearing officer, and after consultation, as appropriate, with the Secretaries of Defense and State in decisions implicating national security and international obligations and policy, respectively, the Secretary shall make a decision adopting, rejecting, or modifying the recommendation of the hearing officer. This decision constitutes a final agency action, and is subject to judicial review under chapter 7 of title 5 of the United States Code.

APPENDIX A TO PART 960—APPLICATION INFORMATION REQUIRED

To apply for a license to operate a remote sensing space system under 51 U.S.C. 60101, *et seq.* and this part, you must provide:

1. Material Facts: Fully accurate and responsive information to the following prompts under ''Description of Applicant (Operator)'' and ''Description of System.'' If a question is not applicable, write ''N/A'' and explain, if necessary.

2. Affirmation: Confirm by indicating below that there will be, at all times, measures in place to ensure positive control of any spacecraft in the system that have propulsion, if applicable to your system. Such measures include encryption of telemetry, command, and control communications or alternative measures consistent with industry best practice.

3. Your response to each prompt below constitutes a material fact. If any information you submit becomes inaccurate or incomplete before a license grant or denial, you must promptly contact the Secretary and submit correct and updated information as instructed by the Secretary.

PART A: DESCRIPTION OF APPLICANT (OPERATOR)

1. General Applicant Information

a. Name of Applicant (entity or individual):

b. Location and address of Applicant:

c. Applicant contact information (for example, general corporate or university contact information):

d. Contact information for a specific individual to serve as the point of contact with Commerce:

e. Contact information for a specific individual to serve as the point of contact with Commerce for limited-operations directives, if different than main point of contact, in the event that the applicant will receive a license in Tier 2 or Tier 3:

f. Place of incorporation and, if incorporated outside the United States, an acknowledgement that you will operate your system within the United States and are therefore subject to the Secretary's jurisdiction under this part:

2. Ownership interests in the Applicant:

a. If there is majority U.S. ownership: Report any domestic entity or individual with an ownership interest in the Applicant totaling at least 50 percent:

b. If there is not majority U.S. ownership: Report all foreign entities or individuals whose ownership interest in the Applicant is at least 10 percent:

c. Report any ownership interest in the Applicant by any foreign entity or individual on the Department of Commerce's Bureau of Industry and Security's Denied Persons List or Entity List or on the Department of the Treasury's Office of Foreign Asset Control's Specially Designated Nationals and Blocked Person List:

3. Identity of any subsidiaries and affiliates playing a role in the operation of the System, including a brief description of that role:

PART B: DESCRIPTION OF SYSTEM

1. General System Information

a. Name of system:

b. Brief mission description:

2. Remote Sensing Instrument(s) parameters

a. Sensor type (Electro Optical, Multi-Spectral (MSI), Hyperspectral (HSI), Synthetic Aperture Radar (SAR), Light Detection and Ranging (LIDAR), Thermal Infrared (TIR), etc.):

b. Imaging/frame rate in Hertz; pulse repetition frequency for SAR or LIDAR:

c. Spatial resolution in meters (show calculation for the anticipated finest ground spatial distance (GSD), impulse response (IPR), or other relevant appropriate unit of resolution):

d. Spectral range in nanometers:

e. Collection volume in area per unit time per spacecraft: Provide an estimate of the maximum number of square kilometers of which the system can provide data/imagery per hour or per minute. If this is a fast-framing system, consider each recorded frame as a separate image collected:

f. Ability of the remote sensing instrument to slew, point, or digitally look off-axis from the x, y, and z axes of travel:

3. If any entity or individual other than the Applicant will own, control, or manage any *remote sensing instrument* in the System:

a. Identity and contact information of that entity or individual:

b. Relationship to Applicant (*i.e.,* operating under Applicant's instructions under a contract):

4. Spacecraft Upon Which the Remote Sensing Instrument(s) is (are) Carried

a. Description:

b. Estimated launch date(s) in calendar quarter:

c. Number of spacecraft (system total and maximum in-orbit at one time):

d. For each spacecraft, provide the following (or if an entire constellation will have substantially the same orbital characteristics, provide these values for the entire constellation and note whether or not all spacecraft will be evenly spaced)

i. Altitude range in kilometers:

ii. Inclination range in degrees:

iii. Period (time of a single orbit):

iv. Longitude of the ascending node:

v. Eccentricity:

vi. Argument of perigee:

vii. Propulsion (yes/no). (If ''yes,'' you must complete the affirmation in the beginning of this application):

viii. Ability of the spacecraft to slew, point, or digitally look off-axis from the x, y, and z axes of travel:

5. If any entity or individual other than the Applicant will own, control, or manage any *spacecraft* in the System

a. Identity and contact information of that entity or individual:

b. Whether that entity or individual is a U.S. person:

c. Relationship to Applicant (*i.e.,* operating under Applicant's instructions under a contract):

6. Ground Components

a. Location of Mission Control Center(s) with the ability to operate the system, including where commands are generated:

b. Location of other Ground Station components of the system, meaning facilities that communicate commands to the instrument or receive unenhanced data from it, and facilities that conduct data preprocessing:

c. If any entity or individual other than the Applicant will own, control, or manage any *mission control center(s)* with the ability to operate the System

i. Identity and contact information of that entity or individual:

ii. Relationship to Applicant (*i.e.,* operating under Applicant's instructions under a contract):

7. Information Applicable to Multi-Spectral Imaging (MSI) and/or Hyper-Spectral Imaging (HSI). Applicants must complete this section only if the response in Part B section 2.a. is ''MSI'' and/or ''HSI.''

a. Number of spectral bands:

b. Individual spectral bandwidths (to include range of the upper and lower ends of each spectral band in nanometers):

8. Noise Equivalent Target (NET). Applicants must complete this section only if the response in Part B 2.c. is 5 meters or less, and the answer in Part B section 2.a. is neither ''SAR'' nor ''LIDAR.'' NET is the primary parameter used by the U.S. Government to describe an Electro Optical sensor's light sensitivity performance for a target at the same distance from the sensor as is specified as the minimum operating altitude in Part B section 4.d.i. If NET cannot be calculated, simply report the expected minimum detectable ground target radiance in watts:

9. Information Applicable to Light Detection and Ranging (LIDAR) if used for remote sensing. Responses should include the calculations used to derive the reported parameters. Applicants must complete this section only if the response in Part B section 2.a. is ''LIDAR.''

a. Type (linear scanning or flash LIDAR (Geiger)):

b. Laser wavelength and pulse frequency:

c. Laser pulse width:

d. Spectral linewidth:

e. Z/Elevation accuracy in meters:

10. Information Applicable to Synthetic Aperture Radar (SAR). Applicants must complete this section only if the response in Part B section 2.a. is ''SAR.''

a. Azimuth resolution (ground plane):

b. Range resolution (ground plane):

c. SAR Signal-To-Noise Ratio (SNR):

d. Polarization Capability (*i.e.* dual polarization, quad polarization):

e. Complex data: Preservation of phase history data in standard format? (yes/no):

f. Center frequency:

g. Squint and Graze angles (include maximum and minimum), or other parameters that determine the size and shape of the area of regard of the sensor collection footprint at the ground:

11. Information Applicable to Thermal Infrared (TIR). TIR is defined as collecting in the spectral range of 3.0–5.0 and/or 8.0–12.0-micrometers. Applicants must complete this section only if the response in Part B section 2.a. is ''TIR.''

a. Estimated relative thermometric accuracy in degrees Kelvin (± × degrees of actual):

b. Noise Equivalent Differential Temperature (NEDT), or if NEDT cannot be calculated, simply provide the expected temperature sensitivity in terms of minimum resolvable temperature difference in degrees[1]:

PART C: REQUESTS FOR STANDARD LICENSE CONDITION WAIVERS OR ADJUSTMENTS

Standard license conditions are listed at §§960.8. 960.9, and 960.10 for Tier 1, Tier 2, and Tier 3 systems, respectively. If requesting that any of these be waived or adjusted, please identify the specific standard license condition and explain why one of the following circumstances applies:

1. The requirement is not applicable due to the nature of the Applicant or the proposed system;

2. The Applicant will achieve the goal in a different way; or

3. There is other good cause to waive or adjust the condition.

Optional: You may submit evidence of the availability of unenhanced data that is substantially the same as unenhanced data you propose to produce with your system. The Secretary will take any such evidence into account, in addition to other evidence of availability, when determining the appropriate tier for your system under §960.6.

APPENDIX B TO PART 960—APPLICATION SUBMISSION INSTRUCTIONS

A person may apply to operate a private remote sensing space system by submitting the information to the Secretary as described in appendix A of this part. This information can be submitted in any one of the following three ways:

1. Complete the fillable form at the Secretary's designated website, presently at *www.nesdis.noaa.gov/crsra*.

2. Respond to the prompts in appendix A of this part and email your responses to *crsra@noaa.gov*.

3. Respond to the prompts in appendix A of this part and mail your responses to: Commercial Remote Sensing Regulatory Affairs, 1335 East-West Highway SSMC–1/G–101, Silver Spring, MD 20910.

APPENDIX C TO PART 960—LICENSE TEMPLATE

PART A: DETERMINATION AND LICENSE GRANT

1. The Secretary determines that [licensee name], as described in Part C, will comply with the requirements of the Act, the regulations at this part, and the conditions in this license.

2. Accordingly, the Secretary hereby grants [licensee name] (hereinafter ''Licensee''), as described in Part C, this license to operate [system name] (hereinafter ''the System''), as described in Part D, subject to the terms and conditions of this license. This license is valid until its term ends in accordance with §960.15. The Licensee must request and receive approval for a license modification before taking any action that would contradict a material fact listed in Part C or D of this license.

3. The Secretary makes this determination, and grants this license, under the Secretary's authority in 51 U.S.C. 60123 and regulations at this part. This license does not authorize the System's use of spectrum for radio communications or the conduct of any non-remote sensing operations that are proposed to be undertaken by the Licensee. This license is not alienable and creates no property right in the Licensee.

PART B: LICENSE CONDITIONS

The Licensee (Operator) must, at all times:

[Depending upon the categorization of the application as Tier 1, 2, or 3, Commerce will insert the applicable standard license conditions, found at §960.8, §960.9, and/or §960.10, and, for a Tier 3 license, any applicable temporary conditions resulting from the process in §960.10, in this part of the license.]

PART C: DESCRIPTION OF LICENSEE

Every term below constitutes a material fact. You must request and receive approval of a license modification before taking any action that would contradict a material fact.

1. General Licensee Information

a. Name of Licensee (entity or individual):

b. Location and address of Licensee:

c. Licensee contact information (for example, general corporate or university contact information):

d. Contact information for a specific individual to serve as the point of contact with Commerce:

e. If Tier 2 or Tier 3, contact information for a specific individual to serve as the point of contact with Commerce for limited-operations directives, if different than main point of contact:

[1] NEDT (noise equivalent differential temperature) is the key figure of merit which is used to qualify midwave (MWIR) and longwave (LWIR) infrared cameras. It is a signal-to-noise figure which represents *the temperature difference which would produce a signal equal to the camera's temporal noise*. It therefore represents approximately the minimum temperature difference which the camera can resolve. It is calculated by dividing the temporal noise by the response per degree (responsivity) and is usually expressed in units of milliKelvins. The value is a function of the camera's f/number, its integration time, and the temperature at which the measurement is made.

f. Place of incorporation and, if incorporated outside the United States, confirmation that the Licensee acknowledged as part of the application that the Licensee will operate its system within the United States and is therefore subject to the Secretary's jurisdiction under this part:

2. Identity of any subsidiaries and affiliates playing a role in the operation of the System, including a brief description of that role:

PART D: DESCRIPTION OF SYSTEM

1. General System Information

a. Name of system:

b. Brief mission description:

2. Remote Sensing Instrument(s) parameters

a. Sensor type (Electro Optical, Multi-Spectral (MSI), Hyperspectral (HSI), Synthetic Aperture Radar (SAR), Light Detection and Ranging (LIDAR), Thermal Infrared (TIR), etc.):

b. Imaging/frame rate in Hertz; pulse repetition frequency for SAR; or number of looks for LIDAR:

c. Spatial resolution in meters:

d. Spectral range in nanometers:

e. Collection volume in area per unit time per spacecraft: An estimate of the maximum number of square kilometers of which the system can provide data/imagery per hour or per minute:

f. Ability of the remote sensing instrument to slew, point, or digitally look off-axis from the x, y, and z axes of travel:

3. If any entity or individual other than the Licensee will own, control, or manage any *remote sensing instrument* in the System:

a. Identity and contact information of that entity or individual:

b. Relationship to Licensee (*i.e.*, operating under Licensee's instructions under a contract):

4. Spacecraft Upon Which the Remote Sensing Instrument(s) is (are) Carried

a. Description:

b. Estimated launch date(s) in calendar quarter:

c. Number of spacecraft (system total and maximum in-orbit at one time):

d. For each spacecraft:

i. Altitude range in kilometers:

ii. Inclination range in degrees:

iii. Period (time of a single orbit):

iv. Longitude of the ascending node:

v. Eccentricity:

vi. Argument of perigee:

vii. Propulsion (yes/no):

viii. Ability of the spacecraft to slew, point, or digitally look off-axis from the x, y, and z axes of travel:

5. If any entity or individual other than the Licensee will own, control, or manage any *spacecraft* in the System

a. Identity and contact information of that entity or individual:

b. Whether that entity or individual is a U.S. person:

c. Relationship to Licensee (*i.e.*, operating under Licensee's instructions under a contract):

6. Ground Components

a. Location of Mission Control Center(s) with the ability to operate the system, including where commands are generated:

b. Location of other Ground Station components of the system, meaning facilities that communicate commands to the instrument or receive unenhanced data from it, and facilities that conduct data preprocessing:

c. If any entity or individual other than the Licensee will own, control, or manage any *mission control center(s)* with the ability to operate the System

i. Identity and contact information of that entity or individual:

ii. Relationship to Licensee (*i.e.*, operating under Licensee's instructions under a contract):

7. Information Applicable to Multi-Spectral Imaging (MSI) and/or Hyper-Spectral Imaging (HSI).

a. Number of spectral bands:

b. Individual spectral bandwidths (to include range of the upper and lower ends of each spectral band in nanometers):

APPENDIX D TO PART 960—MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding Among the Departments of Commerce, State, Defense, and Interior, and the Office of the Director of National Intelligence, Concerning the Licensing and Operations of Private Remote Sensing Satellite Systems. April 25, 2017.

I. AUTHORITIES AND ROLES

This Memorandum of Understanding (MOU) is undertaken pursuant to the National and Commercial Space Programs Act, 51 U.S.C, 60101 *et seq.* (''the Act''), 15 CFR part 960, National Security Presidential Directive 27 (NSPD–27), and Presidential Policy Directive-4 PPD–4) (''applicable directives''), or to any renewal of, or successor to, the Act and the applicable directives.

The principal Parties to this MOU are the Department of Commerce (DOC), Department of State (DOS), Department of Defense (DOD), and Department of the Interior (DOI). The Office of the Director of National Intelligence (ODNI) and the Joint Chiefs of Staff (JCS) provide supporting advice pertaining to their areas of expertise. The Secretary of commerce is responsible for administering the licensing of private remote sensing satellite systems pursuant to the Act and applicable directives, and fulfills this responsibility through the National Oceanic and Atmospheric Administration (NOAA). For remote sensing issues, the Act also grants the

authority to the Secretary of State to determine conditions necessary to meet international obligations and foreign policies, and to the Secretary of Defense to determine conditions necessary to meet the national security concerns raised by any remote sensing license application submitted pursuant to the Act and applicable directives, or to any amendment, renewal, or successor thereto. In addition, pursuant to this MOU, NOAA shall also consult with the Director of National Intelligence (DNI) for the views of the Intelligence Community (IC) and with the Chairman of the Joint Chiefs of Staff for the views of the DOD joint operational community.

II. PURPOSE

The purpose of this MOU is to establish the interagency consultation process for adjudicating remote sensing licensing actions, and the consultation process for the interruption of normal commercial operations pursuant to the Act and applicable directives.

III. POLICY

In consultation with affected departments and agencies, including the DNI and JCS, the Secretary of Commerce will impose constraints on private remote sensing systems when necessary to meet the international obligations, foreign policy concerns, and/or national security concerns of the United States, and shall accord with the determinations of the Secretary of State and the Secretary of Defense, and with applicable laws and directives. Procedures for implementing this policy are established below, with each Party to this MOU separately establishing and documenting its internal timelines and decision authorities below the Cabinet level.

IV. PROCEDURES FOR DEPARTMENT/AGENCY REVIEW

A. Consultation During Review of Licensing Actions

Pursuant to the Act and applicable directives, or to any renewal thereof or successor thereto, the Secretary of Commerce shall review any application and make a determination within 120 days of receipt of such application. If final action has not occurred within such time, then the Secretary shall inform the applicant of any pending issues and of actions required to resolve them. The DOC will provide copies of requests for licensing actions to DOS, DOD, DOI, ODNl, and JCS within 3 working days. Each of these entities will inform DOC, through NOAA, of the office of primary responsibility, including primary and backup points of contact, for license action coordination.

(1) DOC will defer its decision on licensing requests until the other reviewing agencies have had a reasonable time to review them, as provided in this section. Within 10 working days of receipt, if DOS, DOD, DOI, ODNI, or JCS wants more information or time to review, then it shall notify, in writing, DOC/NOAA (a) of any additional information that it believes is necessary to properly evaluate the licensing action, or (b) of the additional time, not to exceed 10 working days, necessary to complete the review. This notification shall state the specific reasons why the additional information is sought, or why more time is needed.

(2) After receiving a complete license package, including any additional information that was requested as described above, DOS, DOD, DOI, ODNI and JCS will provide their final recommendations on the license package within 30 days, or otherwise may request from DOC/NOAA additional time necessary to provide a recommendation. If DOS determines that imposition of conditions on the actions being reviewed is necessary to meet the international obligations and foreign policies of the United States, or DOD determines that imposition of conditions are necessary to address the national security concerns of the United States, the MOU Party identifying the concern will promptly notify, in writing, DOC/NOAA and those departments and agencies responsible for the management of operational land imaging space capabilities of the United States. Such notification shall: (a) Describe the specific national security interests, or the specific international obligations or foreign policies at risk, if the applicant's system is approved as proposed; (b) set forth the specific basis for the conclusion that operation of the applicant's system as proposed will not preserve the identified national security interests or the identified international obligations or foreign policies; and (c) either specify the additional conditions that will be necessary to preserve the relevant U.S. interests, or set forth in detail why denial is required to preserve such interests. All notifications under this paragraph must be in writing.

B. Interagency Dispute Resolution for Licensing Actions

(1) Committees. The following committees are established, described here from the lowest level to the highest, to adjudicate disagreements concerning proposed commercial remote sensing system licenses.

(a) Operating Committee on Private Remote Sensing Space Systems. An Operating Committee on Private Remote Sensing Space Systems (RSOC) is established. The Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator shall appoint its Chair. Its other principal members shall be representatives of DOS, DOD, and DOI, or their subordinate agencies, who along with their subject matter experts, can

speak on behalf of their department or agency. Representatives of the ODNI and the JCS shall participate as supporting members to provide independent advice pertaining to their areas of expertise. The RSOC may invite representatives of United States Government departments or agencies that are not normally represented in the RSOC to participate in the activities of that Committee when matters of interest to such departments or agencies are under consideration.

(b) Advisory Committee on Private Remote Sensing Space Systems. An Advisory Committee on Private Remote Sensing Space Systems (ACPRS) is established and shall have as its principal members the Assistant Secretary of Commerce for Environmental Observation and Prediction, who shall be Chair of the Committee, and Assistant Secretary representatives of DOS, DOD, and DOI. Appointed representatives of ODNI and JCS shall participate as supporting members to provide independent advice pertaining to their areas of expertise. Regardless of the department or agency representative's rank and position, such representative shall speak at the ACPRS on behalf of his/her department or agency. The ACPRS may invite Assistant Secretary level representation of United States Government departments or agencies that are not represented in the ACPRS to participate in the activities of that Committee when matters of interest to such departments or agencies are under consideration.

(c) Review Board for Private Remote Sensing Space Systems. The Board shall have, as its principal members, the Under Secretary of commerce for Oceans and Atmosphere, who shall be Chair of the Board, and Under Secretary or equivalent representatives of DOS, DOD, and DOI. The Director of National Intelligence and Chairman of the Joint Chiefs of Staff shall be represented at an appropriate level as supporting members to provide independent advice pertaining to their areas of expertise. The Board may invite the representatives of United States Government departments or agencies that are not represented on the Board, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

(2) Resolution Procedures.

(a) If, following the various intra-departmental review processes, the principal members of the RSOC do not agree on approving a license or on necessary conditions that would allow for its approval, then the RSOC shall meet to review the license application. The RSOC shall work to resolve differences in the recommendations with the goal of approving licenses with the least restrictive conditions needed to meet the international obligations, foreign policies, or national security concerns of the United States. If the issues cannot be resolved, then the Chair of the RSOC shall prepare a proposed license that reflects the Committee's views as closely as possible, and provide it to the principal members of the RSOC for approval. The proposed license prepared by the RSOC chair shall contain the conditions determined necessary by DOS or DOD. Principal members have 5 working days to object to the proposed license and seek a decision at a higher level. In the absence of a timely escalation, the license proposed by the RSOC Chair will be issued.

(b) If any of the principal Parties disagrees with the proposed license provided by the RSOC Chair, they may escalate the matter to the ACPRS for resolution, Principal Parties must escalate the matter within 5 working days of such a decision. Escalations must be in writing from the principal ACPRS member, and must cite the specific national security, foreign policy, or international obligation concern. Upon receipt of a request to escalate, DOC will suspend any further action on the license action until ACPRS resolution. The ACPRS shall meet to review all departments' information and recommendations, and shall work to resolve interagency disagreements. Following this meeting, the Chair of the ACPRS shall, within 11 working days from the date of receiving notice of escalation, provide the reviewing departments a proposed license that contains the conditions determined by DOS or DOD. Within 5 working days of receipt of the proposed license, an ACPRS principal member may object to the prepared license and seek to escalate the matter to the Review Board. In the absence of an escalation within 5 working days, the license prepared by the ACPRS Chair will be issued.

(c) If any of the principal Parties disagrees with the license prepared by the ACPRS Chair, it may escalate the matter to the Review Board for resolution. Principal Parties must escalate the matter within 5 working days of such a decision. Escalations must be in writing from the principal Review Board member, and must cite the specific national security, foreign policy, or international obligation concern. Upon receipt of a request to escalate, DOC will suspend any further action on the license action until Review Board resolution. The Review Board shall meet to review information and recommendations that are provided by the ACPRS, and such other private remote sensing matters as appropriate. The Chair of the Board shall provide reviewing departments and agencies a proposed license within 11 working days from the date of receiving notice of escalation. The proposed license prepared by the Review Board chair shall contain the conditions determined necessary by DOS or DOD. If no principal Parties object to the proposed license within 5 working days, it will be issued.

(d) If, within 5 working days of receipt of the draft license, a principal Party disagrees with any conditions imposed on the license, that Party's Secretary will promptly notify the Secretary of Commerce and the other principal Parties in writing of such disagreement and the reasons therefor, and a copy will be provided to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(e) Upon notification of such a disagreement, DOC will suspend further action on the license that would be inconsistent with the Secretary of State or the Secretary of Defense determination. If the Secretary of Commerce believes the limits defined by another Secretary are inappropriate, then the Secretary of Commerce or Deputy Secretary shall consult with his or her counterpart in the relevant department within 10 working days regarding unresolved issues. If the relevant Secretaries are unable to resolve any issues, the Secretary of Commerce will notify the Assistant to the President for National Security Affairs, who, in coordination with the Assistant to the President for Science and Technology, will seek to achieve consensus among departments and agencies, or failing that, by referral to the President. All efforts will be taken to resolve the dispute within 3 weeks of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

C. Interagency Dispute Resolution Concerning Other Commercial Remote Sensing Matters

Nothing in this MOU precludes any Party to this MOU from addressing through other appropriate channels, consistent with the Act and applicable directives, any matter regarding commercial remote sensing unrelated to (1) adjudicating remote sensing licensing actions, or (2) the interruption of normal commercial operations. Such matters may be raised using standard coordination processes, including by referral to the Assistant to the President for National Security Affairs, who, in coordination with the Assistant to the President for Science and Technology, will seek to achieve consensus among the departments and agencies, or failing that, by referral to the President, when appropriate.

D. Consultation During Review of Interruption of Normal Commercial Operations

(1) This section establishes the process to limit the licensee's data collection and/or distribution where necessary to meet international obligations or foreign policy interests, as determined by the Secretary of State, or during periods of increased concern for national security, as determined by the Secretary of Defense in consultation with the Director of National Intelligence and the Chairman of the Joint Chiefs of Staff. DOC will provide DOS, DOD, ODNI, and JCS copies of licensee correspondence and documents that describe how the licensee will comply with such interruptions of its commercial operations.

(2) Conditions should be imposed for the smallest area and for the shortest period necessary to protect the international obligations and foreign policies or national security concerns at issue. Alternatives to prohibitions on collection and/or distribution shall be considered as ''modified operations,'' such as delaying or restricting the transmission or distribution of data, restricting disseminated data quality, restricting the field of view of the system, obfuscation, encryption of the data, or other means to control the use of the data, provided the licensee has provisions to implement such measures.

(3) Except where urgency precludes it, DOS, DOD, DOC, ODNI and JCS will consult to attempt to come to an agreement concerning appropriate conditions to be imposed on the licensee in accordance with determinations made by DOS or DOD. Consultations shall be managed so that, in the event an agreement cannot be reached at the staff level, sufficient time will remain to allow the Secretary of Commerce to consult personally with the Secretary of State, the Secretary of Defense, the Director of National Intelligence, or the Chairman of the Joint Chiefs of Staff as appropriate, prior to the issuance of a determination by the Secretary of State, or the Secretary of Defense, in accordance with (4) below. That function shall not be delegated below the Secretary or acting Secretary.

(4) After such consultations, or when the Secretary of State or the Secretary of Defense, specifically determines that urgency precludes consultation with the Secretary of Commerce, the Secretary of State shall determine the conditions necessary to meet international obligations and foreign policy concerns, and the Secretary of Defense shall determine the conditions necessary to meet national security concerns. This function shall not be delegated below the Secretary or acting Secretary.

(5) The Secretary of State or the Secretary of Defense will provide to the Secretary of Commerce a determination regarding the conditions required to be imposed on the licensees. The determination will describe the international obligations, specific foreign policy, or national security interest at risk. Upon receipt of the determination, DOC shall immediately notify the licensees of the imposition of limiting conditions on commercial operations. Copies of the determination and any implementing DOC action will be provided promptly to the Assistant to the President for National Security Affairs and

the Assistant to the President for Science and Technology.

(6) If the Secretary of Commerce believes the conditions determined by another Secretary are inappropriate, he or she will, simultaneous with notification to, and imposition of such conditions on, the licensee, so notify the Secretary of State or the Secretary of Defense, the Assistant to the President for National Security Affairs, and the Assistant to the President for Science and Technology. The Assistant to the President for National Security Affairs, in coordination with the Assistant to the President for Science and Technology, may initiate as soon as possible a Principals-level consultative process to achieve a consensus or, failing that, refer the matter the President for decision. All efforts will be taken to resolve the disagreement within 7 working days of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

E. Coordination Before Release of Information Provided or Generated by Other United States Government Departments or Agencies

Before releasing any information provided or generated by another department or agency to a licensee or potential licensee, to the public, or to an administrative law judge, the agency proposing the release must consult with the agency that provided or generated the information. The purpose of such consultations will be to review the propriety of any proposed release of information that may be privileged or restricted because it is classified, pre-decisional, deliberative, proprietary, or protected for other reasons. No information shall be released without the approval of the department or agency that provided or generated it unless required by law.

F. No Legal Rights

No legal rights or remedies, or legally enforceable causes of action, are created or intended to be created by this MOU.

PART 970—DEEP SEABED MINING REGULATIONS FOR EXPLORATION LICENSES

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AUTHORITY: 30 U.S.C. 1401 *et seq.*

Subpart A—General

SOURCE: 46 FR 45896, Sept. 15, 1981, unless otherwise noted.

§ 970.100 Purpose.

(a) *General.* The purpose of this part is to implement those responsibilities and authorities of the National Oceanic and Atmospheric Administration (NOAA), pursuant to Public Law 96–283, the Deep Seabed Hard Mineral Resources Act (the Act), to issue to eligible United States citizens licenses for the exploration for deep seabed hard minerals.

(b) *Purposes of the Act.* In preparing these regulations NOAA has been mindful of the purposes of the Act, as set forth in section 2(b) thereof. These include:

(1) Encouraging the successful conclusion of a comprehensive Law of the Sea Treaty, which will give legal definition to the principle that the hard mineral resources of the deep seabed are the common heritage of mankind and which will assure, among other things, nondiscriminatory access to such resources for all nations;

(2) Establishing, pending the ratification by, and entering into force with respect to, the United States of such a treaty, an interim program to regulate the exploration for and commercial recovery of hard mineral resources of the deep seabed by United States citizens;

(3) Accelerating the program of environmental assessment of exploration for and commercial recovery of hard mineral resources of the deep seabed and assuring that such exploration and recovery activities are conducted in a manner which will encourage the conservation of such resources, protect the quality of the environment, and promote the safety of life and property at sea;

(4) Encouraging the continued development of technology necessary to recover the hard mineral resources of the deep seabed; and

(5) Pending the ratification by, and entry into force with respect to, the United States of a Law of the Sea Treaty, providing for the establishment of an international revenue-sharing fund the proceeds of which will be used for sharing with the international community pursuant to such treaty.

(c) *Regulatory approach.* (1) These regulations incorporate NOAA's recognition that the deep seabed mining industry is still evolving and that more information must be developed to form the basis for future decisions by industry and by NOAA in its implementation of the Act. They also recognize the need for flexibility in order to promote the development of deep seabed mining technology, and the usefulness of allowing initiative by miners to develop mining techniques and systems in a manner compatible with the requirements of the Act and regulations. In this regard, the regulations reflect an approach, pursuant to the Act, whereby their provisions ultimately will be addressed and evaluated on the basis of exploration plans submitted by applicants.

(2) In addition, these regulations reflect NOAA's recognition that the difference in scale and effects between exploration for and commercial recovery of hard mineral resources normally requires that they be distinguished and addressed separately. This distinction is also based upon the evolutionary stage of the seabed mining industry referenced above. Thus, NOAA will issue separate regulations pertaining to commercial recovery, in part 971 of this chapter.

[46 FR 45896, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

§ 970.101 Definitions.

For purposes of this part, the term:

(a) *Act* means the Deep Seabed Hard Mineral Resources Act (Pub. L. 96–283; 94 Stat. 553; 30 U.S.C. 1401 *et seq.*);

(b) *Administrator* means the Administrator of the National Oceanic and Atmospheric Administration, or a designee;

(c) *Applicant* means an applicant for an exploration license pursuant to the Act and this part;

(d) *Affiliate* means any person:

(1) In which the applicant or licensee owns or controls more than 5% interest;

(2) Which owns or controls more than 5% interest in the applicant or licensee; or

(3) Which is under common ownership or control with the applicant or licensee.

(e) *Commercial recovery* means:

(1) Any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of marketing or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(2) If such recovered hard mineral resource will be processed at sea, such processing; and

(3) If the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(f) *Continental Shelf* means:

(1) The seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(2) The seabed and subsoil of similar submarine areas adjacent to the coast of islands;

(g) *Controlling interest*, for purposes of paragraph (t)(3) of this section, means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(h) *Deep seabed* means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside:

(1) The Continental Shelf of any nation; and

(2) Any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental

Shelf of such nation and such jurisdiction is recognized by the United States;

(i) *Exploration* means:

(1) Any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of:

(i) The nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) The environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(2) The taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(j) *Hard mineral resource* means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals, at least one of which contains manganese, nickel, cobalt, or copper;

(k) *International agreement* means a comprehensive agreement concluded through negotiations at the Third United Nations Conference on the Law of the Sea, relating to (among other matters) the exploration for and commercial recovery of hard mineral resources and the establishment of an international regime for the regulation thereof;

(l) *Licensee* means the holder of a license issued under this part to engage in exploration;

(m) *New entrant* means any applicant, with respect to:

(1) Any application which has not been accorded a pre-enactment explorer priority of right under § 970.301; or

(2) Any amendment which has not been accorded a pre-enactment explorer priority of right under § 970.302.

(n) *NOAA* means the National Oceanic and Atmospheric Administration;

(o) *Permittee* means the holder of permit issued under NOAA regulations to engage in commercial recovery;

(p) *Person* means any United States citizen, any individual, and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(q) *Pre-enactment explorer* means a person who was engaged in exploration prior to the date of enactment of the Act (June 28, 1980);

(r) *Reciprocating state* means any foreign nation designated as such by the Administrator under section 118 of the Act;

(s) *United States* means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(t) *United States citizen* means

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(3) Any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in paragraph (t)(1) or (t)(2) of this section.

[46 FR 45896, Sept. 15, 1981, as amended at 47 FR 5967, Feb. 9, 1982]

§ 970.102 Nature of licenses.

(a) A license issued under this part will authorize the holder thereof to engage in exploration within a specific portion of the sea floor consistent with the provisions of the Act, this part, and the specific terms, conditions and restrictions applied to the license by the Administrator.

(b) Any license issued under this part will be exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(c) A valid existing license will entitle the holder, if otherwise eligible under the provisions of the Act and implementing regulations, to a permit for commercial recovery from an area selected within the same area of the sea floor. Such a permit will recognize the

right of the holder to recover hard mineral resources, and to own, transport, use, and sell hard mineral resources recovered, under the permit and in accordance with the requirements of the Act.

§ 970.103 Prohibited activities and restrictions.

(a) *Prohibited activities and exceptions.* (1) Except as authorized under subpart C of this part, no United States citizen may engage in any exploration or commercial recovery unless authorized to do so under:

(i) A license or a permit issued pursuant to the Act and implementing regulations;

(ii) A license, permit, or equivalent authorization issued by a reciprocating state; or

(iii) An international agreement which is in force with respect to the United States.

(2) The prohibitions of paragraph (a)(1) of this section will not apply to any of the following activities:

(i) Scientific research, including that concerning hard mineral resources;

(ii) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the deep seabed or significantly affect the environment;

(iii) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design, construction or testing is conducted on shore, or does not involve the recovery of any but incidental hard mineral resources;

(iv) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under the Act and implementing regulations, a license or permit or equivalent authorization issued by a reciprocating state, or under an international agreement; and

(v) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(3) No United States citizen may interfere or participate in interference with any activity conducted by any licensee or permittee which is authorized to be undertaken under a license or permit issued by the Administrator to a licensee or permittee under the Act or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the exploration or commercial recovery of hard mineral resources. For purposes of this section, interference includes physical interference with activities authorized by the Act, this part, and a license issued pursuant thereto; the filing of specious claims in the United States or any other nation; and any other activity designed to harass deep seabed mining activities authorized by law. Interference does not include the exercise of any rights granted to United States citizens by the Constitution of the United States, any Federal or State law, treaty, or agreement or regulation promulgated pursuant thereto.

(4) United States citizens must exercise their rights on the high seas with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

(b) *Restrictions on issuance of licenses or permits.* The Administrator will not issue:

(1) Any license or permit after the date on which an international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of such license or permit is not inconsistent with such agreement;

(2) Any license or permit the exploration plan or recovery plan of which, submitted pursuant to the Act and implementing regulations, would apply to an area to which applies, or would conflict with:

(i) Any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under this part;

(ii) Any exploration plan or recovery plan associated with any existing license or permit; or

(iii) Any equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior

to the filing date of any relevant application for licenses or permits pursuant to the Act and implementing regulations;

(3) A permit authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to a person other than the licensee for such area;

(4) Any exploration license before July 1, 1981, or any permit which authorizes commercial recovery to commence before January 1, 1988;

(5) Any license or permit the exploration plan or recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for such license or permit:

(i) The applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant; or

(ii) A license or permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106 of the Act; or

(6) A license or permit, or approve the transfer of a license or permit, except to a United States citizen.

Subpart B—Applications

SOURCE: 46 FR 45898, Sept. 15, 1981, unless otherwise noted.

§ 970.200 General.

(a) *Who may apply; how.* Any United States citizen may apply to the Administrator for issuance or transfer of an exploration license. Applications must be submitted in the form and manner prescribed in this subpart.

(b) *Place, form and copies.* Applications for the issuance or transfer of exploration licenses must be submitted in writing, verified and signed by an authorized officer or other authorized representative of the applicant, in 30 copies, to the following address: Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, suite 410, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, DC 20235. The Administrator may waive, in whole or in part, at his discretion, the requirement that 30 copies of an application be filed with NOAA.

(c) *Use of application information.* The contents of an application, as set forth below, must provide NOAA with the information necessary to make determinations required by the Act and this part pertaining to the issuance or transfer of an exploration license. Thus, each portion of the application should identify the requirement in this part to which it responds. In addition, the information will be used by NOAA in its function under the Act of consultation and cooperation with other Federal agencies or departments in relation to their programs and authorities, in order to reduce the number of separate actions required to satisfy Federal agencies' responsibilities.

(d) *Pre-application consultation.* To assist in the development of adequate applications and assure that applicants understand how to respond to the provisions of this subpart, NOAA will be available for pre-application consultations with potential applicants. This includes consultation on the procedures in subpart C. In appropriate circumstances, NOAA will provide written confirmation to the applicant of any oral guidance resulting from such consultations.

(e) *Priority of right.* (1) Priority of right for issuance of licenses to pre-enactment explorers will be established pursuant to subpart C of this part.

(2) Priority of right for issuance of licenses to new entrants will be established on the basis of the chronological order in which license applications, which are in substantial compliance with the requirements established under this subpart, pursuant to § 970.209, are filed with the Administrator.

(3) Applications must be received by the Office of Ocean Minerals and Energy on behalf of the Administrator before a priority can be established.

(4) Upon (i) a determination that:

(A) An application is not in substantial compliance in accordance with § 970.209 or subpart C, as applicable;

(B) An application has not been brought into substantial compliance in

accordance with § 970.210 or subpart C, as applicable;

(C) A license has been relinquished or surrendered in accordance with § 970.903; or

(ii) A decision to:

(A) Deny certification of a license pursuant to § 970.407; or

(B) Deny issuance of a license pursuant to § 970.508,

and after the exhaustion of any administrative or judicial review of such determination or decision, the priority of right for issuance of a license will lapse.

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in his application treated as confidential, he must so indicate pursuant to 15 CFR 971.802.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 5968, Feb. 9, 1982; 54 FR 547, Jan. 6, 1989]

CONTENTS

§ 970.201 Statement of financial resources.

§ 970.202 Statement of technological experience and capabilities.

§ 970.203 Exploration plan.

§ 970.201 Statement of financial resources.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator the financial resources of the applicant to carry out, in accordance with this part, the exploration program set forth in the applicant's exploration plan. The information must show that the applicant is reasonably capable of committing or raising sufficient resources to cover the estimated costs of the exploration program. The information must be sufficient for the Administrator to make a determination on the applicant's financial responsibility pursuant to § 970.401.

(b) *Contents.* In particular, the information on financial resources must include:

(1) A description of how the applicant intends to finance the exploration program;

(2) The estimated cost of the exploration program;

(3) With respect to the applicant and those entities upon which the applicant will rely to finance his exploration activities, the most recent audited financial statement (for publicly-held companies, the most recent annual report and Form 10–K filed with the Securities and Exchange Commission will suffice in this regard); and

(4) The credit rating and bond rating of the applicant, and such financing entities, to the extent they are relevant.

§ 970.202 Statement of technological experience and capabilities.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator the technological capability of the applicant to carry out, in accordance with the regulations contained in this part, the exploration program set out in the applicant's exploration plan. It must contain sufficient information for the Administrator to make a determination on the applicant's technological capability pursuant to § 970.402.

(b) *Contents.* In particular, the information submitted pursuant to this section must demonstrate knowledge and skills which the applicant either possesses or to which he can demonstrate access. The information must include:

(1) A description of the exploration equipment to be used by the applicant in carrying out the exploration program;

(2) A description of the environmental monitoring equipment to be used by the applicant in monitoring the environmental effects of the exploration program; and

(3) The experience on which the applicant will rely in using this or similar equipment.

§ 970.203 Exploration plan.

(a) *General.* Each application must include an exploration plan which describes the applicant's projected exploration activities during the period to be covered by the proposed license. Generally, the exploration plan must demonstrate to a reasonable extent that the applicant's efforts, by the end of the 10-year license period, will likely lead to the ability to apply for and obtain a permit for commercial recovery. In particular, the plan must include sufficient information for the Administrator, pursuant to this part, to make the necessary determinations pertaining to the certification and issuance or transfer of a license and to the development and enforcement of

the terms, conditions and restrictions for a license.

(b) *Contents.* The exploration plan must contain the following information. In presenting this information, the plan should incorporate the applicant's proposed individual approach, including a general description of how projected participation by other entities will relate to the following elements, if appropriate. The plan must present:

(1) The activities proposed to be carried out during the period of the license;

(2) A description of the area to be explored, including its delineation according to § 970.601;

(3) The intended exploration schedule which must be responsive to the diligence requirements in § 970.602. Taking into account that different applicants may have different concepts and chronologies with respect to the types of activities described, the schedule should include an approximate projection for the exploration activities planned. Although the details in each schedule may vary to reflect the applicant's particular approach, it should address in some respect approximately when each of the following types of activities is projected to occur.

(i) Conducting survey cruises to determine the location and abundance of nodules as well as the sea floor configuration, ocean currents and other physical characteristics of potential commercial recovery sites;

(ii) Assaying nodules to determine their metal contents;

(iii) Designing and testing system components onshore and at sea;

(iv) Designing and testing mining systems which simulate commercial recovery;

(v) Designing and testing processing systems to prove concepts and designing and testing systems which simulate commercial processing;

(vi) Evaluating the continued feasibility of commercial scale operations based on technical, economic, legal, political and environmental considerations; and

(vii) Applying for a commercial recovery permit and, to the extent known, other permits needed to construct and operate commercial scale facilities (if application for such permits is planned prior to obtaining a commercial recovery permit);

(4) A description of the methods to be used to determine the location, abundance, and quality (*i.e.*, assay) of nodules, and to measure physical conditions in the area which will affect nodule recovery system design and operations (e.g., seafloor topography, seafloor geotechnic properties, and currents);

(5) A general description of the developing recovery and processing technology related to the proposed license, and of any planned or ongoing testing and evaluation of such technology. To the extent possible at the time of application, this description should address such factors as nodule collection technique, seafloor sediment rejection subsystem, mineship nodule separation scheme, pumping method, anticipated equipment test areas, and details on the testing plan;

(6) An estimated schedule of expenditures, which must be responsive to the diligence requirements as discussed in § 970.602;

(7) Measures to protect the environment and to monitor the effectiveness of environmental safeguards and monitoring systems for commercial recovery. These measures must take into account the provisions in §§ 970.506, 970.518, 970.522 and subpart G of this part; and

(8) A description of any relevant activity that the applicant has completed prior to the submission of the application.

§ 970.204 Environmental and use conflict analysis.

(a) *Environmental information.* To enable NOAA to implement better its responsibility under section 109(d) of the Act to develop an environmental impact statement (EIS) on the issuance of an exploration license, the application must include information for use in preparing NOAA's EIS on the environmental impacts of the activities proposed by the applicant. The applicant must present physical, chemical and biological information for the exploration area. This information should include relevant environmental information, if any, obtained during past

exploration activities, but need not duplicate information obtained during NOAA's DOMES Project. Planned activities in the area, including the testing of integrated mining systems which simulate commercial recovery, also must be described. NOAA will need information with the application on location and boundaries of the proposed exploration area, and plans for delineation of features of the exploration area including baseline data or plans for acquiring them. The applicant may at his option delay submission of baseline and equipment data and system test plans. However, applicants so electing should plan to submit this latter information at least one year prior to the initial test, to allow time for the supplement to the site-specific EIS, if one is required, to be prepared by NOAA, circulated, reviewed and filed with EPA. The submission of this information with the application is strongly encouraged, however, to minimize the possibility that a supplement will be required. If such latter information is submitted subsequent to the original application such tests may not be undertaken in the absence of concurrence by NOAA (which, if applicable, will be required in a term, condition, or restriction in the license). NOAA has developed a technical guidance document which will provide assistance for the agency and the applicant, in consultation, to identify the details on information needed in each case. NOAA may refer to such information for purposes of other determinations under the Act as well. NOAA also will seek to facilitate other Federal and, as necessary, state decisions on exploration activities by functioning as lead agency for the EIS on the application and related actions by other agencies, including those pertaining to any onshore impacts which may result from the proposed exploration activities.

(b) *Use conflict information.* To assist the Administrator in making determinations relating to potential use conflicts between the proposed exploration and other activities in the exploration area, pursuant to §§ 970.503, 970.505, and 970.520, the application must include information known to the applicant with respect to such other activities.

§ 970.205 Vessel safety.

In order to provide a basis for the necessary determinations with respect to the safety of life and property at sea, pursuant to §§ 970.507, 970.521 and subpart H of this part, the application must contain the following information, except for those vessels under 300 gross tons which are engaged in oceanographic research if they are used in exploration.

(a) *U.S. flag vessel.* The application must contain a demonstration or affirmation that any United States flag vessel utilized in exploration activities will possess a current valid Coast Guard Certificate of Inspection (COI). To the extent that the applicant knows which United States flag vessel he will be using, the application must include a copy of the COI.

(b) *Foreign flag vessel.* The application must also contain information on any foreign flag vessels to be used in exploration activities, which responds to the following requirements. To the extent that the applicant knows which foreign flag vessel he will be using, the application must include evidence of the following:

(1) That any foreign flag vessel whose flag state is party to the International Convention for Safety of Life at Sea, 1974 (SOLAS 74) possesses current valid SOLAS 74 certificates;

(2) That any foreign flag vessel whose flag state is not party to SOLAS 74 but is party to the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) possesses current valid SOLAS 60 certificates; and

(3) That any foreign flag vessel whose flag state is not a party to either SOLAS 74 or SOLAS 60 meets all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies (IACS).

(c) *Supplemental certificates.* If the applicant does not know at the time of submitting an application which vessels he will be using, he must submit the applicable certification for each vessel before the cruise on which it will be used.

§ 970.206 Statement of ownership.

The application must include sufficient information to demonstrate that the applicant is a United States citizen, as required by § 970.103(b)(6), and as defined in § 970.101(t). In particular, the application must include:

(a) Name, address, and telephone number of the United States citizen responsible for exploration operations to whom notices and orders are to be delivered; and

(b) A description of the citizen or citizens engaging in such exploration, including:

(1) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(2) The state of incorporation or state in which the partnership or other business entity is registered;

(3) The name of registered agent or equivalent representative and places of business;

(4) Certification of essential and nonproprietary provisions in articles of incorporation, charter or articles of association; and

(5) The name of each member of the association, partnership, or joint venture, including information about the participation of each partner and joint venturer and/or ownership of stock.

§ 970.207 Antitrust information.

(a) *General.* Section 103(d) of the Act specifically provides for antitrust review of applications by the Attorney General of the United States and the Federal Trade Commission.

(b) *Contents.* In order to provide information for this antitrust review, the application must contain the following:

(1) A copy of each agreement between any parties to any joint venture which is applying for a license, provided that said agreement relates to deep seabed hard mineral resource exploration or mining;

(2) The identity of any affiliate of any person applying for a license; and

(3) For each applicant, its affiliate, or parent or subsidiary of an affiliate which is engaged in production in, or the purchase or sale in or to, the United States of copper, nickel, cobalt or manganese minerals or any metals refined from these minerals:

(i) The annual tons and dollar value of any of these minerals and metals so purchased, sold or produced for the two preceding years;

(ii) Copies of the annual report, balance sheet and income statement for the two preceding years; and

(iii) Copies of each document submitted to the Securities and Exchange Commission.

§ 970.208 Fee.

(a) *General.* Section 104 of the Act provides that no application for the issuance or transfer of an exploration license will be certified unless the applicant pays to NOAA a reasonable administrative fee, which must reflect the reasonable administrative costs incurred in reviewing and processing the application.

(b) *Amount.* In order to meet this requirement, the application must include a fee payment of $100,000, payable to the National Oceanic and Atmospheric Administration, Department of Commerce. If costs incurred by NOAA in reviewing and processing an application are significantly less than or in excess of the original fee, the agency subsequently will determine those differences in costs and adjust the fee accordingly. If the costs are significantly less, NOAA will refund the difference. If they are significantly greater, the applicant will be required to submit the additional payment prior to issue or transfer of the license. In the case of an application for transfer of a license to an entity which has previously been found qualified for a license, the Administrator may, on the basis of preapplication consultations pursuant to § 970.200(d), reduce the fee in advance by an appropriate amount which reflects costs avoided by reliance on previous findings made in relation to the proposed transferee. If an applicant elects to pursue the 'banking' option under § 970.601(d), and exercises that option by submitting two applications, only one application fee needs to be submitted with respect to each use of the 'banking' option.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 5966, 5968, Feb. 9, 1982]

PROCEDURES

§ 970.209 Substantial compliance with application requirements.

(a) Priority of right for the issuance of licenses to new entrants will be established on the basis of the chronological order in which license applications which are in substantial compliance with the requirements established under this subpart are filed with the Administrator pursuant to § 970.200.

(b) In order for an application to be in substantial compliance with the requirements of this subpart, it must include information specifically identifiable with and materially responsive to each requirement contained in §§ 970.201 through 970.208. A determination on substantial compliance relates only to whether the application contains the required information, and does not constitute a determination on certification of the application, or on issuance or transfer of a license.

(c) The Administrator will make a determination as to whether the application is in substantial compliance. Within 30 days after receipt of an application and the opening of coordinates describing the application area, he will issue written notice to the applicant regarding such determination. The notice will identify, if applicable, in what respects the application is not in either full or substantial compliance. If the application is in substantial but not full compliance, the notice will specify the information which the applicant must submit in order to bring it into full compliance, and why the additional information is necessary.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 11513, Mar. 17, 1982]

§ 970.210 Reasonable time for full compliance.

Priority of right will not be lost in case of any application filed which is in substantial but not full compliance, as specified in § 970.209, if the Administrator determines that the applicant, within 60 days after issuance to the applicant by the Administrator of written notice that the application is in substantial but not full compliance, has brought the application into full compliance with the requirements of §§ 970.201 through 970.208.

[46 FR 45898, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

§ 970.211 Consultation and cooperation with Federal agencies.

(a) Promptly after his receipt of an application and the opening of coordinates describing the application area, the Administrator will distribute a copy of the application to each other Federal agency or department which, pursuant to section 103(e) of the Act, has identified programs or activities within its statutory responsibilities which would be affected by the activities proposed in the application (*i.e.*, the Departments of State, Transportation, Justice, Interior, Defense, Treasury and Labor, as well as the Environmental Protection Agency, Federal Trade Commission, Small Business Administration and National Science Foundation). Based on its legal responsibilities and authorities, each such agency or department may, not later than 60 days after it receives a copy of the application which is in full compliance with this subpart, recommend certification of the application, issuance or transfer of the license, or denial of such certification, issuance or transfer. The advice or recommendation by the Attorney General or Federal Trade Commission on antitrust review, pursuant to § 970.207, must be submitted within 90 days after their receipt of a copy of the application which is in full compliance with this subpart. NOAA will use the benefits of this process of consultation and cooperation to facilitate necessary Federal decisions on the proposed exploration activities, pursuant to the mandate of section 103(e) of the Act to reduce the number of separate actions required to satisfy Federal agencies' statutory responsibilities.

(b) In any case in which a Federal agency or department recommends a denial, it will set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and will indicate how the application may be amended, or how terms, conditions or restrictions might be added to the license to assure compliance with such law or regulation.

(c) A recommendation from another Federal agency or department for denying or amending an application will not affect its having been in substantial compliance with the requirements of this subpart, pursuant to § 970.209, for purposes of establishing priority of right. However, pursuant to section 103(e) of the Act, NOAA will cooperate with such agencies and with the applicant with the goal of resolving the concerns raised and satisfying the statutory responsibilities of these agencies.

[46 FR 45898, Sept. 15, 1981, as amended at 47 FR 11513, Mar. 17, 1982]

§ 970.212 Public notice, hearing and comment.

(a) *Notice and comments.* The Administrator will publish in the FEDERAL REGISTER, for each application for an exploration license, notice that such application has been received. Subject to 15 CFR 971.802, interested persons will be permitted to examine the materials relevant to such application. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) After preparation of the draft EIS on an application pursuant to section 109(d) of the Act, the Administrator shall hold a public hearing on the application and the draft EIS in an appropriate location, and may employ such additional methods as he deems appropriate to inform interested persons about each application and to invite their comments thereon.

(2) If the Administrator determines there exists one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of subpart I of 15 CFR part 971. The record developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

(c) Hearings held pursuant to this section and other procedures will be consolidated insofar as practicable with hearings held and procedures employed by other agencies.

[46 FR 45898, Sept. 15, 1981, as amended at 54 FR 547, Jan. 6, 1989]

§ 970.213 Amendment to an application.

After an application has been submitted to the Administrator, but before a determination is made on the issuance or transfer of a license, the applicant must submit an amendment to the application if required by a significant change in the circumstances represented in the original application and affecting the requirements of this subpart. Applicants should consult with NOAA to determine if changes in circumstances are sufficiently significant to require submission of an amendment. The application, as amended, would then serve as the basis for determinations by the Administrator under this part. For each amendment judged by the Administrator to be significant, he will provide a copy of such amendment to each other Federal agency and department which received a copy of the original application, and also will provide for public notice, hearing and comment on the amendment pursuant to § 970.212. Such amendment, however, will not affect the priority of right established by the filing of the original application. After the issuance of or transfer of a license, any revision by the licensee will be made pursuant to § 970.513.

Subpart C—Procedures for Applications Based on Exploration Commenced Before June 28, 1980; Resolution of Conflicts Among Overlapping Applications; Applications by New Entrants

SOURCE: 47 FR 24948, July 8, 1982, unless otherwise noted.

§ 970.300 Purposes and definitions.

(a) This subpart sets forth the procedures which the Administrator will apply to applications filed with NOAA covering areas of the deep seabed where the applicants have engaged in exploration prior to June 28, 1980, and to the resolution of conflicts arising out of such applications. This subpart also establishes the date on which NOAA will begin to accept applications or amendments filed by new entrants, and certain other procedures for new entrants.

(b) For the purposes of this subpart the term:

(1) *Amendment* means an amendment to an application which changes the area applied for;

(2) *Application* means an application for an exploration license which is filed pursuant to the Act and this subpart;

(3) *Conflict* means the existence of more than one application or amendment with the same priority of right:

(i) Which are filed with the Administrator or with the Administrator and a reciprocating state; and

(ii) In which the deep seabed areas applied for overlap in whole or part, to the extent of the overlap;

(4) *Original conflict* means a conflict solely between or among applications;

(5) *New conflict* means a conflict between or among amendments filed after July 22, 1982, and on or before October 15, 1982;

(6) *Domestic conflict* means a conflict solely between or among applications or amendments which have been filed with the Administrator.

(7) *International conflict* means a conflict arising between or among applications or amendments filed with the Administrator and a reciprocating state.

§ 970.301 Requirements for applications based on pre-enactment exploration.

(a) Pursuant to section 101(b) of the Act, any United States citizen who was engaged in exploration before the effective date of the Act (June 28, 1980) qualifies as a pre-enactment explorer and may continue to engage in such exploration without a license:

(1) If such citizen applies under this part for a license with respect to such exploration within the time period specified in paragraph (b) of this section; and

(2) Until such license is issued to such citizen or a final administrative or judicial determination is made affirming the denial of certification of the application for, or issuance of, such license.

(b) Any application for a license based upon pre-enactment exploration must be filed, at the address specified in § 970.200(b), no later than 5:00 p.m. EST on March 12, 1982 (or such later date and time as the Administrator may announce by regulation). All such applications filed at or before that time will be deemed to be filed on such closing date.

(c) Applications not filed in accordance with this section will not be considered to be based on pre-enactment exploration, and may be filed only as new entrant applications under § 970.303.

(d) To receive a pre-enactment explore priority of right for issuance of a license, and application must be, when filed, in substantial compliance with requirements described in § 970.209(b). An application which is in substantial but not full compliance will not lose its priority of right if it is brought into full compliance according to § 970.210.

(e) Any application based on pre-enactment exploration must be for a reasonably compact area with respect to which the applicant is a pre-enactment explorer, and, notwithstanding any part of § 970.601 which indicates otherwise, such area must be bounded by a single continuous boundary.

(f) The coordinates and any chart of the logical mining unit applied for in an application based on a pre-enactment exploration must be submitted in a separate, sealed envelope.

(g) On or before March 12, 1982, the applicants must indicate to the Administrator, other than in the sealed portion of the application:

(1) The size of the area applied for;

(2) Whether the applicant or any person on the applicant's behalf has applied, or intends to apply, for the same area or substantially the same area to one or more nations, and the number of such other applications; and

(3) Whether the other applicant is pursuing the ''banking'' option under § 970.601(d), and the number of applications filed, or to be filed, in pursuit of the ''banking'' option.

§ 970.302 Procedures and criteria for resolving conflicts.

(a) *General.* This section governs the resolution of all conflicts between or among applications or amendments having pre-enactment explorer priority of right.

(b) *Identification of applicants.* On June 21, 1982, the Administrator will

meet with representatives of reciprocating states to identify their respective pre-enactment explorer applicants, and will identify the coordinates of the application areas applied for by such applicants.

(c) *Initial processing.* On or before July 13, 1982, the Administrator will determine whether each domestic application is entitled to a priority of right based on pre-enactment exploration in accordance with § 970.301.

(d) *Identification of conflicts.* On July 14, 1982, the Administrator will meet with representatives of reciprocating states to exchange lists of applications accorded pre-enactment explorer priorities of right, and will identify any conflicts existing among such applications.

(e) *Notification to applicants of conflicts.* If the Administrator identifies a conflict, he will send, no later than July 22, 1982, written notice of the conflict to each domestic applicant involved in the conflict. The notice will:

(1) Identify each applicant involved in the conflict in question:

(2) Identify the coordinates of the portions of the application areas which are in conflict;

(3) Indicate that the applicant may request from the Administrator the coordinates of the application areas from any other applications filed with the Administrator or with a reciprocating state (such coordinates will be provided subject to appropriate confidentiality arrangements);

(4) State whether;

(i) Each domestic application involved in the conflict is in substantial or, if known, full compliance with the requirements described in § 970.209(b); and

(ii) Each foreign application involved in the conflict meets, if known, the legal requirements of the reciprocating state in which it is filed;

(5) Notify each domestic applicant involved in a conflict that he may, after July 22, 1982, and on or before November 16, 1982, resolve the conflict voluntarily according to paragraph (f) of this section, and that on or after November 17, 1982, any unresolved conflict shall be resolved in accordance with paragraph (j) or (k) of this section, as applicable; and

(6) In the case of an international conflict, include a copy of any applicable conflict resolution procedures in force between the United States and its reciprocating states pursuant to section 118 of the Act.

(f) *Voluntary resolution of conflicts.* Each U.S. applicant involved in a conflict may resolve the conflict after July 22, 1982, and on or before November 16, 1982, by:

(1) Unilaterally, or by agreement with each other applicant involved in the conflict, filing an amendment to the application eliminating the conflict; or

(2) Agreeing in writing with the other applicant(s) involved in the conflict to submit it to an agreed binding conflict resolution procedure.

(g) *Amendments.* (1) Amendments must be filed in accordance with the requirements for applications described in § 970.200.

(2) The Administrator will:

(i) Accept no amendment prior to July 23, 1982;

(ii) Accord pre-enactment explorer priority of right only to amendments which:

(A) Pertain to areas with respect to which the applicant has engaged in pre-enactment exploration;

(B) Resolve an existing conflict with respect to that application;

(C) Do not apply for an area included in an application filed pursuant to § 970.301 which is accorded pre-enactment explorer priority of right or an application identified pursuant to § 970.302(b) which has been filed with a reciprocating state; and

(D) Are filed on or before October 15, 1982; and

(iii) Accord amendments which meet the requirements of this paragraph (g) the same priority of right as the applications to which they pertain.

(3) The area applied for in an amendment need not be adjacent to the area applied for in the original application.

(4) Amendments not accorded pre-enactment explorer priority of right may be filed as new entrant amendments under § 970.303.

(h) *Notification of amendments and new conflicts.* The Administrator will:

(1) No later than October 25, 1982, notify each reciprocating state of any

amendment accorded pre-enactment explorer priority of right pursuant to paragraph (g) of this section and, in cooperation with such states, identify any new conflicts;

(2) No later than October 27, 1982, notify each domestic applicant who is involved in a new conflict. The notice will:

(i) Identify each applicant with whom each new conflict has arisen;

(ii) Identify the coordinates of each area in which the applicant is involved in a new conflict;

(iii) Indicate that the applicant may request from the Administrator the coordinates of each area included in an amendment accorded pre-enactment explorer priority of right pursuant to paragraph (g) of this section, or for which notice has been received from a reciprocating state (such coordinates will be provided subject to appropriate confidentiality arrangements);

(iv) Notify the applicant that he may, on or before November 16, 1982, resolve the conflict voluntarily according to paragraph (f) of this section, and that on or after November 17, 1982, any unresolved conflict shall be resolved in accordance with paragraph (j) or (k) of this section, as applicable; and

(v) In the case of an international conflict, include a copy of any applicable conflict resolution procedures in force between the United States and its reciprocating states pursuant to section 118 of the Act.

(i) *Government assistance in resolving international conflicts.* If, by October 26 1982, the applicants have not resolved, or agreed in writing to a specified binding procedure to resolve, an original international conflict, or new international conflict, the Administrator, the Secretary of State of the United States, and appropriate officials of the government of the reciprocating state to which the other applicant involved in the conflict applied will use their good offices to assist the applicants to resolve the conflict. After November 16, 1982, any unresolved international conflicts will be resolved in accordance with paragraph (k) of this section.

(j) *Unresolved domestic conflict*—(1) *Procedure.* (i) In the case of an original domestic conflict or a new domestic conflict, the applicants will be allowed until April 15, 1983, to resolve the conflict or agree in writing to submit the conflict to a specified binding conflict resolution procedure. If, by April 15, 1983, all applicants involved in an original or new domestic conflict have not resolved that conflict, or agreed in writing to submit the conflict to a specified binding conflict resolution procedure, the conflict will be resolved in a formal hearing held in accordance with subpart I of 15 CFR part 971, except that:

(A) The General Counsel of NOAA will not, as a matter of right, be a party to the hearing; however, the General Counsel may be admitted to the hearing by the administrative law judge as a party or as an interested person pursuant to 15 CFR 971.901 (f)(2) or (f)(3); and

(B) The administrative law judge will take such actions as he deems necessary and appropriate to conclude the hearing and transmit a recommended decision to the Administrator in an expeditious manner.

(ii) Notwithstanding the above, at any time on or after November 17, 1982, and on or before April 14, 1983, the applicants involved in the conflict may, by agreement, request the Administrator to resolve the conflict in a formal hearing as described above.

(2) *Decision principles for NOAA formal conflict resolution.* (i) The Administrator shall determine which applicant involved in a conflict between or among pre-enactment explorer applications or amendments shall be awarded all or part of each area in conflict.

(ii) The determination of the Administrator shall be based on the application of principles of equity which take into consideration, with respect to each applicant involved in the conflict, the following factors:

(A) The continuity and extent of activities relevant to each area in conflict and the application area of which it is a part;

(B) The date on which each applicant involved in the conflict, or predecessor in interest or component organization thereof, commenced activities at sea in the application area;

(C) The financial cost of activities relevant to each area in conflict and to

the application area of which it is a part, measured in constant dollars;

(D) The time when the activities were carried out, and the quality of the activities; and

(E) Such additional factors as the Administrator determines to be relevant, but excluding consideration of the future work plans of the applicants involved in any conflict.

(iii) For the purposes of this paragraph (j) of this section, the word *activities* means the undertakings, commitments of resources investigations, findings, research, engineering development and other activities relevant to the identification, discovery, and systematic analysis and evaluation of hard mineral resources and to the determination of the technical and economic feasibility of commercial recovery.

(iv) When considering the factors specified in paragraph (j)(2)(ii) of this section, the Administrator shall hear, and shall (except for purposes of apportionment pursuant to paragraph (j)(2)(v) of this section) limit his consideration to, all evidence based on the activities specified in paragraph (j)(2)(ii) of this section which were conducted on or before January 1, 1982, *Provided, however,* That an applicant must prove at-sea activities in the area in conflict prior to June 28, 1980, as a pre-condition to presentation of further evidence to the Administrator regarding activities in the area in conflict.

(v) In making his determination, the Administrator may award the entire area in conflict to one applicant involved in the conflict, or he may apportion the area among any or all of the applicants involved in the conflict. If, after applying the principles of equity, the Administrator determines that the area in conflict should be apportioned, the Administrator shall (to the maximum extent practicable consistent with the Administrator's application of the principles of equity) apportion the area in a manner designed to satisfy the plan of work set forth in the application of each applicant which is awarded part of the area.

(vi) Each applicant involved in the conflict must file an amendment to its application if necessary to implement the determination made by the Administrator.

(k) *Unresolved international conflicts.* (1) If, by November 17, 1982, all applicants involved in an original or new international conflict have not resolved that conflict, or agreed in writing to submit the conflict to a specified binding conflict resolution procedure, the applicants shall proceed in accordance with the conflict resolution procedures agreed to between the United States and its reciprocating states pursuant to section 118 of the Act.

(2) Each applicant whose application is involved in an international conflict shall be responsible for actions required in the conduct of the conflict resolution procedures, including bearing a proportional cost of implementing the procedures, representing himself in any proceedings, and assisting in the selection of arbitrators if necessary.

(l) *Continued opportunity for voluntary resolutions.* Each applicant may resolve any conflict by voluntary procedures at any time while that conflict persists.

(m) *Effect on priorities of new entrants.* (1) A pre-enactment explorer is entitled to a priority of right over a new entrant for any area in which the pre-enactment explorer has engaged in exploration prior to June 28, 1980 if, with respect to that area, the pre-enactment explorer files an application in accordance with this part on or after January 25, 1982 and on or before the closing date for pre-enactment explorer applications established under § 970.301(b).

(2) Any amendment which is filed by a pre-enactment explorer on or before October 15, 1982, relates back to the date of filing of the original application and shall give the pre-enactment explorer priority of right over all new entrants if the amendment is accorded a pre-enactment explorer priority of right under paragraph (g) of this section.

[47 FR 24948, July 8, 1982, as amended at 54 FR 548, Jan. 6, 1989]

§ 970.303 Procedures for new entrants.

(a) *Filing of new entrant applications or amendments; priority of right.* New entrant applications or amendments must be filed in accordance with

§ 970.200. A new entrant may file an application or amendment only at or after 1500 hours G.m.t. (11:00 a.m. EDT) January 3, 1983. All applications or amendments filed at that time shall be deemed to be filed simultaneously, and, if in accordance with § 970.209, shall have priority of right over any application or amendment filed subsequently. Priority of right for any application or amendment filed after that time will be established as described in § 970.209.

(b) *Conflicts.* (1) If a domestic conflict exists between or among new entrant applications or amendments, the applicants involved in the conflict shall resolve it.

(2) If an international conflict exists between or among new entrant applications or amendments, the conflict shall be resolved in accordance with applicable conflict resolution procedures agreed to between the United States and its reciprocating States pursuant to section 118 of the Act. The Administrator will provide each domestic applicant involved in an international conflict a copy of any such procedures in force when the Administrator issues notice to the applicant that an international conflict exists. Each applicant whose application is involved in an international conflict shall be responsible for actions required in the conduct of the conflict resolution procedures, including bearing a proportional cost of implementing the procedures, representing himself in any proceedings, and assisting in the selection of arbitrators if necessary.

§ 970.304 Action on portions of applications or amendments not in conflict.

If an applicant so requests, the Administrator will proceed in accordance with this part to review that portion of an area included in an application or amendment that is not involved in a conflict. However, the Administrator will proceed with such review only if the applicant advises the Administrator in writing that the applicant will continue to seek a license for the proposed exploration activities in the portion of the application area that is not in conflict. To the extent practicable, the deadlines for certification of an application or amendment and issuance of a license provided in §§ 970.400 and 970.500, respectively, will run from the date of filing of the original application.

Subpart D—Certification of Applications

SOURCE: 46 FR 45902, Sept. 15, 1981, unless otherwise noted.

§ 970.400 General.

(a) Certification is an intermediate step between receipt of an application for issuance or transfer of a license and its actual issuance or transfer. It is a determination which focuses on the eligibility of the applicant.

(b) Before the Administrator may certify an application for issuance or transfer of a license, he must determine that issuance of the license would not violate any of the restrictions in § 970.103(b). He also must make written determinations with respect to the requirements set forth in §§ 970.401 through 970.406. This will be done after consultation with other departments and agencies pursuant to § 970.211.

(c) To the maximum extent possible, the Administrator will endeavor to complete certification of an application within 100 days after submission of an application which is in full compliance with subpart B of this part. If final certification or denial of certification has not occurred within 100 days after such submission of the application, the Administrator will inform the applicant in writing of the pending unresolved issues, the agency's efforts to resolve them, and an estimate of the time required to do so.

§ 970.401 Financial responsibility.

(a) Before the Administrator may certify an application for an exploration license he must find that the applicant has demonstrated that, upon issuance or transfer of the license, the applicant will be financially responsible to meet all obligations which he may require to engage in the exploration proposed in the application.

(b) In order for the Administrator to make this determination, the applicant must show to the Administrator's satisfaction that he is reasonably capable

of committing or raising sufficient resources to carry out, in accordance with the provisions contained in this part, the exploration program set forth in his exploration plan.

§ 970.402 Technological capability.

(a) Before the Administrator may certify an application for an exploration license, he must find that the applicant has demonstrated that, upon issuance or transfer of the license, the applicant will possess, or have access to or a reasonable expectation of obtaining, the technological capability to engage in the proposed exploration.

(b) In order for the Administrator to make this determination, the applicant must demonstrate to the Administrator's satisfaction that the applicant will possess or have access to, at the time of issuance or transfer of the license, the technology and expertise, as needed, to carry out the exploration program set forth in his exploration plan.

§ 970.403 Previous license and permit obligations.

In order to certify an application, the Administrator must find that the applicant has satisfactorily fulfilled all past obligations under any license or permit previously issued or transferred to the applicant under the Act.

§ 970.404 Adequate exploration plan.

Before he may certify an application, the Administrator must find that the proposed exploration plan of the applicant meets the requirements of § 970.203.

§ 970.405 Appropriate exploration site size and location.

Before the Administrator may certify an application, he must approve the size and location of the exploration area selected by the applicant. The Administrator will approve the size and location of the area unless he determines that the area is not a logical mining unit pursuant to § 970.601.

§ 970.406 Fee payment.

Before the Administrator may certify an application, he must find that the applicant has paid the license fee as specified in § 970.208.

§ 970.407 Denial of certification.

(a) The Administrator may deny certification of an application if he finds that the requirements of this subpart have not been met. If, in the course of reviewing an application for certification, the Administrator becomes aware of the fact that one or more of the requirements for issuance or transfer under §§ 970.503 through 970.507 will not be met, he may also deny certification of the application.

(b) When the Administrator proposes to deny certification he will send to the applicant, and publish in the FEDERAL REGISTER, written notice of intention to deny certification. Such notice will include:

(1) The basis upon which the Administrator proposes to deny certification; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (the period of time may not exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny certification:

(1) On the 30th day after the date the notice is sent to the applicant, under paragraph (b) of this section, unless before such 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) of this section in which the applicant must correct a deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (c)(1) of this section is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with Subpart I of 15 CFR part 971. If the proposed denial is the result of a correctable deficiency, the

administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies certification, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying certification is subject to judicial review as provided in Chapter 7 of Title 5, United States Code.

[46 FR 45902, Sept. 15, 1981, as amended at 54 FR 547, Jan. 6, 1989]

§ 970.408 Notice of certification.

Upon making a final determination to certify an application for an exploration license, the Administrator will promptly send written notice of his determination to the applicant.

Subpart E—Issuance/Transfer/ Terms, Conditions and Restrictions

SOURCE: 46 FR 45903, Sept. 15, 1981, unless otherwise noted.

§ 970.500 General.

(a) *Proposal.* After certification of an application pursuant to Subpart D of this part, the Administrator will proceed with a proposal to issue or transfer a license for the exploration activities described in the application.

(b)(1) *Terms, conditions and restrictions.* Within 180 days (or such longer period as the Administrator may establish for good cause shown in writing) after certification, the Administrator will propose terms and conditions for, and restrictions on, the proposed exploration which are consistent with the provisions of the Act and this part as set forth in §§ 970.517 through 970.524. Proposed and final terms, conditions and restrictions will be uniform in all licenses, except to the extent that differing physical and environmental conditions require the establishment of special terms, conditions and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The Administrator will propose these in writing to the applicant. Also, public notice thereof will be provided pursuant to § 970.501, and they will be included with the draft of the EIS on the issuance of a license which is required by section 109(d) of the Act.

(2) If the Administrator does not propose terms, conditions and restrictions within 180 days after certification, he will notify the applicant in writing of the reasons for the delay and will indicate the approximate date on which the proposed terms, conditions and restrictions will be completed.

(c) *Findings.* Before issuing or transferring an exploration license, the Administrator must make written findings in accordance with the requirements of §§ 970.503 through 970.507. These findings will be made after considering all information submitted with respect to the application and proposed issuance or transfer. He will make a final determination on issuance or transfer of a license, and will publish a final EIS on that action, within 180 days (or such longer period of time as he may establish for good cause shown in writing) following the date on which proposed terms, conditions and restrictions, and the draft EIS, are published.

ISSUANCE/TRANSFER; MODIFICATION/ REVISION; SUSPENSION/REVOCATION

§ 970.501 Proposal to issue or transfer and of terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the FEDERAL REGISTER notice of each proposal to issue or transfer, and of terms and conditions for, and restrictions on, an exploration license. Subject to 15 CFR 971.802, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) The Administrator will hold a public hearing in an appropriate location and may employ such additional methods as he deems appropriate to inform interested persons about each proposal and to invite their comments thereon.

(2) If the Administrator determines there exists one or more specific and

material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of subpart I of 15 CFR part 971. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and of terms, conditions and restrictions for the license.

(c) Hearings held pursuant to this section will be consolidated insofar as practicable with hearings held by other agencies.

[46 FR 45903, Sept. 15, 1981, as amended at 54 FR 548, Jan. 6, 1989]

§ 970.502 Consultation and cooperation with Federal agencies.

Prior to the issuance or transfer of an exploration license, the Administrator will continue the consultation and cooperation with other Federal agencies which were initiated pursuant to § 970.211. This consultation will be to assure compliance with, among other statutes, the Endangered Species Act of 1973, as amended, the Marine Mammal Protection Act of 1972, as amended, and the Fish and Wildlife Coordination Act. He also will consult, prior to any issuance, transfer, modification or renewal of a license, with any affected Regional Fishery Management Council established pursuant to section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852) if the activities undertaken pursuant to such license could adversely affect any fishery within the Fishery Conservation Zone, or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond such zone.

§ 970.503 Freedom of the high seas.

(a) Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not unreasonably interfere with the exercise of the freedoms of the high seas by other nations, as recognized under general principles of international law.

(b) In making this finding, the Administrator will recognize that exploration for hard mineral resources of the deep seabed is a freedom of the high seas. In the exercise of this right, each licensee must act with reasonable regard for the interests of other nations in their exercise of the freedoms of the high seas.

(c)(1) In the event of a conflict between the exploration program of an applicant or licensee and a competing use of the high seas by another nation or its nationals, the Administrator, in consultation and cooperation with the Department of State and other interested agencies, will enter into negotiations with that nation to resolve the conflict. To the maximum extent possible the Administrator will endeavor to resolve the conflict in a manner that will allow both uses to take place in a manner in which neither will unreasonably interfere with the other.

(2) If both uses cannot be conducted harmoniously in the area subject to the exploration plan, the Administrator will decide whether to issue or transfer the license.

§ 970.504 International obligations of the United States.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States.

§ 970.505 Breach of international peace and security involving armed conflict.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

§ 970.506 Environmental effects.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application cannot reasonably be expected to result in a significant adverse effect on the quality of the environment, taking into account the analyses and information in any

applicable EIS prepared pursuant to section 109(c) or 109(d) of the Act. This finding also will be based upon the considerations and approach in § 970.701.

§ 970.507 Safety at sea.

Before issuing or transferring an exploration license, the Administrator must find that the exploration proposed in the application will not pose an inordinate threat to the safety of life and property at sea. This finding will be based on the requirements reflected in §§ 970.205 and 970.801.

§ 970.508 Denial of issuance or transfer.

(a) The Administrator may deny issuance or transfer of a license if he finds that the applicant or the proposed exploration activities do not meet the requirements of this part for the issuance or transfer of a license.

(b) When the Administrator proposes to deny issuance or transfer, he will send to the applicant, and publish in the FEDERAL REGISTER, written notice of such intention to deny issuance or transfer. Such notice will include:

(1) The basis upon which the Administrator proposes to deny issuance or transfer; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (the period of time may not exceed 180 days except as specified by the Administrator for good cause).

The FEDERAL REGISTER notice will not include the coordinates of the proposed exploration area.

(c) The Administrator will deny issuance or transfer:

(1) On the 30th day after the date the notice is sent to the applicant under paragraph (b) of this section, unless before such 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) of this section in which the applicant must correct a deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (c)(1) of this section is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with subpart I of 15 CFR part 971. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies issuance or transfer, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying issuance of a license is subject to judicial review as provided in chapter 7 of title 5, United States Code.

[46 FR 45903, Sept. 15, 1981, as amended at 54 FR 548, Jan. 6, 1989]

§ 970.509 Notice of issuance or transfer.

If the Administrator finds that the requirements of this part have been met, he will issue or transfer the license along with the appropriate terms, conditions and restrictions. Notification thereof will be made in writing to the applicant and in the FEDERAL REGISTER.

§ 970.510 Objections to terms, conditions and restrictions.

(a) The licensee may file a notice of objection to any term, condition or restriction in the license. The licensee may object on the grounds that any term, condition or restriction is inconsistent with the Act or this part, or on any other grounds which may be raised under applicable provisions of law. If the licensee does not file notice of an objection within the 60-day period immediately following the licensee's receipt of the notice of issuance or transfer under § 970.509, he will be deemed conclusively to have accepted the terms, conditions and restrictions in the license.

(b) Any notice of objection filed under paragraph (a) of this section must be in writing, must contain the precise legal basis for the objection, and must provide information relevant to any underlying factual issues deemed by the licensee as necessary to the Administrator's decision upon the objection.

(c) Within 90 days after receipt of the notice of objection, the Administrator will act on the objection and publish in the FEDERAL REGISTER, as well as provide to the licensee, written notice of his decision.

(d) If, after the Administrator takes final action on an objection, the licensee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with subpart I of 15 CFR part 971.

(e) Any final determination by the Administrator on an objection to terms, conditions or restrictions in a license after the formal hearing provided in paragraph (d) of this section is subject to judicial review as provided in chapter 7 of title 5, United States Code.

[46 FR 45903, Sept. 15, 1981, as amended at 54 FR 548, Jan. 6, 1989]

§ 970.511 Suspension or modification of activities; suspension or revocation of licenses.

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under subpart J of 15 CFR part 971, or in addition to the imposition of any fine under subpart J, suspend or revoke any license issued under this part, or suspend or modify any particular activities under such a license, if the licensee substantially fails to comply with any provision of the Act, this part, or any term, condition or restriction of the license; and

(2) Suspend or modify particular activities under any license, if the President determines that such suspension or modification is necessary:

(i) To avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States; or

(ii) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) will proceed pursuant to the procedures in 15 CFR 971.1003. Any action taken in accordance with paragraph (a)(2) will proceed pursuant to paragraphs (c) through (i) of this section, other than paragraph (h)(2).

(c) Prior to taking any action specified in paragraph (a)(2) of this section the Administrator will publish in the FEDERAL REGISTER, and send to the licensee, written notice of the proposed action. The notice will include:

(1) The basis of the proposed action; and

(2) If the basis for the proposed action is a deficiency which the Administrator believes the licensee can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (this period of time may not exceed 180 days except as specified by the Administrator for good cause).

(d) The Administrator will take the proposed action:

(1) On the 30th day after the date the notice is sent to the licensee, under paragraph (c) of this section, unless before such 30th day the licensee files with the Administrator a written request for an administrative review of the proposed action; or

(2) On the last day of the period established under paragraph (c)(2)(ii) of this section in which the licensee must correct the deficiency, if such deficiency has not been corrected before such day and an administrative review requested pursuant to paragraph (d)(1) of this section is not pending or in progress.

(e) If a timely request for administrative review of the proposed action is made by the licensee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with subpart I of 15 CFR part 971. If the proposed action is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct

the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(f) The Administrator will serve on the licensee, and publish in the FEDERAL REGISTER, written notice of the action taken including the reasons therefor.

(g) Any final determination by the Administrator to take the proposed action is subject to judicial review as provided in chapter 7 of title 5, United States Code.

(h) The issuance of any notice of proposed action under this section will not affect the continuation of exploration activities by a licensee, except as provided in paragraph (i) of this section.

(i) The provisions of paragraphs (c), (d), (e) and (h) of this section will not apply when:

(1) The President determines by Executive Order that an immediate suspension of a license, or immediate suspension or modification of particular activities under such license, is necessary for the reasons set forth in paragraph (a)(2) of this section; or

(2) The Administrator determines that immediate suspension of such a license, or immediate suspension or modification of particular activities under a license, is necessary to prevent a significant adverse effect on the environment or to preserve the safety of life or property at sea, and the Administrator issues an emergency order in accordance with §971.1003(d)(4).

(j) The Administrator will immediately rescind the emergency order as soon as he has determined that the cause for the order has been removed.

[46 FR 45903, Sept. 15, 1981, as amended at 54 FR 548, Jan. 6, 1989]

§970.512 Modification of terms, conditions and restrictions.

(a) After issuance or transfer of any license, the Administrator, after consultation with interested agencies and the licensee, may modify any term, condition, or restriction in such license for the following purposes:

(1) To avoid unreasonable interference with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. This determination will take into account the provisions of §970.503;

(2) If relevant data and other information (including, but not limited to, data resulting from exploration activities under the license) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea;

(3) To avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(4) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(b) The procedures for objection to the modification of a term, condition or restriction will be the same as those for objection to an original term, condition or restriction under §970.510, except that the period for filing notice of objection will run from the receipt of notice of proposed modification. Public notice of proposed modifications under this section will be made according to §970.514. On or before the date of publication of public notice, written notice will be provided to the licensee.

[46 FR 45903, Sept. 15, 1981; 47 FR 5966, Feb. 9, 1982]

§970.513 Revision of a license.

(a) During the term of an exploration license, the licensee may submit to the Administrator an application for a revision of the license or the exploration plan associated with it. NOAA recognizes that changes in circumstances encountered, and in information and technology developed, by the licensee during exploration may require such revisions. In some cases it may even be advisable to recognize at the time of filing the original license application that although the essential information for issuing or transferring a license as specified in §§970.201 through 920.208 must be included in such application, some details may have to be provided in the future in the form of a revision. In such instances, the Administrator may issue or transfer a license

which would authorize exploration activities and plans only to the extent described in the application.

(b) The Administrator will approve such application for a revision upon a finding in writing that the revision will comply with the requirements of the Act and this part.

(c) A change which would require an application to and approval by the Administrator as a revision is a major change in one or more of:

(1) The bases for certifying the original application pursuant to §§ 970.401 through 970.406;

(2) The bases for issuing or transferring the license pursuant to §§ 970.503 through 970.507; or

(3) The terms, conditions and restrictions issued for the license pursuant to §§ 970.517 through 970.524.

A major change is one which is of such significance so as to raise a question as to:

(i) The applicant's ability to meet the requirements of the sections cited in paragraphs (c) (1) and (2) of this section; or

(ii) The sufficiency of the terms, conditions and restrictions to accomplish their intended purpose.

§ 970.514 Scale requiring application procedures.

(a) A proposal by the Administrator to modify a term, condition or restriction in a license pursuant to § 970.512, or an application by a licensee for revision of a license or exploration plan pursuant to § 970.513, is significant, and the full application requirements and procedures will apply, if it would result in other than an incidental:

(1) Increase in the size of the exploration area; or

(2) Change in the location of the area.

An incidental increase or change is that which equals two percent or less of the original exploration area, so long as such adjustment is contiguous to the licensed area.

(b) All proposed modifications or revisions other than described in paragraph (a) of this section will be acted on after a notice thereof is published by the Administrator in the FEDERAL REGISTER, with a 60-day opportunity for public comment. On a case-by-case basis, the Administrator will determine if other procedures, such as a public hearing in a potentially affected area, are warranted. Notice of the Administrator's decision on the proposed modification will be provided to the licensee in writing and published in the FEDERAL REGISTER.

§ 970.515 Duration of a license.

(a) Each exploration license will be issued for a period of 10 years.

(b) If the licensee has substantially complied with the license and its associated exploration plan and requests an extension of the license, the Administrator will extend the license on terms, conditions and restrictions consistent with the Act and this part for a period of not more than 5 years.

In determining substantial compliance for purposes of this section, the Administrator may make allowance for deviation from the exploration plan for good cause, such as significantly changed market conditions. However, a request for extension must be accompanied by an amended exploration plan to govern the activities by the licensee during the extended period.

(c) Successive extensions may be requested, and will be granted by the Administrator, based on the criteria, and for the length of time, specified in paragraph (b) of this section.

§ 970.516 Approval of license transfers.

(a) The Administrator may transfer a license after a written request by the licensee. After a licensee submits such a request to the Administrator, the proposed transferee will be deemed an applicant for an exploration license, and will be subject to the requirements and procedures of this part.

(b) The Administrator will transfer a license if the proposed transferee and exploration activities meet the requirements of the Act and this part, and if the proposed transfer is in the public interest. The Administrator will presume that the transfer is in the public interest if it meets the requirements of the Act and this part. In case of mere change in the form or ownership of a licensee, the Administrator may waive relevant determinations for requirements for which no changes have occurred since the preceding application.

TERMS, CONDITIONS, AND RESTRICTIONS

§ 970.517 Diligence requirements.

The terms, conditions and restrictions in each exploration license must include provisions to assure diligent development. The Administrator will establish these pursuant to § 970.602.

§ 970.518 Environmental protection requirements.

(a) Each exploration license must contain such terms, conditions and restrictions, established by the Administrator, which prescribe actions the licensee must take in the conduct of exploration activities to assure protection of the environment. The Administrator will establish these pursuant to § 970.702.

(b) Before establishing the terms, conditions and restrictions pertaining to environmental protection, the Administrator will consult with the Administrator of the Environmental Protection Agency, the Secretary of State and the Secretary of the department in which the Coast Guard is operating. He also will take into account and give due consideration to the information contained in the final EIS prepared with respect to that proposed license.

§ 970.519 Resource conservation requirements.

For the purpose of conservation of natural resources, each license issued under this part will contain, as needed, terms, conditions and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the license area. The Administrator will establish these pursuant to § 970.603.

§ 970.520 Freedom of the high seas requirements.

Each license issued under this part must include such restrictions as may be necessary and appropriate to ensure that the exploration activities do not unreasonably interfere with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law, such as fishing, navigation, submarine pipeline and cable laying, and scientific research. The Administrator will consider the provisions in § 970.503 in establishing these restrictions.

§ 970.521 Safety at sea requirements.

The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, will require in any license issued under this part, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the license comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea. These requirements will be established with reference to subpart H of this part.

§ 970.522 Monitoring requirements.

Each exploration license must require the licensee:

(a) To allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the licensee in exploration activities to:

(1) Monitor such activities at such time, and to such extent, as the Administrator deems reasonable and necessary to assess the effectiveness of the terms, conditions, and restrictions of the license; and

(2) Report to the Administrator whenever such officers or employees have reason to believe there is a failure to comply with such terms, conditions, and restrictions;

(b) To cooperate with such officers and employees in the performance of monitoring functions; and

(c) To monitor the environmental effects of the exploration activities in accordance with a monitoring plan approved and issued by the Administrator as license terms, conditions and restrictions, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects. This environmental monitoring plan

and reporting will respond to the concerns and procedures discussed in Subpart G of this part.

§ 970.523 Special terms, conditions, and restrictions.

Although the general criteria and standards to be used in establishing terms, conditions, and restrictions for a license are set forth in this part, as referenced in §§ 970.517 through 970.522, the Administrator may impose special terms, conditions, and restrictions for the conservation of natural resources, protection of the environment, or the safety of life and property at sea when required by differing physical and environmental conditions.

§ 970.524 Other Federal requirements.

Pursuant to § 970.211, another Federal agency, upon review of an exploration license application submitted under this part, may indicate how terms, conditions, and restrictions might be added to the license, to assure compliance with any law or regulation within that agency's area of responsibility. In response to the intent, reflected in section 103(e) of the Act, to reduce the number of separate actions to satisfy the statutory responsibilities of these agencies, the Administrator may include such terms, conditions, and restrictions in a license.

Subpart F—Resource Development Concepts

SOURCE: 46 FR 45907, Sept. 15, 1981, unless otherwise noted.

§ 970.600 General.

Several provisions in the Act relate to appropriate mining techniques or mining efficiency. These raise what could be characterized as resource development issues. In particular, under section 103(a)(2)(D) of the Act, the applicant will select the size and location of the area of an exploration plan, which will be approved unless the Administrator finds that the area is not a ''logical mining unit.'' Also, pursuant to section 108 of the Act the applicant's exploration plan and the terms, conditions and restrictions of each license must be designed to ensure diligent development. In addition, for the purpose of conservation of natural resources, section 110 of the Act provides that each license is to contain, but only as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the resources.

§ 970.601 Logical mining unit.

(a) In the case of an exploration license, a logical mining unit is an area of the deep seabed which can be explored under the license, and within the 10-year license period, in an efficient, economical and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant as set forth in the exploration plan. In addition, it must be of sufficient size to allow for intensive exploration.

(b) Approval by the Administrator of a proposed exploration logical mining unit will be based on a case-by-case review of each application. In order to provide a proper basis for this evaluation, the applicant's exploration plan should describe the seabed topography, the location of mineral deposits and the nature of planned equipment and operations. Also, the exploration plan must show the relationship between the area to be explored and the applicant's plans for commercial recovery volume, to the extent projected in the exploration plan.

(c) In delineating an exploration area, the applicant need not include unmineable areas. Thus, the area need not consist of contiguous segments, as long as each segment would be efficiently mineable and the total proposed area constitutes a logical mining unit. In describing the area, the applicant must present the geodetic coordinates of the points defining the boundaries, referred to the World Geodetic System (WGS) Datum. A boundary between points must be a geodesic. If grid coordinates are desired, the Universal Transverse Mercator Grid System must be used.

(d) At the applicant's option, for the purpose of satisfying a possible obligation under a future Law of the Sea Treaty, the applicant may propose an exploration area which includes two exploration logical mining units. The applicant should specify in the application if this ''banking'' option is chosen, and any applicant choosing this option and filing an application based on pre-enactment exploration under §970.301 shall so notify the Administrator in accordance with §970.301(g).

(e) Applicants are advised that NOAA will not accept an application or issue a license for an exploration area larger than 150,000 square kilometers unless the applicant can demonstrate the necessity of a larger area based on factors such as topography, nodule abundance, distribution and ore grade. If the applicant elects to pursue the ''banking'' option described in paragraph (d) of this section, and wishes to apply for an exploration area larger than 150,000 square kilometers, the applicant must file a second application with respect to at least the area in excess of 150,000 square kilometers, unless the applicant justifies such excess area as part of a single application under the preceding sentence.

[46 FR 45907, Sept. 15, 1981, as amended at 47 FR 5968, Feb. 9, 1982]

§970.602 Diligent exploration.

(a) Each licensee must pursue diligently the activities described in his approved exploration plan. This requirement applies to the full scope of the plan, including environmental safeguards and monitoring systems. To help assure this diligence, terms, conditions and restrictions which the Administrator issues with a license will require such periodic reasonable expenditures for exploration by the licensee as the Administrator may establish, taking into account the size of the area of the deep seabed to which the exploration plan applies and the amount of funds which is estimated by the Administrator to be required during exploration for commercial recovery of hard mineral resources to begin within the time limit established by the Administrator. However, such required expenditures will not be established at a level which would discourage exploration by persons with less costly technology than is prevalently in use.

(b) In order to fulfill the diligence requirement, the applicant first must propose to the Administrator an estimated schedule of activities and expenditures pursuant to §970.203(b) (3) and (6). The schedule must show, and the Administrator must be able to make a reasonable determination, that the applicant can complete his exploration activities within the term of the license. In this regard, there must be a reasonable relationship between the size of the exploration area and the financial and technological resources reflected in the application. Also, the exploration must clearly point toward developing the ability, by the end of the 10-year license period, to apply for and obtain a permit for commercial recovery.

(c) Ultimately, the diligence requirement will involve a retrospective determination by the Administrator, based on the licensee's reasonable conformance to the approved exploration plan. Such determination, however, will take into account the need for some degree of flexibility in an exploration plan. It also will include consideration of the needs and stage of development of each licensee, again based on the approved exploration plan. In addition, the determination will take account of legitimate periods of time when there is no or very low expenditure, and will allow for a certain degree of flexibility for changes encountered by the licensee in such factors as its resource knowledge and financial considerations.

(d) In order for the Administrator to make determinations on a licensee's adherence to the diligence requirements, the licensee must submit a report annually reflecting his conformance to the schedule of activities and expenditures contained in the license. In case of any changes requiring a revision to an approved license and exploration plan, the licensee must advise the Administrator in accordance with §970.513.

§ 970.603 Conservation of resources.

(a) With respect to the exploration phase of seabed mining, the requirement for the conservation of natural resources, encompassing due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the area to which the license applies, may not be particularly relevant. Thus, since the Act requires such terms, conditions and restrictions only as needed, exploration licenses will require such provisions only as the Administrator deems necessary.

(b) NOAA views license phase mining system tests as an opportunity to examine, with industry, the conservation implications of any mining patterns used. Thus, in order to develop information needed for future decisions during commercial recovery, NOAA will include with a license a requirement for the submission of collector track and nodule production data. Only if information submitted reflects that the integrated system tests are resulting in undue waste or threatening the future opportunity for commercial recovery of the unrecovered balance of hard mineral resources will the Administrator modify the terms, conditions or restrictions pertaining to the conservation of natural resources, in order to address such problems.

(c) If the Administrator so modifies such terms, conditions and restrictions relating to conservation of resources, he will employ a balancing process in the consideration of the state of the technology being developed, the processing system utilized and the value and potential use of any waste, the environmental effects of the exploration activities, economic and resource data, and the national need for hard mineral resources.

Subpart G—Environmental Effects

SOURCE: 46 FR 45908, Sept. 15, 1981, unless otherwise noted.

§ 970.700 General.

Congress, in authorizing the exploration for hard mineral resources under the Act, also enacted provisions relating to the protection of the marine environment from the effects of exploration activities. For example, before the Administrator may issue a license, pursuant to section 105(a)(4) of the Act he must find that the exploration proposed in an application cannot reasonably be expected to result in a significant adverse effect on the quality of the environment. Also, the Act requires in section 109(b) that each license issued by the Administrator must contain such terms, conditions and restrictions which prescribe the actions the licensee must take in the conduct of exploration activities to assure protection of the environment. Furthermore, the Act in section 105(c)(1)(B) provides for the modification by the Administrator of any term, condition or restriction if relevant data and other information indicates that modification is required to protect the quality of the environment. In addition, section 114 of the Act specifies that each license issued under the Act must require the licensee to monitor the environmental effects of the exploration activities in accordance with guidelines issued by the Administrator, and to submit such information as the Administrator finds to be necessary and appropriate to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects.

§ 970.701 Significant adverse environmental effects.

(a) *Activities with no significant impact.* NOAA believes that exploration activities of the type listed below are very similar or identical to activities considered in section 6(c)(3) of NOAA Directives Manual 02–10, and therefore have no potential for significant environmental impact, and will require no further environmental assessment.

(1) Gravity and magnetometric observations and measurements;

(2) Bottom and sub-bottom acoustic profiling or imaging without the use of explosives;

(3) Mineral sampling of a limited nature such as those using either core, grab or basket samplers;

(4) Water and biotic sampling, if the sampling does not adversely affect shellfish beds, marine mammals, or an

endangered species, or if permitted by the National Marine Fisheries Service or another Federal agency;

(5) Meteorological observations and measurements, including the setting of instruments;

(6) Hydrographic and oceanographic observations and measurements, including the setting of instruments;

(7) Sampling by box core, small diameter core or grab sampler, to determine seabed geological or geotechnical properties;

(8) Television and still photographic observation and measurements;

(9) Shipboard mineral assaying and analysis; and

(10) Positioning systems, including bottom transponders and surface and subsurface buoys filed in *Notices to Mariners*.

(b) *Activities with potential impact*. (1) NOAA research has identified at-sea testing of recovery equipment and the operation of processing test facilities as activities which have some potential for significant environmental impacts during exploration. However, the research has revealed that only the following limited effects are expected to have potential for significant adverse environmental impact.

(2) The programmatic EIS's documents three at-sea effects of deep seabed mining which cumulatively during commercial recovery have the potential for significant effect. These three effects also occur during mining system tests that may be conducted under a license, but are expected to be insignificant. These include the following:

(i) *Destruction of benthos in and near the collector track*. Present information reflects that the impact from this effect during mining tests under exploration licenses will be extremely small.

(ii) *Blanketing of benthic fauna and dilution of food supply away from mine site subareas*. The settling of fine sediments disturbed by tests under a license of scale-model mining systems which simulate commercial recovery could adversely affect benthic fauna by blanketing, diluation of their food supply, or both. Because of the anticipated slow settling rate of the sediments, the affected area could be quite large. However, research results are insufficient to conclude that this will indeed be a problem.

(iii) *Surface plume effect on fish larvae*. The impact of demonstration-scale mining tests during exploration is expected to be insignificant.

(3) If processing facilities in the United States are planned to be used for testing during exploration, NOAA also will assess their impacts in the site-specific EIS developed for each license.

(c) *NOAA approach*. In making determinations on significant adverse environmental effects, the Administrator will draw on the above conclusions and other findings in NOAA's programmatic environmental statement and site-specific statements issued in accordance with the Act. He will issue licenses with terms, conditions and restrictions containing, as appropriate, environmental protection or mitigation requirements (pursuant to §970.518) and monitoring requirements (pursuant to §970.522). The focus of NOAA's environmental efforts will be on environmental research and on monitoring during mining tests to acquire more information on the environmental effects of deep seabed mining. If these efforts reveal that modification is required to protect the quality of the environment, NOAA then may modify terms, conditions and restrictions pursuant to §970.512.

§970.702 Monitoring and mitigation of environmental effects.

(a) *Monitoring*. If an application is determined to be otherwise acceptable, the Administrator will specify an environmental monitoring plan as part of the terms, conditions and restrictions developed for each license. The plan will be based on the monotoring plan proposed by the applicant and reviewed by NOAA for completeness, accuracy and statistical reliability. This monitoring strategy will be devised to insure that the exploration activities do not deviate significantly from the approved exploration plan and to determine if the assessment of the plan's acceptability was sound. The monitoring plan, among other things, will include monitoring environmental parameters relating to verficiation of NOAA's findings concerning potential impacts, but

relating mainly to the three unresolved concerns with the potential for significant environmental effect, as identified in § 970.701(b)(2). NOAA has developed a technical guidance document, which includes parameters pertaining to the upper and lower water column and operational aspects, which document will provide assistance in developing monitoring plans in consultation with applicants.

(b) *Mitigation.* Monitoring and continued research may develop information on future needs for mitigating environmental effects. If such needs are identified, terms, conditions and restrictions can be modified appropriately.

Subpart H—Safety of Life and Property at Sea

§ 970.800 General.

The Act contains requirements, in the context of several decisions, that relate to assuring the safety of life and property at sea. For instance, before the Administrator may issue a license, section 105(a)(5) of the Act requires that he find that the proposed exploration will not pose an inordinate threat to the safety of life and property at sea. Also, under section 112(a) of the Act the Coast Guard, in consultation with NOAA, must require in any license or permit issued under the Act, in conformity with principles of international law, that vessels documented in the United States and used in activities authorized under the license comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the safety of life and property at sea. In addition, under section 105(c)(1)(B) of the Act, the Administrator may modify terms, conditions and restrictions for a license if required to promote the safety of life and property at sea.

[46 FR 45909, Sept. 15, 1981]

§ 970.801 Criteria for safety of life and property at sea.

Response to the safety at sea requirements in essence will involve vessel inspection requirements. These inspection requirements may be identified by reference to present laws and regulations. The primary inspection statutes pertaining to United States flag vessels are: 46 U.S.C. 86 (Loadlines); 46 U.S.C. 395 (Inspection of seagoing barges over 100 gross tons); 46 U.S.C. 367 (Inspection of sea-going motor vessels over 300 gross tons); and 46 U.S.C. 404 (Inspection of vessels above 15 gross tons carrying freight for hire). All United States flag vessels will be required to meet existing regulatory requirements applicable to such vessels. This includes the requirement for a current valid Coast Guard Certificate of Inspection, as specified in § 970.205. Being United States flag, these vessels will be under United States jurisdiction on the high seas and subject to domestic enforcement procedures. With respect to foreign flag vessels, the SOLAS 74 or SOLAS 60 certificate requirements or alternative IACS requirements, as specified in § 970.205, apply.

[46 FR 45909, Sept. 15, 1981]

Subpart I—Miscellaneous

§ 970.900 Other applicable regulations.

The regulations in subparts H, I and J of 15 CFR part 971 are consolidated regulations and are applicable both to licenses under this part and to permits under 15 CFR part 971. The regulations in subparts H, I and J of part 971 govern records to be maintained and information to be submitted by licensees and permittees, public disclosure of documents received by NOAA, relinquishment and surrender of licenses and permits, amendment of regulations, competition of time, uniform hearing procedures, and enforcement under the Act.

[54 FR 548, Jan. 6, 1989]

Subparts J–W [Reserved]

Subpart X—Pre-enactment Exploration

§ 970.2401 Definitions.

(a) *Engage in exploration* means:

(1) To cause or authorize exploration to occur, including but not limited to a person's actions as a sponsor, principal, or purchaser of exploration services; or

(2) To conduct exploration on behalf of a person described in paragraph (a)(1) of this section.

(b) [Reserved]

[45 FR 76662, Nov. 20, 1980, as amended at 47 FR 5966, Feb. 9, 1982]

§ 970.2402 Notice of pre-enactment exploration.

(a) *General.* NOAA encourages any United States citizen who engaged in exploration for deep seabed hard mineral resources before June 28, 1980, to file not later than February 1, 1981, a written notice with the Administrator, in care of: The Director, Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, Department of Commerce, Page Building 1, Suite 410, 2001 Wisconsin Avenue, NW., Washington, DC 20235. Such notice shall not constitute an application for a license or permit and shall not confer or confirm any priority of right to any site.

(b) *Content of pre-enactment exploration Notice.* If a notice of exploration commenced prior to June 28, 1980, is filed pursuant to paragraph (a) it should be in writing and include the following:

(1) Names, addresses, and telephone numbers of the United States citizens responsible for exploration operations to whom notices and orders are to be delivered;

(2) A description of the citizen or citizens engaging in such exploration including:

(i) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(ii) The state of incorporation of state in which the partnership or other business entity is registered;

(iii) The name of registered agent and places of business;

(iv) Certification of essential and non-proprietary provisions in articles of incorporation, charter, or articles of association; and

(v) Membership of the association, partnership, or joint venture, including information about the participation of partners and joint venturers, and/or ownership of stock.

(3) A general description of the exploration activities conducted prior to June 28, 1980, including:

(i) The approximate date that the citizen, or predecessor in interest, commenced exploration activities;

(ii) A general estimate of expenditures made on the exploration program prior to June 28, 1980;

(iii) A statement of whether the citizen intends to file an application for an exploration license pursuant to section 101(b)(1)(A) of the Act after NOAA issues regulations implementing section 103(a) of the Act; and

(iv) A statement of whether the citizen intends to continue to engage in exploration as allowed by section 101(b) of the Act, pending a final determination on his application for an exploration license.

(c) *Exclusion of location information.* The information submitted in the notice of pre-enactment exploration required by this section shall *not* include the location of past or future exploration or prospective mine sites.

[45 FR 76662, Nov. 20, 1980]

Subpart Y—Pre-license Exploration

SOURCE: 45 FR 76662, Nov. 20, 1980, unless otherwise noted.

§ 970.2501 Notice of pre-license exploration voyages.

(a) *General.* Any United States citizen who schedules an exploration voyage to begin after November 20, 1980 shall file written notice with the Administrator which sets out:

(1) The name, address and telephone number of the citizen;

(2) The anticipated date of commencement of the voyage and its planned duration;

(3) The exploration activities to be carried out on the voyage, including a general description of the equipment and methods to be used, and an estimate of the anticipated extent of seabed disturbance and effluent discharge; and

(4) If the U.S. citizen has not filed a notice of pre-enactment exploration in accordance with § 970.2402, the information specified in § 970.2402(b).

(b) *When and where to file Notice of future exploration*—(1) *When.* (i) Except as allowed in paragraph (b)(2) of this section, the notice required by paragraph

(a) of this section must be filed not later than 45 days prior to the date on which the exploration voyage is scheduled to begin.

(ii) With respect to filing of the information referred to in paragraph (a)(4) of this section, the filing dates specified in paragraph (b) of this section shall prevail over the date specified in §970.2402(a).

(2) *Exception*. If an exploration voyage is scheduled to begin before January 5, 1981, the notice required by paragraph (a) of this section must be filed on or before December 22, 1980.

(3) *Where*. The notice required by paragraph (a) of this section must be filed in writing with the Administrator, at the address specified in §970.2402(a) of this part.

§970.2502 Post voyage report.

Within 30 days of the conclusion of each exploration voyage, the United States citizen engaging in the voyage shall submit to NOAA a report containing any environmental data or information obtained during that voyage.

§970.2503 Suspension of exploration activities.

(a) The Administrator may issue an emergency order, either in writing or orally with written confirmation, requiring the immediate suspension of exploration activities or any particular exploration activity when, in his judgment, immediate suspension of such activity or activities is necessary to prevent a significant adverse effect on the environment. Upon receipt of notice of the emergency order, the United States citizen engaged in the exploration shall immediately cease the activity that is the subject of the emergency order. During any suspension NOAA will consult with the citizen engaged in the activity suspended concerning appropriate measures to remove the cause of suspension. A suspension may be rescinded at any time by written notice from the Administrator upon presentation of satisfactory evidence by the citizen that the activity will no longer threaten a significant adverse effect on the environment.

(b) [Reserved]

Subpart Z—Miscellaneous

§970.2601 Additional information.

Any United States citizen filing notice under §970.2402 or §970.2501 of this part shall provide such additional information as the Administrator may require as necessary and appropriate to implement section 101 of the Act.

[45 FR 76662, Nov. 20, 1980]

PART 971—DEEP SEABED MINING REGULATIONS FOR COMMERCIAL RECOVERY PERMITS

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AUTHORITY: 30 U.S.C. 1401 *et seq.*

SOURCE: 54 FR 525, Jan. 6, 1989, unless otherwise noted.

Subpart A—General

§ 971.100 Purpose.

The purpose of this part is to implement the responsibilities and authorities of the Administrator of the National Oceanic and Atmospheric Administration (NOAA) pursuant to Public Law 96–283, the Deep Seabed Hard Mineral Resources Act (the Act), to issue to eligible United States citizens permits for the commercial recovery of deep seabed hard minerals.

§ 971.101 Definitions.

For purposes of this part, the term

(a) *Act* means the Deep Seabed Hard Mineral Resources Act (Pub. L. 96–283; 94 Stat. 553; 30 U.S.C. 1401 *et seq.*);

(b) *Administrator* means the Administrator of the National Oceanic and Atmospheric Administration, or the Administrator's designee;

(c) *Affected State* means any State with a coastal zone management program approved under Section 306 of the Coastal Zone Management Act, as amended, where coastal zone land and water uses are affected by the issuance of a commercial recovery permit under the provisions of the Act or this part;

(d) *Applicant* means an applicant for a commercial recovery permit pursuant to the Act and this part; as used in subparts H, I and J of this part, ''applicant'' also means an applicant for an exploration license pursuant to the Act and part 970 of the title. ''Applicant'' also means a proposed permit transferee;

(e) *Commercial recovery* means—

(1) Any activity engaged in at sea to recover any hard mineral resource at a substantial rate for the primary purpose of marketing or commercially using such resource to earn a net profit, whether or not such net profit is actually earned;

(2) If such recovered hard mineral resource will be processed at sea, such processing; and

(3) If the waste of such activity to recover any hard mineral resource, or of such processing at sea, will be disposed of at sea, such disposal;

(f) *Continental Shelf* means—

(1) The seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area; and

(2) The seabed and subsoil of similar submarine areas adjacent to the coast of islands;

(g) *Controlling interest*, for purposes of paragraph (v)(3) of this section, means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person;

(h) *Deep seabed* means the seabed, and the subsoil thereof to a depth of ten meters, lying seaward of and outside—

(1) The Continental Shelf of any nation; and

(2) Any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States;

(i) *Environment* or *environmental* as used in the definitions of ''irreparable harm'' and ''significant adverse environmental effect'' means or pertains to the deep seabed and ocean waters lying at and within the permit area, and in surrounding areas including transportation corridors to the extent that they might be affected by the commercial recovery activities, and the living and non-living resources of those areas;

(j) *Exploration* means—

(1) Any at-sea observation and evaluation activity which has, as its objective, the establishment and documentation of—

(i) The nature, shape, concentration, location, and tenor of a hard mineral resource; and

(ii) The environmental, technical, and other appropriate factors which must be taken into account to achieve commercial recovery; and

(2) The taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication and testing of equipment which is intended to be used in the commercial recovery and processing of such resource;

(k) *Hard mineral resource* means any deposit or accretion on, or just below, the surface of the deep seabed of nodules which include one or more minerals, at least one of which is manganese, nickel, cobalt, or copper;

(l) *Irreparable harm* means significant undesirable effects to the environment occurring after the date of the permit issuance which will not be reversed after cessation or modification of the activities authorized under the permit;

(m) *Licensee* means the holder of a license issued under NOAA regulations to engage in exploration;

(n) *NOAA* means the National Oceanic and Atmospheric Administration;

(o) *Permittee* means the holder of a permit issued or transferred under this part to engage in commercial recovery;

(p) *Person* means any United States citizen, any individual, and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any nation;

(q) *Reciprocating state* means any foreign nation designated as such by the Administrator under section 118 of the Act;

(r) *Recovery plan* or *commercial recovery plan* means the plan submitted by an applicant for a commercial recovery permit pursuant to § 971.203;

(s) *Significant adverse environmental effect* means: (1) Important adverse changes in ecosystem diversity, productivity, or stability of the biological communities within the environment; (2) threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms; or (3) important loss of aesthetic, recreational, scientific or economic values;

(t) *State agency* means the agency responsible for implementing the responsibilities of section 306(c)(5) under the Coastal Zone Management Act, as amended, and 15 CFR part 930;

(u) *United States* means the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the United States Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States; and

(v) *United States citizen* means—

(1) Any individual who is a citizen of the United States;

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any of the United States; and

(3) Any corporation, partnership, joint venture, association, or other entity (whether organized or existing under the laws of any of the United States or a foreign nation) if the controlling interest in such entity is held by an individual or entity described in paragraph (v)(1) or (v)(2).

§ 971.102 Nature of permits.

(a) A permit issued under this part authorizes the holder thereof to engage in commercial recovery within a specific portion of the sea floor consistent with the provisions of the Act and this part and consistent with the specific terms, conditions, and restrictions (TCRs) applied to the permit by the Administrator.

(b) A permit issued under this part is exclusive with respect to the holder thereof as against any other United States citizen or any citizen, national or governmental agency of, or any legal entity organized or existing under the laws of, any reciprocating state.

(c) A valid existing license under 15 CFR part 970 will entitle the holder, if otherwise eligible under the provisions of the Act and implementing regulations, to a permit for commercial recovery from an area selected from within the license area. Such a permit will recognize the right of the holder to recover hard mineral resources, and to own, tranport, use, and sell hard mineral resources recovered under the permit and in accordance with the requirements of the Act and this part.

§ 971.103 Prohibited activities and restrictions.

(a) *Prohibited activities and exceptions.* (1) No United States citizen may engage in any commercial recovery unless authorized to do so under—

(i) A permit issued pursuant to the Act and implementing regulations;

(ii) A license, permit or equivalent authorization issued by a reciprocating state; or

(iii) An international agreement which is in force with respect to the United States.

(2) The prohibitions of paragraph (a)(1) of this section do not apply to any of the following activities:

(i) Scientific research, including that concerning hard mineral resources;

(ii) Mapping, or the taking of any geophysical, geochemical, oceanographic, or atmospheric measurements or random bottom samplings of the deep seabed, if such taking does not significantly alter the surface or subsurface of the seabed or significantly affect the environment;

(iii) The design, construction, or testing of equipment and facilities which will or may be used for exploration or commercial recovery, if such design,

construction or testing is conducted onshore, or does not involve the recovery of any but incidental hard mineral resources;

(iv) The furnishing of machinery, products, supplies, services, or materials for any exploration or commercial recovery conducted under a license or permit issued under the Act and implementing regulations, a license or permit or equivalent authorization issued by a reciprocating state, or any relevant international agreement; and

(v) Activities, other than exploration or commercial recovery activities, of the Federal Government.

(3) No United States citizen may interfere or participate in interference with any activity conducted by any permittee which is authorized to be undertaken under a permit issued by the Administrator to a permittee under the Act or with any activity conducted by the holder of, and authorized to be undertaken under, a license or permit or equivalent authorization issued by a reciprocating state for the commercial recovery of hard mineral resources. For purposes of this section, interference includes physical interference with activities authorized by the Act, this part, and a license or permit issued pursuant thereto; the filing of a specious claim in the United States or any other nation; and any other activity designed to harass, or which has the effect of harassing, persons conducting deep seabed mining activities authorized by law. Interference does not include the exercise of any superior rights granted to United States citizens by the Constitution of the United States, or any Federal or State law, treaty, or agreement or regulation promulgated pursuant thereto.

(4) United States citizens shall exercise their rights on the high seas with reasonable regard for the interests of other states in their exercise of the freedoms of the high seas.

(b) *Restrictions on issuance of permits.* The Administrator will not issue any permit—

(1) After the date on which any relevant international agreement is ratified by and enters into force with respect to the United States, except to the extent that issuance of the permit is not inconsistent with that agreement.

(2) The recovery plan of which, submitted pursuant to the Act and implementing regulations, would apply to an area to which applies, or would conflict with:

(i) Any exploration plan or recovery plan submitted with any pending application to which priority of right for issuance applies under 15 CFR part 970 or this part;

(ii) Any exploration plan or recovery plan associated with any existing license or permit; or

(iii) An equivalent authorization which has been issued, or for which formal notice of application has been submitted, by a reciprocating state prior to the filing date of any relevant application for licenses or permits pursuant to the Act and implementing regulations;

(3) Authorizing commercial recovery within any area of the deep seabed in which exploration is authorized under a valid existing license if such permit is issued to a person other than the licensee for such area;

(4) Which authorizes commercial recovery to commence before January 1, 1988;

(5) The recovery plan for which applies to any area of the deep seabed if, within the 3-year period before the date of application for that permit:

(i) The applicant therefor surrendered or relinquished such area under an exploration plan or recovery plan associated with a previous license or permit issued to such applicant; or

(ii) A permit previously issued to the applicant had an exploration plan or recovery plan which applied to such area and such license or permit was revoked under section 106 of the Act;

(6) Or approve the transfer of a permit, except to a United States citizen; or

(7) That would authorize commercial recovery activities in an area other than for which the applicant therefore holds a valid exploration license under part 970 of this title.

§ 971.104 OMB control number.

The information collection requirements and reporting and recordkeeping requirements contained in this part

were approved by the Office of Management and Budget under control number 0648–0170.

Subpart B—Applications

§ 971.200 General.

(a) *Who may apply; how.* Any United States citizen holding a valid exploration license may apply to the Administrator for issuance of a commercial recovery permit for all or part of the area to which the license applies. Any holder of a commercial recovery permit may apply to the Administrator for transfer of the permit. Applications must be submitted in the form and manner described in this subpart.

(b) *Place, form and copies.* An application for the issuance or transfer of a commerical recovery permit must be in writing, verified and signed by an authorized officer or other authorized representative of the applicant. The application and 25 copies thereof must be submitted to:

Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, Suite 710, 1825 Connecticut Avenue, NW., Washington, DC 20235.

The Administrator may waive in whole or in part, at his discretion, the requirement that 25 copies of an application be filed with NOAA.

(c) *General contents.* The application must contain a proposed commerical recovery plan and the financial, technical, environmental and other information specified in this part, which in total are necessary for the Administrator to make the determinations required by the Act and this part. Although the ultimate standards for determinations under these rules are identical for both transferees and original preexisting licensees, NOAA anticipates that applicants who are transferees will have to supply more information with the application than licensees will [see subsection (e) in this section].

(d) *Identification of requirements.* Each portion of the application should identify the requirements of this part to which it responds.

(e) *Information previously submitted in connection with an exploration license.* Information previously submitted as part of an exploration license application, as well as information submitted during the course of license activities (such as data included in annual reports to NOAA), may be incorporated in the commercial recovery permit application by reference.

(f) *Request for confidential treatment of information.* If an applicant wishes to have any information in its application not be subject to public disclosure, it must so request, at the time of submitting the information, pursuant to § 971.802 which will govern disposition of the request.

(g) *Pre-application consultation.* The Administrator will make NOAA staff available to potential applicants for pre-application consultations on how to respond to the provisions of this part. In appropriate circumstances, the Administrator will provide written confirmation to the applicant of oral guidance resulting from such consultations. Such consultation is required for the purpose of § 971.207. The applicant is encouraged to consult with affected States as early as is practicable [see also §§ 971.213 and 971.606(b)].

(h) *Compliance with Federal consistency requirements.* An applicant for a commercial recovery permit must comply with all necessary requirements, including procedures, pursuant to 15 CFR part 930, subpart D. Applications and other necessary data and information must be transmitted to the designated State agency as prescribed under 15 CFR 930.50.

CONTENTS

§ 971.201 Statement of financial resources.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator pursuant to § 971.301 that, upon issuance or transfer of the permit, the applicant will have access to the financial resources to carry out, in accordance with this part, the commercial recovery program set forth in the applicant's commercial recovery plan.

(b) *Specific.* In particular, the information on financial resources is expected to be general in nature but must include the likely sources and timing

of funds to meet the applicant's scheduled expenditures in the recovery plan. These sources may include cash flow, reserves, and outside funding.

§ 971.202 Statement of technological experience and capabilities.

(a) *General.* The application must contain information sufficient to demonstrate to the Administrator pursuant to § 971.301 that, upon issuance or transfer of the permit, the applicant will have the technological capability to carry out, in accordance with the regulations contained in this part, the commercial recovery program set out in the applicant's commercial recovery plan.

(b) *Specific.* In particular, the information submitted pursuant to this section must describe the equipment, knowledge, and skills the applicant possesses, or to which it can demonstrate access [see § 971.200(e)]. The information must include:

(1) A description of the technology or the equipment and methods to be used by the applicant in carrying out each step in the mining process, including nodule collection, retrieval, transfer to ship, environmental monitoring, transport to processing facilities, nodule processing, waste disposal and compliance with applicable water quality standards. The description must include:

(i) An analysis of the performance of experimental systems, sub-systems, or analogous machinery;

(ii) The rationale for extrapolating from test results to commercial mining. The more test data offered with the application the less analysis will be expected; and

(iii) Anticipated system reliability within the context of anticipated production time lost through equipment failure.

(2) A functional description of the types of technical persons on whom the applicant will rely to operate its equipment.

§ 971.203 Commercial recovery plan.

(a) *General.* The application must include a proposed commercial recovery plan which describes the applicant's projected commercial recovery activities, in a general way, for the twenty year period to be covered by the proposed permit. Although preliminary and subject to change, the plan must be more detailed for that portion of the permit term leading up to the initiation of commercial recovery. The plan must include sufficient information for the Administrator, pursuant to this part, to make the necessary determinations pertaining to the certification and issuance or transfer of a permit and to the development and enforcement of the TCRs for a permit.

(b) *Specific.* The plan must include:

(1) A description of the activities proposed to be carried out during the period of the permit;

(2) The intended schedule of commercial recovery (see ''Diligent commercial recovery,'' § 971.503);

(3) Environmental safeguards and monitoring systems, which must take into account requirements under subpart F of this part, including best available technologies (BAT) (§ 971.604) and monitoring (§ 971.603);

(4) Details of the area or areas proposed for commercial recovery, which meet requirements for diligence (§ 971.503) and conservation of resources pursuant to subpart E (especially § 971.502);

(5) A resource assessment of the area or areas proposed for commercial recovery which meets the requirements for resource assessment and logical mining unit (§ 971.501);

(6) A description of the methods and technology to be used for commercial recovery and processing (see § 971.202(b)(1)); and

(7) The methods to be used for disposal of wastes from recovery and processing, including the areas for disposal and identification of any toxic substances in wastes.

§ 971.204 Environmental and use conflict analysis.

(a) *Environmental information submission.* The application must be supported by sufficient marine environmental information for the Administrator to prepare an environmental impact statement (EIS) on the proposed mining activities, and to determine the appropriate permit TCRs based on environmental characteristics of the requested minesite. The Administrator

may require the submission of additional data, in the event he determines that the basis for a suitable EIS, or a determination of appropriate TCRs, is not available.

(b)(1) In preparing the EIS, the Administrator will attempt to characterize the environment in such a way as to provide a basis for judging the potential for significant adverse effects or irreparable harm triggered by commercial mining (see subpart F). In compiling these data, the Administrator will utilize existing information including the relevant license EIS, additional exploration data acquired by the applicant, and other data in the public domain.

(2) The EIS must present adequate physical, chemical, and biological information for the permit area. If the permit area lies within the area of NOAA's Deep Ocean Mining Environmental Study (DOMES), the parameters listed in NOAA's Technical Guidance Document pertaining to the upper and lower water column should be included. Specifically, these parameters include:

(i) Upper water column—

Nutrients
Endangered species
Salinity, temperature, density
Currents.

(ii) Lower water column and seafloor—

Currents
Suspended particulate matter dispersion
Sediment characteristics (mineralogy, particle size, shape and density, and water content)
Topography
Benthos.

(3) For a permit area outside the DOMES area, the applicant is encouraged to consult with NOAA at the earliest opportunity in order to determine the specific parameters to be measured based on the location and specific environmental characteristics of the permit area. The Administrator, in consultation with the Administrator of the Environmental Protection Agency and with the assistance of other appropriate Federal agencies, may determine that a programmatic EIS is required for any new area.

(c) The application must include a monitoring plan for test mining and at-sea commercial recovery activities which meets the objectives and requirements of § 971.603.

(d) *Use conflict analysis.* The application must include information known to the applicant on other uses of the proposed mining area to support the Administrator's determination regarding potential use conflicts between commercial mining activities and those activities of other nations or of other U.S. citizens.

(e) *Onshore information.* Because of NEPA requirements, the Administrator must include in the EIS on the proposed permit the complete spectrum of activities resulting from the issuance of a permit. Therefore, onshore information including the location and operation of nodule processing facilities must be submitted with the application in accordance with the details in § 971.606.

§ 971.205 Vessel safety and documentation.

In order to provide a basis for the necessary determinations with respect to the safety of life and property at sea, pursuant to § 971.407, § 971.422 and Subpart G of this part, the application must contain the following information for vessels used in commercial recovery, except for those vessels under 300 gross tons which are engaged in oceanographic research:

(a) *U.S. flag vessel.* All mining ships and at least one of the transport ships used by each permittee must be documented under the laws of the United States. To the extent that the applicant knows which United States flag vessels it will use, it must include with its application copies of the vessels' current valid Coast Guard Certificates of Inspection.

(b) *Foreign flag vessels.* To the extent that the applicant knows which foreign flag vessel(s) it will be using for other purposes, the application must include evidence of the following:

(1) That any foreign flag vessel whose flag state is party to the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) possesses current valid SOLAS 74 certificates;

(2) That any foreign flag vessel whose flag state is not party to SOLAS 74 but

is party to the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) possesses current valid SOLAS 60 certificates; and

(3) That any foreign flag vessel whose flag state is not a party to either SOLAS 74 or SOLAS 60 meets all applicable structural and safety requirements contained in the published rules of a member of the International Association of Classification Societies (IACS).

(c) *Supplemental certificates.* If the applicant does not know at the time of submitting an application which vessels it will be using, it must submit the applicable certification for each vessel before the cruise on which it will be used.

§ 971.206 Statement of ownership.

(a) *General.* The application must include sufficient information to demonstrate that the applicant is a United States citizen.

(b) *Specific.* In particular, the application must include:

(1) Name, address, and telephone number of the United States citizen responsible for commercial recovery operations;

(2) A description of the citizen or citizens engaging in commercial recovery, including:

(i) Whether the citizen is a natural person, partnership, corporation, joint venture, or other form of association;

(ii) The state of incorporation or state in which the partnership or other business entity is registered;

(iii) The name and place of business of the registered agent or equivalent representative to whom notices and orders are to be delivered;

(iv) Copies of all essential and nonproprietary provisions in articles of incorporation, charter or articles of association; and

(v) The name of each member of the association, partnership, or joint venture, including information about the participation and/or ownership of stock of each partner or joint venturer.

§ 971.207 Antitrust information.

In order to support the antitrust review referenced in § 971.211, the application must contain information sufficient, in the applicant's view and based on preapplication consultations pursuant to § 971.200(g), to identify the applicant and describe any significant existing market share it has with respect to the mining or marketing of the metals proposed to be recovered under the permit.

§ 971.208 Fee.

(a) *General.* Section 104 of the Act provides that no application for the issuance or transfer of a permit will be certified unless the applicant pays to NOAA an administrative fee which reflects the reasonable administrative costs incurred in reviewing and processing the application.

(b) *Amount.* A fee payment of $100,000, payable to the National Oceanic and Atmospheric Administration, Department of Commerce, must accompany each application. If the administrative costs of reviewing and processing the application are significantly less than or in excess of $100,000, the Administrator, after determining the amount of the under- or over-charge, as applicable, will refund the difference or require the applicant to pay the additional amount before issuance or transfer of the permit. In the case of an application for transfer of a permit to, or for a significant change to a permit held by, an entity which has previously been found qualified for a permit, the Administrator may reduce the fee in advance by an appropriate amount which reflects costs avoided by reliance on previous findings made in relation to the proposed transferee.

§ 971.209 Processing outside the United States.

(a) Except as provided in this section and § 971.408, the processing of hard minerals recovered pursuant to a permit shall be conducted within the U.S., provided that the President or his designee does not determine that this restriction contravenes the overriding national interests of the United States.

(b) If foreign processing is proposed, the applicant shall submit a justification demonstrating the basis for a finding pursuant to § 971.408(a)(1). The justification shall include an analysis of each factor which the applicant considers essential to its conclusion that

processing at a site within the U.S. is not economically viable.

(c) If the Administrator determines that the justification provided by the applicant is insufficient, or if the Administrator receives during the public comment or hearing period what the Administrator determines to be a serious alternative U.S. processing site proposal, the Administrator may require the applicant to supply, within a specified reasonable time, additional information relevant to the § 971.408(a)(1) finding.

(d) The applicant must include in its application satisfactory assurances that such resources after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use if the Administrator determines pursuant to § 971.408 that the national interest necessitates such return. Assurances must include proposed arrangements with the host country.

PROCEDURES

§ 971.210 Determination whether application is complete for further processing.

Upon receipt of an application, the Administrator will review it to determine whether it includes information specifically identifiable with and fully responsive to each requirement in § 971.201 through § 971.209. The Administrator will notify the applicant whether the application is complete within 60 days after it is received. The notice will identify, if applicable, in what respects the application is not complete, and will specify the information which the applicant must submit in order to make it complete, why the additional information is necessary, and a reasonable date by which the application must be completed. Application processing will not begin until the Administrator determines that the application is complete.

§ 971.211 Consultation and cooperation with Federal agencies.

(a) Promptly after receipt of an application that the Administrator has determined pursuant to § 971.210 is complete, the Administrator will distribute a copy of the application to every Federal agency or department which, pursuant to section 103(e) of the Act, has identified programs or activities within its statutory responsibilities which would be affected by the activities proposed in the application (e.g., the Departments of State, Transportation, Justice, Interior, Defense, Treasury and Labor, as well as the Environmental Protection Agency, Federal Trade Commission, International Trade Administration and National Science Foundation). Based on its legal responsibilities and authorities, each such agency or department may, not later than 60 days after it receives a copy of the application, recommend certification of the application, issuance or transfer of the permit, or denial of such certification, issuance or transfer. The advice or recommendation by the Attorney General or Federal Trade Commission on antitrust review, pursuant to section 103(d) of the Act, must be submitted within 90 days after their receipt of a copy of the application.

(b) NOAA will use this process of consultation and cooperation to facilitate necessary Federal decisions on proposed commercial recovery activities, pursuant to the mandate of section 103(e) of the Act to reduce the number of separate actions required to satisfy Federal agencies' statutory responsibilities. The Administrator will not issue or transfer the permit during the 90 day period after receipt by the Attorney General and the Federal Trade Commission except upon written confirmation of the Attorney General and the Federal Trade Commission that neither intends to submit further comments or recommendations with respect to the application.

(c) In any case in which a Federal agency or department recommends a denial, it must set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and how the application may be amended, or how TCRs might be added to the permit, to assure compliance with such law or regulation.

(d) NOAA will cooperate with such agencies and with the applicant with the goal of resolving any concerns raised and satisfying the statutory responsibilities of these agencies.

(e) If the Administrator decides to issue or transfer a permit with respect to which denial of the issuance or transfer has been recommended by the Attorney General or the Federal Trade Commission, or to issue or transfer a permit without imposing TCRs recommended by the Attorney General or the Federal Trade Commission, as appropriate, the Administrator will, before or at issuance or transfer of the permit, notify the Attorney General and the Federal Trade Commission of the reasons for his decision.

§ 971.212 Public notice, hearing and comment.

(a) *Notice and comments.* The Administrator will publish in the FEDERAL REGISTER, for each complete application for issuance or transfer of a commercial recovery permit, notice that the application has been received. Subject to § 971.802, interested persons will be allowed to examine the materials relevant to the application, and will have at least 60 days after publication of notice to submit written comments to the Administrator.

(b) *Hearings.* After preparation of the draft environmental impact statement (EIS) on an application, the Administrator will hold a public hearing on the application and the draft EIS in an appropriate location and may employ additional methods he/she deems appropriate to inform interested persons about each application and to invite comments thereon. A hearing will be conducted in any State in which a processing plant or any of its ancillary facilities (such as a marine terminal or a waste disposal facility) are proposed to be located.

(c) If the Administrator determines there exist one or more specific and material factual issues which require resolution by formal processes, at least one formal hearing will be held in the District of Columbia metropolitan area in accordance with the provisions of Subpart I of this part. The record developed in any such formal hearing will be part of the basis of the Administrator's decisions on an application.

(d) Hearings held pursuant to this section and other procedures will be consolidated, if practicable, with hearings held and procedures employed by other Federal and State agencies.

§ 971.213 Amendment to an application.

After an application has been submitted to the Administrator, but before a determination is made on the issuance or transfer of a permit, the applicant must submit an amendment to the application if there is a significant change in the circumstances represented in the original application which affects the requirements of this subpart. Applicants should consult with NOAA to determine if changes in circumstances are sufficiently significant to require submission of an amendment. The application, as amended, would then serve as the basis for determinations by the Administrator under this part. For each amendment judged by the Administrator to be significant, the Administrator will provide a copy of that amendment to each other Federal agency and department which received a copy of the original application, and also will provide for public notice, hearing and comment on the amendment pursuant to § 971.212. After the issuance or transfer of a permit, any revision of the permit will be made pursuant to § 971.413. Any amendment or modification which would cause coastal zone effects substantially different than those originally reviewed by the state agency would be subject to Federal consistency review as prescribed in 15 CFR part 930.

§ 971.214 Consolidated license and permit procedures. [Reserved]

Subpart C—Certification of Applications

§ 971.300 General.

(a) Certification is an intermediate step between receipt of an application for issuance or transfer of a permit and actual issuance or transfer. It is a determination which focuses on the eligibility of the applicant.

(b) Before the Administrator may certify an application for issuance or transfer of a permit, the Administrator must determine that issuance of the

permit would not violate any of the restrictions in § 971.103(b). The Administrator also must make written determinations with respect to the requirements with respect to the requirements set forth in § 971.301.

(c) To the maximum extent possible, the Administrator will endeavor to complete certification within 100 days after receipt of a complete application. If final certification or denial of certification has not occurred within 100 days after receipt of the application, the Administrator will inform the applicant in writing of the pending unresolved issues, the efforts to resolve them, and an estimate of the time required to do so.

§ 971.301 Required findings.

Before the Administrator may certify an application for a commercial recovery permit, the Administrator must:

(a) Approve the size and location of the commercial recovery area selected by the applicant, and this approval will occur unless the Administrator determines that (1) the area is not a logical mining unit under § 971.501, or (2) commercial recovery activities in the proposed area would result in a significant adverse environmental effect which cannot be avoided by imposition of reasonable restrictions; and

(b) Find that the applicant—

(1) Has demonstrated that, upon issuance or transfer of the permit, the applicant will be financially responsible to meet all obligations which may be required to engage in its proposed commercial recovery activities;

(2) Has demonstrated that, upon permit issuance or transfer, it will possess, or have access to, the technological capability to engage in the proposed commercial recovery;

(3) Has satisfactorily fulfilled all past obligations under any license or permit previously issued or transferred to the applicant under the Act;

(4) Has a commercial recovery plan which meets the requirements of § 971.203; and

(5) Has paid the permit fee specified in § 971.208.

§ 971.302 Denial of certification.

(a) The Administrator may deny certification of an application if the Administrator finds that the requirements of this subpart, or the requirements for issuance or transfer under § 971.403 through § 971.408, have not been met.

(b) When the Administrator proposes to deny certification the Administrator will send to the applicant, via certified mail, return receipt requested, and publish in the FEDERAL REGISTER, written notice of intention to deny certification. The notice will include:

(1) The basis upon which the Administrator proposes to deny certification; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny certification:

(1) On the 30th day after the date the notice is received by the applicant, under paragraph (b) of the section, unless before the 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) in which the applicant must correct a deficiency, if that deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (c)(1) is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempts to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies certification, he will send to the applicant written notice of the denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying certification is subject to judicial review as provided in chapter 7 of title 5, United States Code.

§ 971.303 Notice of certification.

Upon making a final determination to certify an application for a commercial recovery permit, the Administrator will promptly send written notice of the determination to the applicant.

Subpart D—Issuance/Transfer: Terms, Conditions and Restrictions

§ 971.400 General.

(a) *Proposal.* After certification of an application pursuant to subpart C of this part, the Administrator will proceed with a proposal to issue or transfer a permit for the commercial recovery activities described in the application.

(b) *Terms conditions and restrictions.* (1) Within 180 days after certification (or such longer period as the Administrator may establish for good cause shown in writing), the Administrator will propose terms and conditions for, and restrictions on, the proposed commercial recovery which are consistent with the provisions of the Act and this part as set forth in §§ 971.418 through 971.430. Proposed and final TCRs will be uniform in all permits, except to the extent that differing physical and environmental conditions and/or mining methods require the establishment of special TCRs for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The Administrator will propose TCRs in writing to the applicant, and public notice thereof will be provided pursuant to § 971.401. The proposed TCRs will be included with the draft of the EIS on permit issuance.

(2) If the Administrator does not propose TCRs within 180 days after certification, the Administrator will notify the applicant in writing of the reasons for delay and of the approximate date on which the proposed TCRs will be completed.

(c) *Findings.* Before issuing or transferring a commercial recovery permit, the Administrator must make written findings in accordance with the requirements of § 971.403 through § 971.408. These findings will be made after considering all information submitted with respect to the application and proposed issuance or transfer. The Administrator will make a final determination of issuance or transfer of a permit, and will publish a final EIS on that action, within 180 days (or such longer period of time as the Administrator may establish for good cause shown in writing) following the date on which proposed TCRs and the draft EIS are published.

ISSUANCE/TRANSFER, MODIFICATION/REVISION; SUSPENSION/REVOCATION

§ 971.401 Proposal to issue or transfer and proposed terms, conditions and restrictions.

(a) *Notice and comment.* The Administrator will publish in the FEDERAL REGISTER notice of each proposal to issue or transfer, including notice of a draft EIS, and of proposed terms and conditions for, and restrictions on, a commercial recovery permit that will be included with the draft EIS [see § 971.400(b)]. Subject to § 971.802, interested persons will be permitted to examine the materials relevant to such proposals. Interested persons and affected States will have at least 60 days after publication of such notice to submit written comments to the Administrator.

(b) *Hearings.* (1) The Administrator will hold the public hearing(s) required by § 971.212(b) in an appropriate location and may employ such additional methods as he deems appropriate to inform interested persons about each proposal and to invite their comments thereon. A copy of the notice and draft EIS will be provided to the affected State agency. Information provided by NOAA may be used to supplement information provided by the applicant, however it will not affect schedules for State agency review and decisions with respect to consistency determinations as required in 15 CFR part 930, subpart D.

(2) If the Administrator determines there exist one or more specific and material factual issues which require resolution by formal processes, at least

one formal hearing, which may be consolidated with a hearing held by another agency, will be held in the District of Columbia metropolitan area in accordance with the provisions of subpart I of this part. The record developed in any such formal hearing will be part of the basis for the Administrator's decisions on issuance or transfer of, and on TCRs for, the permit.

§ 971.402 Consultation and cooperation with Federal and State agencies.

Before issuance or transfer of a commercial recovery permit, the Administrator will conclude any consultations in cooperation with other Federal and State agencies which were initiated pursuant to §§ 971.211 and 971.200(g). These consultations will be held to assure compliance with, as applicable and among other statutes, the Endangered Species Act of 1973, as amended, the Marine Mammal Protection Act of 1972, as amended, the Fish and Wildlife Coordination Act, and the Coastal Zone Management Act of 1972, as amended. The Administrator also will consult, before any issuance, transfer, modification or renewal of a permit, with any affected Regional Fishery Management Council established pursuant to section 302 of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852) if the activities undertaken pursuant to the permit could adversely affect any fishery within the Fishery Conservation Zone (now known as the Exclusive Economic Zone), or any anadromous species or Continental Shelf fishery resource subject to the exclusive management authority of the United States beyond that zone.

§ 971.403 Freedom of the high seas.

(a) Before issuing or transferring a commercial recovery permit, the Administrator must find the recovery proposed in the application will not unreasonably interfere with the exercise of the freedoms of the high seas by other nations, as recognized under general principles of international law.

(b) In making this finding, the Administrator will recognize that commercial recovery of hard mineral resources of the deep seabed is a freedom of the high seas. In the exercise of this right, each permittee shall act with reasonable regard for the interests of other nations in their exercise of the freedoms of the high seas.

(c)(1) In the event of a conflict between the commercial recovery program of an applicant or permittee and a competing use of the high seas by another nation or its nationals, the Administrator, in consultation and cooperation with the Department of State and other interested agencies, will enter into negotiations with that nation to resolve the conflict. To the maximum extent possible the Administrator will endeavor to resolve the conflict in a manner that will allow both uses to take place such that neither will unreasonably interfere with the other.

(2) If both uses cannot be conducted harmoniously in the area subject to the recovery plan, the Administrator will decide whether to issue or transfer the permit.

§ 971.404 International obligations of the United States.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application will not conflict with any international obligation of the United States established by any treaty or international convention in force with respect to the United States.

§ 971.405 Breach of international peace and security involving armed conflict.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the recovery proposed in the application will not create a situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

§ 971.406 Environmental effects.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse environmental effect, taking into account the analyses and information in any applicable EIS and any TCRs associated

with the permit. This finding also will be based upon the requirements in subpart F. However, as also noted in subpart F, if a determination on this question cannot be made on the basis of available information, and it is found that irreparable harm will not occur during a period when an approved monitoring program is undertaken to further examine the significant adverse environmental effect issue, a permit may be granted, subject to modification or suspension and, if necessary and appropriate, revocation pursuant to §971.417(a), or subject to emergency suspension pursuant to §971.417(h).

§971.407 Safety at sea.

Before issuing or transferring a commercial recovery permit, the Administrator must find that the commercial recovery proposed in the application will not pose an inordiante threat to the safety of life and property at sea. This finding will be based on the requirements in §971.205 and subpart G.

§971.408 Processing outside the United States.

(a) Before issuing or transferring a commercial recovery permit which authorizes processing outside the U.S., the Administrator must find, after the opportunity for an agency hearing required by §971.212(b), that:

(1) The processing of the quantity concerned of hard mineral resource at a place other than within the United States is necessary for the economic viability of the commercial recovery activities of the permittee; and

(2) Satisfactory assurances have been given by the permittee that such resources, after processing, to the extent of the permittee's ownership therein, will be returned to the United States for domestic use, if the Administrator so requires after determining that the national interest necessitates such return.

(b) At or after permit issuance the Administrator may determine, or revise a prior determination, that the national interest necessitates return to the U.S. of a specified amount of hard mineral resource recovered pursuant to the permit and authorized to be processed outside the United States. Considerations in making this determination may include:

(1) The national interest in an adequate supply of minerals;

(2) The foreign policy interests of the United States; and

(3) The multi-national character of deep seabed mining operations.

(c) As appropriate, TCRs will incorporate provisions to implement the decision of the Administrator made pursuant to this section.

(d) Environmental considerations of the proposed activity will be addressed in accordance with §971.606(c).

§971.409 Denial of issuance or transfer.

(a) The Administrator may deny issuance or transfer of a permit if he finds that the applicant or the proposed commercial recovery activities do not meet the rquirements of this part for the issuance or transfer of a permit.

(b) When the Administrator proposes to deny issuance or transfer, he will send to the applicant, via certified mail, return receipt requested, and publish in the FEDERAL REGISTER, written notice of his intention to deny issuance or transfer. The notice will include:

(1) The basis upon which the Administrator proposes to deny issuance or transfer; and

(2) If the basis for the proposed denial is a deficiency which the Administrator believes the applicant can correct:

(i) The action believed necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(c) The Administrator will deny issuance or transfer:

(1) On the 30th day after the date the notice is received by the applicant under paragraph (b) of this section, unless before the 30th day the applicant files with the Administrator a written request for an administrative review of the proposed denial; or

(2) On the last day of the period established under paragraph (b)(2)(ii) in

which the applicant must correct a deficiency, if the deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (c)(1) is not pending or in progress.

(d) If a timely request for administrative review of the proposed denial is made by the applicant under paragraph (c)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with subpart I. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(e) If the Administrator denies issuance or transfer, the Administrator will send to the applicant written notice of final denial, including the reasons therefor.

(f) Any final determination by the Administrator granting or denying issuance or transfer of a permit is subject to judicial review as provided in chapter 7 of title 5, United States Code.

§ 971.410 Notice of issuance or transfer.

If the Administrator finds that the requirements of this subpart have been met, he will issue or transfer the permit along with the appropriate TCRs. Notice of issuance or transfer will be made in writing to the applicant and published in the FEDERAL REGISTER.

§ 971.411 Objections to terms, conditions and restrictions.

(a) The permittee may file a notice of objection to any TCR in the permit. The permittee may object on the grounds that any TCR is inconsistent with the Act or this part, or on any other grounds which may be raised under applicable provisions of law. If the permittee does not file notice of an objection within the 60-day period immediately following the permittee's receipt of the notice of issuance or transfer under § 971.410, the permittee will be deemed conclusively to have accepted the TCRs in the permit.

(b) Any notice of objection filed under paragraph (a) of this section must be in writing, must indicate the legal or factual basis for the objection, and must provide information relevant to any underlying factual issues deemed by the permittee as necessary to the Administrator's decision upon the objection.

(c) Within 90 days after receipt of the notice of objection, the Administrator will act on the objection and publish in the FEDERAL REGISTER, as well as provide to the permittee, written notice of the decision.

(d) If, after the Administrator takes final action on an objection, the permittee demonstrates that a dispute remains on a material issue of fact, the Administrator will provide for a formal hearing which will proceed in accordance with Subpart I of this part.

(e) Any final determination by the Administrator on an objection to TCRs in a permit, after the formal hearing provided in paragraph (d), is subject to judicial review as provided in chapter 7 of title 5, United States Code.

§ 971.412 Changes in permits and permit terms, conditions, and restrictions.

(a) During the duration of a commercial recovery permit, changes in the permit or its associated commercial recovery plan may be initiated by either the permittee or the Administrator.

(b) A significant change is one which, if approved, would result in:

(1) An increase of more than five percent in the size of the commercial recovery area; or

(2) A change in the location of five percent or more of the commercial recovery area.

(c) A major change is one affecting one or more of:

(1) The bases for certifying the original application pursuant to § 971.301;

(2) The bases for issuing or transferring the permit pursuant to § 971.403 through § 971.408;

(3) The TCRs issued as part of the permit pursuant to §§ 971.418 through 971.430; or

(4) The ownership of a permittee (or the membership of the joint venture, partnership or other entity on whose behalf the permit was issued); and which change is sufficiently broad in scope to raise a question as to:

(i) The permittee's ability to meet the requirements of the sections cited in paragraphs (c)(1) and (2) of this section;

(ii) The sufficiency of the TCRs to accomplish their intended purpose; or

(iii) The antitrust characteristic of the permittee.

(d) A minor change is one that is clearly more modest in scope than the changes described in paragraph (b) or (c) of this section.

(e) A permittee may not implement a significant or major change, as defined in paragraphs (b) and (c) of this section, until an application for revision of the permit or its associated commercial recovery plan has been approved by the Administrator. However, advance notice of proposed major changes in a permittee's corporate membership or legal structure is not required, unless practicable, but the Administrator expects prompt notification of the occurrence of such a major change.

(f) A proposed significant or major change, as defined in paragraphs (b) and (c) of this section, may trigger the need for additional review, under the Federal consistency provisions of the Coastal Zone Management Act of 1972, as amended.

§ 971.413 Revision of a permit.

(a) During the term of a commercial recovery permit, the permittee may submit to the Administrator an application for a revision of the permit or the commercial recovery plan associated with it to accommodate changes desired by the permittee. In some cases it may be advisable to recognize at the time of filing the original permit application that, although the essential information for issuing or transferring a permit as specified in § 971.201 through § 971.209 must be included in such application, some details may have to be provided in the future in the form of a revision. In such instances, the Administrator may issue or transfer a permit which would authorize commercial recovery activities and plans only to the extent described in the application.

(b) An application by a permittee for a revision of a permit or its associated commercial recovery plan involving a significant change, as defined in § 971.412(b), must be followed by the full application procedures in this part, including a public hearing.

(c) An application by a permittee for a revision of a permit or its associated commercial recovery plan involving a major change, as defined in § 971.412(c) (See also § 971.425 of this part), will be acted on after notice thereof is published by the Administrator in the FEDERAL REGISTER with a 60-day opportunity for public comment and consultation with appropriate Federal agencies.

(d)(1) The Administrator will approve a revision if the Administrator finds in writing that the revision will comply with the requirements of the Act and this part.

(2) Notice of the Administrator's decision on the proposed revision will be provided to the permittee in writing and published in the FEDERAL REGISTER.

(e) A permittee may notify the Administrator of minor changes, as defined in § 971.412(d), subsequently in the annual report (See § 971.801 of this part).

(f) If the relative importance of the change is unclear to the permittee, the Administrator should be notified in advance so that the Administrator can decide whether a revision in accordance with § 971.412(e) is required.

§ 971.414 Modification of permit terms, conditions, and restrictions.

(a) After issuance or transfer of any permit, the Administrator, after consultation with appropriate Federal agencies and the permittee, may modify the TCRs in a permit for the following purposes:

(1) To avoid unreasonable interference with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. This determination will take into account the considerations listed in § 971.403;

(2) If relevant data and information (including, but not limited to, data resulting from activities under a permit) indicate that modification is required to protect the quality of the environment or to promote the safety of life and property at sea;

(3) To avoid a conflict with any international obligation of the United States, established by any treaty or convention in force with respect to the United States, as determined in writing by the President; or

(4) To avoid any situation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict, as determined in writing by the President.

(b) A proposal by the Administrator to modify the TCRs in a permit is significant and must be followed by the full application procedures in this part, including a public hearing, if it would result in either of the changes identified in §971.412(b).

(c) All proposed modifications other than those described in paragraph (b) of this section will be acted on after the Administrator provides:

(1) Written notice of the proposal to the permittee; and

(2) Publication of this proposal in the FEDERAL REGISTER with a 60-day opportunity for comment.

(d)(1) The Administrator will effect a modification of the TCRs if the Administrator finds in writing that the proposed modification will comply with the requirements of the Act and this part.

(2) Upon adopting a TCR modification, the Administrator shall issue to the permittee an amended permit including the modified TCRs, and shall publish notice of issuance in the FEDERAL REGISTER.

(3) The procedures for objection to modification of the TCRs are the same as those for objection to a TCR under §971.411 of this part.

§971.415 Duration of a permit.

(a) Unless suspended or revoked pursuant to §§971.406 and 971.417, each commercial recovery permit will be issued for a period of 20 years and for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area listed in the permit.

(b) If the permittee has substantially complied with the permit and its associated recovery plan and requests an extension of the permit, the Administrator will extend the permit with appropriate TCRs, consistent with the Act, for so long thereafter as hard mineral resources are recovered annually in commercial quantities from the area to which the recovery plan associated with the permit applies. The Administrator may make allowance for deviation from the recovery plan for good cause, such as significantly changed market conditions. However, a request for extension must be accompanied by an amended recovery plan to govern the activities by the permittee during the extended period.

(c) Successive extensions may be requested, and will be granted by the Administrator, based on the criteria specified in paragraphs (a) and (b).

§971.416 Approval of permit transfers.

(a) The Administrator may transfer a permit after a written request by the permittee. After a permittee submits a transfer request to the Administrator, the proposed transferee will be deemed an applicant for a commercial recovery permit, and will be subject to the requirements and procedures of this part.

(b) The Administrator will transfer a permit if the proposed transferee is a United States citizen and proposed commercial recovery activities meet the requirements of the Act and this part, and if the proposed transfer is in the public interest. The Administrator will presume that the transfer is in the public interest if it meets the requirements of the Act and this part. In case of mere change in the form or ownership of a permittee, the Administrator may waive relevant determinations for requirements for which no changes have occurred since the preceding application.

§971.417 Suspension or modification of activities; suspension or revocation of permits.

(a) The Administrator may:

(1) In addition to, or in lieu of, the imposition of any civil penalty under subpart J of this part, or in addition to the imposition of any fine under subpart J, suspend or revoke any permit issued under this part, or suspend or modify any particular activities under such a permit, if the permittee substantially fails to comply with any provision of the Act, this part, or any

term, condition or restriction of the permit; and

(2) Suspend or modify particular activities under any permit, if the President determines that such suspension or modification is necessary:

(i) To avoid any conflict with any international obligation of the United States established by any treaty or convention in force with respect to the United States; or

(ii) To avoid any situtation which may reasonably be expected to lead to a breach of international peace and security involving armed conflict.

(b) Any action taken by the Administrator in accordance with paragraph (a)(1) will proceed pursuant to the procedures in § 971.1003. Any action taken in accordance with paragraph (a)(2) will proceed pursuant to paragraphs (c) through (i) of this section, other than paragraph (h)(2).

(c) Prior to taking any action specified in paragraph (a)(2) the Administrator will publish in the FEDERAL REGISTER, and send to the permittee, written notice of the proposed action. The notice will include:

(1) The basis of the proposed action; and

(2) If the basis for the proposed action is a deficiency which the Administrator believes the permittee can correct:

(i) The action necessary to correct the deficiency; and

(ii) The time within which any correctable deficiency must be corrected (not to exceed 180 days except as specified by the Administrator for good cause).

(d) The Administrator will take the proposed action:

(1) On the 30th day after the date notice is sent to the permittee, under paragraph (c) of this section, unless before the 30th day the permittee files with the Administrator a written request for an administrative review of the proposed action; or

(2) On the last day of the period established under paragraph (c)(2)(ii) in which the permittee must correct the deficiency, if such deficiency has not been corrected before that day and an administrative review requested pursuant to paragraph (d)(1) is not pending or in progress.

(e) If a timely request for administrative review of the proposed denial is made by the permittee under paragraph (d)(1) of this section, the Administrator will promptly begin a formal hearing in accordance with subpart I of this part. If the proposed denial is the result of a correctable deficiency, the administrative review will proceed concurrently with any attempt to correct the deficiency, unless the parties agree otherwise or the administrative law judge orders differently.

(f) The Administrator will serve on the permittee, and publish in the FEDERAL REGISTER, written notice of the action taken including the reasons therefor.

(g) Any final determination by the Administrator to take the proposed action is subject to judicial review as provided in chapter 7 of title 5, United States Code.

(h) The issuance of any notice of proposed action under this section will not affect the continuation of commercial recovery activities by a permittee. The provisions of paragraphs (c), (d), (e) and the first sentence of this paragraph (h) of this section will not apply when:

(1) The President determines by Executive Order that an immediate suspension or modification of particular activities under that permit, is necessary for the reasons set forth in paragraph (a)(2); or

(2) The Administrator determines that immediate suspension of such a permit or immediate suspension or modification of particular activities under a permit, is necessary to prevent a significant adverse environmental effect or to preserve the safety of life or property at sea, and the Administrator issues an emergency order in accordance with § 971.1003(d)(4).

(i) The Administrator will immediately rescind the suspension order as soon as he has determined that the cause for suspension has been removed.

TERMS, CONDITIONS AND RESTRICTIONS

§ 971.418 Diligence requirements.

The TCRs in each commercial recovery permit must include provisions to assure diligent development consistent with § 971.503, including a requirement that recovery at commercial scale be

underway within ten years from the date of permit issuance unless that deadline is extended by the Administrator for good cause.

§ 971.419 Environmental protection requirements.

(a) Each commercial recovery permit must contain TCRs established by the Administrator pursuant to subpart F which prescribe actions the permittee must take in the conduct of commercial recovery activities to assure protection of the environment. Factors to be taken into account regarding the potential for significant adverse environmental effects are discussed in §§ 971.601 and 971.602.

(b) Before establishing the TCRs pertaining to environmental protection, the Administrator will consult with the Administrator of the Environmental Protection Agency, the Secretary of State and the Secretary of the department in which the Coast Guard is operating. The Administrator also will take into account and give due consideration to formal comments received from the public, including those from the State agency, and to the information contained in the final site-specific EIS prepared with respect to the proposed permit.

§ 971.420 Resource conservation requirements.

For the purpose of conservation of natural resources, each permit issued under this part will contain, as needed, TCRs which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources in the recovery area. The Administrator will establish these requirements pursuant to § 971.502.

§ 971.421 Freedom of the high seas requirements.

Each permit issued under this part must include appropriate restrictions to ensure that commercial recovery activities do not unreasonably interfere with the interests of other nations in their exercise of the freedoms of the high seas, as recognized under general principles of international law. The Administrator will consider the factors in § 971.403 in establishing these restrictions.

§ 971.422 Safety at sea requirements.

The Secretary of the department in which the Coast Guard is operating, in consultation with the Administrator, will require in any permit issued under this part, in conformity with principles of international law, that vessels documented under the laws of the United States and used in activities authorized under the permit comply with conditions regarding design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the promotion of safety of life and property at sea. These requirements will be established with reference to subpart G of this part.

§ 971.423 Best available technology.

The Administrator will require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant adverse effect on safety, health, or the environment, (see §§ 971.203(b)(3), 971.602(f), and 971.604(a)), except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies.

§ 971.424 Monitoring requirements.

Each commercial recovery permit will require the permittee:

(a) To allow the Administrator to place appropriate Federal officers or employees as observers aboard vessels used by the permittee in commercial recovery activities to:

(1) Monitor activities at times, and to the extent, the Administrator deems reasonable and necessary to assess the effectiveness of the TCRs of the permit; and

(2) Report to the Administrator whenever those officers or employees have reason to believe there is a failure to comply with the TCRs;

(b) To cooperate with Federal officers and employees in the performance of monitoring functions; and

(c) To monitor the environmental effects of the commercial recovery activities in accordance with a monitoring plan approved and issued by NOAA as permit TCRs and to submit data and other information as necessary to permit evaluation of environmental effects. The environmental monitoring plan and reporting will respond to the concerns and procedures discussed in subpart F.

§ 971.425 Changes of circumstances.

Each permit must require the permittee to advise the Administrator of any changes of circumstances which might constitute a revision which would be a major change under § 971.412(c). Changes in ownership, financing, and use conflicts are examples, as are technology or methodology changes including those which might result in significant adverse environmental effects.

§ 971.426 Annual report and records maintenance.

Each permit will require the permittee to submit an annual report and maintain information in accordance with § 971.801 including compliance with the commercial recovery plan and the quantities of hard mineral resources recovered and the disposition of such resources.

§ 971.427 Processing outside the United States.

If appropriate TCRs will incorporate provisions to implement the decision of the Administrator regarding the return of resources processed outside the United States, in accordance with § 971.408.

§ 971.428 Other necessary permits.

Each permit will provide that securing the deep seabed mining permit for activities described in the recovery plan and accompanying application does not eliminate the need to secure all other necessary Federal, State, and local permits.

§ 971.429 Special terms, conditions and restrictions.

Although the general criteria and standards to be used in establishing TCRs for a permit are set forth in this part, as referenced in §§ 971.418 through 971.428, the Administrator may impose special TCRs for the conservation of natural resources, protection of the environment, or the safety of life and property at sea when required by differing physical and environmental conditions.

§ 971.430 Other Federal requirements.

Pursuant to § 971.211, another Federal agency, or a State acting under Federal authority, upon review of a commercial recovery permit application submitted under this part, may propose that certain TCRs be added to the permit, to assure compliance with any law or regulation within that agency's area of responsibility. The Administrator will include appropriate TCRs in a permit.

Subpart E—Resource Development

§ 971.500 General.

Several provisions in the Act relate to appropriate mining techniques or mining efficiency. These raise what could be characterized as resource development issues. In particular, section 103(a)(2)(C) requires a resource assessment to be provided with the recovery plan. Section 103(a)(2)(D) of the Act provides that the applicant will select the size and location of the area of a recovery plan, which will be approved unless the Administrator finds that the area is not a ''logical mining unit'' or the commercial recovery activities in the proposed site would result in a significant adverse environmental effect which cannot be avoided by the imposition of reasonable restrictions. Also, pursuant to section 108 of the Act, the applicant's recovery plan and the TCRs of each permit must be designed to ensure diligent development. In addition, for the purpose of conservation of natural resources, section 110 of the Act provides that each permit is to contain, as needed, terms, conditions, and restrictions which have due regard for the prevention of waste and the future opportunity for the commercial recovery of the unrecovered balance of the resources.

§ 971.501 Resource assessment, recovery plan, and logical mining unit.

(a) The applicant must submit with the application a resource assessment to provide a basis for assessing the area applied for. This assessment must include a discussion of mineable and unmineable areas, taking into account nodule grade, nodule concentration, and other factors such as seafloor topography. These areas may be delineated graphically. The resources in the area must be described in relation to the applicant's production requirements, operating period, and recovery efficiency in order to justify the area applied for.

(b) The applicant shall select the size and location of the area of the recovery plan, which area shall be approved unless the Administrator finds that, among other considerations (see § 971.301(a)), the area is not a logical mining unit. In the case of a commercial recovery permit, a logical mining unit is an area of the deep seabed:

(1) In which hard mineral resources can be recovered in sufficient quantities to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit in an efficient, economical, and orderly manner with due regard for conservation and protection of the environment, taking into consideration the resource data, other relevant physical and environmental characteristics, and the state of the technology of the applicant set out in the recovery plan;

(2) Which is not larger than necessary to satisfy the permittee's estimated production requirements over the initial 20-year term of the permit; and

(3) In relation to which the permittee's estimated production requirements are not found by the Administrator to be unreasonable.

(c) Approval by the Administrator of a proposed logical mining unit will be based on a case-by-case review of each application. The area need not consist of contiguous segments, as long as each segment would be efficiently mineable and the total proposed area constitutes a logical mining unit.

(d) In describing the area, the applicant must present the geodetic coordinates of the points defining the boundaries referred to the World Geodetic System (WGS) Datum. A boundary between points must be a geodesic. If grid coordinates are desired, the Universal Transverse Mercator Grid System must be used.

§ 971.502 Conservation of resources.

(a) If the Administrator establishes terms, conditions and restrictions relating to conservation of resources, he will employ a balancing process in the consideration of the state of the technology being developed, the processing system utilized and the value and potential use of any waste, the environmental effects of the recovery activities, economic and resource data, and the national need for hard mineral resources.

(b) The application must set forth how the applicant's proposed method of collecting nodules will conserve resources by providing for the future opportunity for commercial recovery of the unrecovered balance of the resources in the proposed permit area. Although preliminary and subject to change, the discussion must include a plan for the chronology of areas to be mined. This is needed in order for the Administrator to determine if selective mining, expected to be carried out in the early years to improve cash flow, is part of a long range recovery plan.

(c) If the applicant proposes a refining process that does not include the use of manganese in a productive manner, it may not render the manganese unavailable to future users by dispersing the tailings over a vast area unless such a scheme is necessary for the financial practicability of the commercial recovery activities of the applicant. A permittee must advise the Administrator in the annual report of the location, composition and quantity of manganese in tailings which remain after processing. Should national needs for manganese develop during the duration of a permit, e.g., in case of national emergency, the Administrator may cancel the exception granted involving dispersion of tailings. Applicants seeking an exception would be required to demonstrate how and in what time frame their commercial recovery processing activities could be modified to respond to new national needs.

§ 971.503 Diligent commercial recovery.

(a) Each permittee must pursue diligently the activities described in its approved commercial recovery plan. This requirement applies to the full scope of the plan, including environmental safeguards and monitoring systems. Permit TCRs will require periodic reasonable expenditures for commercial recovery by the permittee, taking into account the size of the area of the deep seabed to which the recovery plan applies and the amount of funds estimated by the Administrator to be required to initiate commercial recovery of hard mineral resources within the time limit established by the Administrator. However, required expenditures will not be established at a level which would discourage commercial recovery or operational efficiency.

(b) To meet the diligence requirement, the applicant must propose to the Administrator an estimated schedule of activities and expenditures pursuant to § 971.203(b)(2). The schedule must show, and the Administrator must be able to make a reasonable determination, that the applicant can reasonably develop the resources in the permit area within the term of the permit. There must be a reasonable relationship between the size of the recovery area and the financial and technological resources reflected in the application. The permittee must initiate the recovery of nodules in commerical quantities within ten years of the issuance of the permit unless this deadline is extended by the Administrator for good cause.

(c) Once commercial recovery is achieved, the permittee must, within reasonable limits and taking into consideration all relevant factors, maintain commercial recovery throughout the period of the permit. However, the Administrator will, for good cause shown, authorize temporary suspension of commercial recovery activities. The duration of any suspension will not exceed one year, unless the Administrator determines that conditions justify an extension of the suspension.

(d) Ultimately, the diligence requirement will involve a retrospective determination by the Administrator, based on the permittee's reasonable conformance to the approved recovery plan. This determination, however, will take into account the need for some degree of flexibility in a recovery plan. It also will include consideration of the needs and stage of development of the permittee based on the approved recovery plan; legitimate periods of time when there is no or very low expenditure; and allowance for a certain degree of flexibility for changes encountered by the permittee in market conditions or other factors.

(e) The permittee must submit a report annually reflecting its conformance to the schedule of activities and expenditures contained in the permit and its associated recovery plan. In case of any changes requiring a revision to an approved permit and recovery plan, the permittee must advise the Administrator in accordance with § 971.413.

Subpart F—Environmental Effects

§ 971.600 General.

The Act contains several provisions which relate to environmental protection. For example, section 105(a)(4) requires that, before the Administrator may issue a commercial recovery permit, he must find that the commercial recovery proposed in the application cannot reasonably be expected to result in a significant adverse environmental effect. In addition, each permit issued must contain TCRs which prescribe actions the permittee must take in the conduct of commercial recovery activities to assure protection of the environment (section 109(b)). The Act also provides for modification by the Administrator of any TCR if relevant data and information indicate that modification is required to protect the quality of the environment (section 105(c)(1)(B)). The Administrator also may order an immediate suspension or modification of activities (section 106(c)), or require use of best available technologies (section 109(b)), to prevent a significant adverse environmental effect. Furthermore, each permit issued under the Act must require the permittee to monitor the environmental effects of commercial recovery activities in accordance with guidelines

issued by the Administrator, and to submit information the Administrator finds necessary and appropriate to assess environmental effects and to develop and evaluate possible methods of mitigating adverse effects (section 114).

§ 971.601 Environmental requirements.

Before issuing a permit for the commercial recovery of deep seabed hard mineral resources, the Administrator must find that:

(a) The issuance of a permit cannot reasonably be expected to result in a significant adverse environmental effect, or, if there is insufficient information to make that determination, that no irreparable harm will result during a period when monitoring of commerical recovery is undertaken to gather sufficient information in order to determine the potential for or occurrence of any significant adverse environmental effect. In examining this issue, NOAA will give consideration to the following Ocean Discharge Criteria of the Clean Water Act (40 CFR part 125, subpart M), as they may pertain to discharges and other environmental perturbations related to the commercial recovery operations:

(1) The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;

(2) The potential transport of such pollutants by biological, physical or chemical processes;

(3) The composition and vulnerability of the biological communities which may be exposed to such pollutants including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, or the presence of those species critical to the structure or function of the ecosystem such as those important for the food chain;

(4) The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism;

(5) The existence of special aquatic sites including but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;

(6) The potential impacts on human health through direct and indirect pathways;

(7) Existing or potential recreational and commercial fishing, including finfishing and shellfishing;

(8) Any applicable requirements of an approved Coastal Zone Management plan;

(9) Such other factors relating to the effects of the discharge as may be appropriate;

(10) Marine water quality criteria developed pursuant to section 304(a)(1) of the Clean Water Act; and

(b) The applicant has an approved monitoring plan (§ 971.603) and the resources and other capabilities to implement it.

§ 971.602 Significant adverse environmental effects.

(a) *Determination of significant adverse environmental effects.* The Administrator will determine the potential for or the occurrence of any significant adverse environmental effect or impact (for the purposes of sections 103(a)(2)(D), 105(a)(4), 106(c) and 109(b) (second sentence) of the Act), on a case-by-case basis.

(b) *Basis for determination.* Determinations will be based upon the best information available, including relevant environmental impact statements, NOAA-collected data, monitoring results, and other data provided by the applicant or permittee, as well as consideration of the criteria in § 971.601(a).

(c) *Related considerations.* In making a determination the Administrator may take into account any TCRs or other mitigation measures.

(d) *Activities with no significant adverse environmental effect.* NOAA believes that exploration-type activities, as listed in the license regulations (15 CFR 970.701), require no further environmental assessment.

(e) *Activities with potential for significant adverse environmental effects.* NOAA research has identified at-sea

testing of recovery equipment, the recovery of manganese nodules in commercial quantities from the deep seabed, and the construction and operation of commercial-scale processing facilities as activities which may have some potential for significant adverse envirnomental effects.

(f) *Related terms, conditions and restrictions.* Permits will be issued with TCRs containing environmental requirements with respect to protection (pursuant to § 971.419), mitigation (pursuant to § 971.419), or best available technology requirements (pursuant to § 971.423), as appropriate, and monitoring requirements (pursuant to § 971.424) to acquire more information on the environmental effects of deep seabed mining.

§ 971.603 At-sea monitoring.

(a) An applicant must submit with its application a monitoring plan designed to enable the Administrator to assess environmental impacts and to develop and evaluate possible methods of mitigating adverse environmental effects, to validate assessments made in the EIS, and to assure compliance with the environmental protection requirements of this part.

(b) The monitoring plan shall include a characterization of the proposed mining system in terms of collector contact, benthic discharge and surface discharge.

(c) The monitoring plan shall include determination of (1) the spatial and temporal characteristics of the mining ship discharges; (2) the spatial extent and severity of the benthic impact, including recovery rate and pattern of benthic recolonization; and (3) any secondary effects that result from the impact of the mining collector and benthic plume.

(d) The monitoring of benthic impact shall involve the study of two types of areas, each selected by the permittee in consultation with NOAA, which areas shall be representative of the environmental characteristics of the permittee's site:

(1) An impact reference area, located in a portion of a permit area tentatively scheduled to be mined early in a commercial recovery plan; and

(2) An interim preservational reference area, located in a portion of a permit area tentatively determined: to be non-mineable, not to be scheduled for mining during the commercial recovery plan, or to be scheduled for mining late in the plan.

Reference areas may be selected provisionally prior to application for a commercial recovery permit.

(e) The following specific environmental parameters must be proposed for examination in the applicant's monitoring plan:

(1) Discharges—

(i) Salinity, temperature, density.

(ii) Suspended particulates concentration and density.

(iii) Particulate and dissolved nutrients and metals.

(iv) Size, configuration, and velocities of discharge.

(2) Upper water column—

(i) Nutrients.

(ii) Endangered species (observations).

(iii) Salinity, temperature, density.

(iv) Currents and direct current shear.

(v) Vertical distribution of light.

(vi) Suspended particulate material advection and diffusion.

(vii) In-situ settling velocities of suspended particulates.

(viii) Zooplankton and trace metals uptake.

(ix) Fish larvae.

(x) Behavior of biota, including commercially and recreationally valuable fish.

(3) Lower water column and seafloor—

(i) Currents.

(ii) Suspended particulate material advection and diffusion.

(iii) In-situ settling velocities of suspended particulates.

(iv) Benthic scraping and blanketing, and their impacts and recovery.

(f) The monitoring plan shall include provision for monitoring those areas impacted by the permittee's mining activities, even if such areas fall outside its minesite, where the proposed activities have the potential to cause significant adverse environmental effect or irreparable harm in the outside area.

(g) After the Administrator's approval of the monitoring plan, this

plan will become a permit TCR. The monitoring plan TCR will include, to the maximum extent practicable, identification of those activities or events that could cause suspension or modification due to environmental effects under § 971.417, or permit revocation in the event that these effects cannot be adequately mitigated. The TCR also will authorize refinement of the monitoring plan prior to testing and commercial-scale recovery, and at other appropriate times, if refinement is necessary to reflect accurately proposed operations or to incorporate recent research or monitoring results.

(h) If test mining is proposed, the applicant shall include in the monitoring plan a monitoring plan for the test(s) as well as a strategy for using the result to monitor more effectively commercial-scale recovery. This monitoring shall address concerns expressed in the PEIS and in the permit EIS.

(i) The monitoring plan shall include a sampling strategy that assures: that it is based on sound statistical methods, that equipment and methods be scientifically accepted, that the personnel who are planning, collecting and analyzing data be scientifically well qualified, and that the resultant data be submitted to the Administrator in accordance with formats of the National Oceanographic Data Center and other formats as may be specified by the Administrator.

(j) Pursuant to section 114(1) of the Act, the Administrator intends to place observers onboard mining vessels, not only to ensure that permit TCRs are followed, but also to evaluate the effectiveness of monitoring strategies, both in terms of protecting the environment and in being cost-effective (See § 971.1005), and if necessary, to develop potential mitigation measures. If modification of permit TCRs or regulations is required to protect the quality of the environment, the Administrator may modify TCRs pursuant to § 971.414, or the regulations pursuant to § 971.804.

§ 971.604 Best available technologies (BAT) and mitigation.

(a) The Administrator shall require in all activities under new permits, and wherever practicable in activities under existing permits, the use of the best available technologies for the protection of safety, health, and the environment wherever such activities would have a significant adverse effect on safety, health, or the environment, except where the Administrator determines that the incremental benefits are clearly insufficient to justify the incremental costs of using such technologies. Because of the embryonic nature of the industry, NOAA is unable either to specify particular equipment or procedures comprising BAT or to define performance standards. Until such experience exists, the applicant shall submit such information as is necessary to indicate, as required above, the use of BAT, the alternatives considered to the specific equipment or procedures proposed, and the rationale as to why one alternative technology was selected in place of another. This analysis shall include a discussion of the relative costs and benefits of the technologies considered.

(b) NOAA is not specifying particular mitigation methodologies or techniques at this time (such as requiring the sub-surface release of mining vessel discharges), but expects applicants and permittees to develop and carry out their operations, to the extent possible, to minimize adverse environmental effects and to be able to demonstrate efforts to that end. The applicant must submit a plan describing how he would mitigate a problem, if it were caused by the surface release of mining vessel discharges, including a plan for the monitoring of any discharges. Based upon monitoring results, NOAA may find it necessary in the future to specify particular procedures for minimizing adverse environmental effects. These procedures would be incorporated into permit TCRs.

(c) NOAA will require the permittee to report, prior to implementation, any proposed technological or operational changes that will increase or have unknown environmental effects. Changes in composition, concentration or size distribution of suspended particulates discharged from the mining vessel, water depth of vessel discharges, depth of cut in the seafloor of the mining collector, and direction or amount of sediment discharged at the seafloor are

factors of concern to NOAA. In reporting any such change, the permittee shall submit information to indicate the use of BAT, alternatives considered, and rationale for selecting one technology in place of another, in a manner comparable to and to the extent required in paragraph (a) of this section. If proposed changes have a high potential for increasing adverse environmental effects, the Administrator may disapprove or require modification of the changes.

§ 971.605 Stable Reference Areas. [Reserved]

§ 971.606 Onshore information.

(a) To assist the Administrator in complying with NEPA requirements and to enable NOAA to function as lead agency in preparing permit site-specific environmental impact statements (EISs) and facilitating the preparation and processing of other environmental documents and permits, the applications must include the following information:

(1) The location and affected environment of port, transport, processing and waste disposal facilities and associated facilities (e.g., maps, land use and layout);

(2) A description of the environmental consequences and socio-economic effects of construction and operation of the facilities, including waste characteristics and toxicity;

(3) Any mitigating measures that may be proposed;

(4) Certification of consistency with the federally approved State coastal management program, where applicable, and evidence of the status of compliance with other State or local requirements relating to protection of the environment; and

(5) Alternative sites and technologies considered by the applicant and the considerations which eliminate their selection.

(b) The applicant must consult with NOAA as early as possible concerning the information to be submitted to NOAA to prepare an adequate environmental impact statement. The applicant is encouraged to consult with potentially affected States as early as is practicable [see also §§ 971.200(g) and 971.213].

(c) The requirements of paragraphs (a)(1)–(3) and (5) of this section also apply if approval of processing outside the United States is requested by the applicant, in accordance with Executive Order 12114 which requires the environmental review of major Federal actions abroad. Information detailing the socio-economic impacts of foreign processing activities is not required.

Subpart G—Safety of Life and Property at Sea

§ 971.700 General.

The Act contains several requirements that relate to assuring the safety of life and property at sea. For example, before the Administrator may issue a permit, he must find that the proposed recovery will not pose an inordinate threat to the safety of life and property at sea (section 105(a)(5)). The Coast Guard, in consultation with NOAA, must require in any permit issued under the Act, in conformity with principles of international law, that vessels documented in the United States and used in activities authorized under the permit comply with conditions regarding the design, construction, alteration, repair, equipment, operation, manning and maintenance relating to vessel and crew safety and the safety of life and property at sea (section 112(a)). The Administrator may impose or modify TCRs for a permit if required to promote the safety of life and property at sea (section 105(c)(1)(B)).

§ 971.701 Criteria for safety of life and property at sea.

Response to the safety at sea requirements in essence will involve vessel inspection requirements, as identified by present laws and regulations. The primary inspection statutes pertaining to United States flag vessels are: 46 App. U.S.C. 86 (Loadlines) and 46 U.S.C. 3301 (Inspection of Seagoing Barges, Seagoing Motor Vessels, and Freight Vessels). United States flag vessels will be required to meet all applicable regulatory requirements, including the requirement for a current valid Coast

Guard Certificate of Inspection (pursuant to §971.205(a)). United States flag vessels are under United States jurisdiction on the high seas and subject to domestic enforcement procedures. With respect to foreign flag vessels, the SOLAS 74 or SOLAS 60 certificate requirements specified in §971.205(b) apply.

Subpart H—Miscellaneous

§971.800 General.

The subpart contains miscellaneous provisions pursuant to the Act which are applicable to exploration licenses and commercial recovery permits.

§971.801 Records to be maintained and information to be submitted by licensees and permittees.

(a)(1) In addition to the information specified elsewhere in the part and in 15 CFR part 970, each licensee and permittee must keep such records, consistent with standard accounting principles, as specified by the Administrator in the license or permit. Such records shall include information which will fully disclose expenditures for exploration for, or commercial recovery of hard mineral resources in the area under license or permit, and any other information which will facilitate an effective audit of these expenditures.

(2) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination to any books, documents, papers, and records of licensees and permittees which are necessary and directly pertinent to verification of the expenditures referred to in paragraph (a)(1) of this section.

(b) In addition to the information specified elsewhere in this part and in 15 CFR part 970, each applicant, licensee or permittee will be required to submit to the Administrator, upon request, data or other information the Administrator may reasonably need for purposes of:

(1) Making determinations with respect to the issuance, revocation, modification, or suspension of the license or permit in question;

(2) Evaluating the effectiveness of license or permit TCRs;

(3) Compliance with the biennial Congressional report requirement contained in section 309 of the Act; and

(4) Evaluation of the exploration or commercial recovery activities conducted by the licensee or permittee.

At a minimum, licensees and permittees shall submit an annual written report within 90 days after each anniversary of the license or permit issuance or transfer, discussing exploration or commercial recovery activities and expenditures. The report shall address diligence requirements (see §971.503 and 15 CFR 970.602), implementation of any approved monitoring plan (see §971.602 and 15 CFR 970.522(c) and 970.702(a)), and applicable changes which do not constitute revisions (see §971.413(e) and 15 CFR 970.513(c)). Permittees must also report the tonnage of nodules recovered (§971.426) and discuss manganese conservation measures (see §971.502).

§971.802 Public disclosure of documents received by NOAA.

(a) *Purpose.* This section provides a procedure by which persons submitting information pursuant to this part and 15 CFR part 970 may request that certain information not be subject to public disclosure. The substantiation requested is intended to assure that NOAA has a complete and proper basis for determining the legality and appropriateness of withholding or releasing the identified information if a public request for disclosure is received.

(b) *Written requests for confidential treatment.* (1) Any person who submits any information pursuant to this part or 15 CFR part 970, which information is considered by that person to be protected by the Trade Secrets Act (18 U.S.C. 1905) or otherwise to be a trade secret or commercial or financial information which is privileged or confidential, may request that the Administrator give the information confidential treatment.

(2)(i) Any request for confidential treatment of information:

(A) Should be submitted at the time of submission of information;

(B) Should state the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurrence of a certain event, or permanently);

(C) Must be submitted in writing; and

(D) Must include the name, mailing address, and telephone number of an agent of the submitter who is authorized to receive notice of requests for disclosure of the information pursuant to paragraph (d) of this section.

(ii) If information is submitted to the Administrator without an accompanying request for confidential treatment, the notice referred to in paragraph (d)(2) of this section need not be given. If a request for confidential treatment is received after the information itself is received, the Administrator will make efforts to the extent administratively practicable to associate the request with copies of the previously submitted information in the files of NOAA and the Federal agencies to which the Administrator distributed the information.

(3)(i) Information subject to a request for confidential treatment must be segregated from information for which confidential treatment is not being requested, and each page (or segregable portion of each page) subject to the request must be clearly marked with the name of the person requesting confidential treatment, the name of the applicant, licensee or permittee, and an identifying legend such as ''Proprietary Information'' or ''Confidential Treatment Requested.'' Where this marking proves impracticable, a cover sheet containing the identifying names and legend must be securely attached to the compilation of information for which confidential treatment is requested. Each copy of the information for which confidential treatment has been requested must be cross-referenced to the appropriate section of the application or other document. All information for which confidential treatment is requested pertaining to the same application or other document must be submitted to the Administrator in a package separate from that information for which confidential treatment is not being requested.

(ii) Each copy of any application or other document with respect to which confidential treatment of information has been requested must indicate, at each place in the application or document where confidential information has been deleted, that confidential treatment of information has been requested.

(4) Normally, the Administrator will not make a determination as to whether confidential treatment is warranted until a request for disclosure of the information is received. However, on a case-by-case basis, the Administrator may make a determination in advance of a request, where it would facilitate obtaining voluntarily submitted information (rather than information required to be submitted under this part).

(c) *Substantiation of request for confidential treatment.* (1) Any request for confidential treatment may include a statement of the basis for believing that the information is deserving of confidential treatment, which addresses the issues relevant to a determination of whether the information is a trade secret, or commercial or financial information which is privileged or confidential. To the extent permitted by applicable law, part or all of any substantiation statement submitted will be treated as confidential if so requested, and must be segregated, marked, and submitted in accordance with the procedure described in paragraph (b)(3) of this section.

(2) Issues addressed in the statement should include:

(i) The commercial or financial nature of the information;

(ii) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(iii) The nature and extent of the competitive harm which would result from public disclosure of the information;

(iv) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(v) The extent to which persons other than the person submitting the information possesses, or have access to, the same information; and

(vi) The nature of the measures which have been and are being taken to

protect the information from disclosure.

(d) *Requests for disclosure of trade secrets, privileged, or confidential information.* (1) Any request for disclosure of information submitted, reported or collected pursuant to this part must be made in accordance with 15 CFR 903.7.

(2) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) of the request for disclosure to the person who requested confidential treatment of the information or to the designated agent. The notice also will:

(i) Inquire whether that person continues to maintain the request for confidential treatment;

(ii) Notify that person of the date (generally, not later than the close of business on the seventh working day after issuance of the notice) by which the person is strongly encouraged to deliver to the Administrator a written statement that the person either:

(A) Waives or withdraws the request for confidential treatment in full or in part; or

(B) Confirms that the request for confidential treatment is maintained;

(iii) Inform that person that by a date the Administrator specifies (generally, not later than the close of business on the seventh working day after issuance of the notice), the person:

(A) Is strongly encouraged to deliver to the Administrator a written statement addressing the issues listed in paragraph (c)(2) of this section, describing the basis for believing that the information is deserving of confidential treatment, if this statement was not previously submitted;

(B) Is strongly encouraged to deliver to the Administrator an update of or supplement to any statement previously submitted under paragraph (c) of this section; and

(C) May present to the Administrator in a form the Administrator deems appropriate (such as by telephone or in an informal conference) agruments against disclosure of the information; and

(iv) Inform that person that the burden is on him to assure that any response to the notice is delivered to the Administrator within the time specified in the notice.

(3) To the extent permitted by applicable law, part or all or of any statement submitted in response to any notice issued under paragraph (d)(2) will be treated as confidential if so requested by the person submitting the response. Any response for which confidential treatment is requested must be segregated, marked and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(4) Upon the expiration of the time allowed for response under paragraph (d)(2) of this section, the Administrator will determine, in consultation with the General Counsel for the Department of Commerce, whether confidential treatment is warranted based on the information then available to NOAA.

(5) If the person who requested confidential treatment waives or withdraws that request, the Administrator will proceed with appropriate disclosure of the information.

(6) If the Administrator determines that confidential treatment is warranted, he will so notify the person requesting confidential treatment, and will issue an initial denial of the request for disclosure of records in accordance with 15 CFR 903.8.

(7) If the Administrator determines that confidential treatment is not warranted for part or all of the information, the Administrator immediately will issue notice by an expeditious means (such as by telephone, confirmed by certified or registered mail, return receipt requested) to the person who requested confidential treatment. The notice will state:

(i) The basis for the Administrator's determination;

(ii) That the Administrator's determination constitutes final agency action on the request for confidential treatment;

(iii) That the final agency action is subject to judicial review under chapter 7 of title 5, United States Code; and

(iv) That on the seventh working day after issuance of the notice described

in this paragraph (d)(7), the Administrator will make the information available to the person who requested disclosure unless the Administrator has first been notified of the filing of an action in a Federal court to obtain judicial review of the determination, and the court has issued an appropriate order preventing or limiting disclosure.

(8) The Administrator will keep a record of the date any notice is issued and the date any response is received, by the Administrator, under this paragraph (d).

(9) In all other respects, procedures for handling requests for records containing information submitted to, reported to, or collected by the Administrator pursuant to this part will be in accordance with 15 CFR Part 903. For example, if ten working days have passed after the receipt of a request for disclosure and, despite the exercise of due diligence by the agency, the Administrator cannot make a determination as to whether confidential treatment is warranted, the Administrator will issue appropriate notice in accordance with 15 CFR 903.8(b)(5).

(e) *Direct submission of confidential information.* If any person has reason to believe that it would be prejudiced by furnishing information required from it to the applicant, licensee or permittee, that person may file the required information directly with the Administrator. Information for which the person requests confidential treatment must be segregated, marked, and submitted in accordance with the procedures described in paragraph (b)(3) of this section.

(f) *Protection of confidential information transmitted by the Administrator to other agencies.* Each copy of information for which confidential treatment has been requested which is transmitted by the Administrator to other Federal agencies will be accompanied by a cover letter containing:

(1) A request that the other Federal agency maintain the information in confidence in accordance with applicable law (including the Trade Secret Act, 18 U.S.C. 1905) and any applicable protective agreement entered into by the Administrator and the Federal agency receiving the information;

(2) A request that the other Federal agency notify the Administrator immediately upon receipt of any request for disclosure of the information; and

(3) A request that all copies of the information be returned to the Administrator for secure storage or disposal promptly after the Federal agency determines that it no longer needs the information for its official use.

(g) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal zone effects of the proposal.

§ 971.803 Relinquishment and surrender of licenses and permits.

(a) Any licensee or permittee may at any time, without penalty:

(1) Surrender to the Administrator a license or permit issued to the licensee or permittee; or

(2) Relinquish to the Administrator, in whole or in part, any right to conduct any exploration or commercial recovery activities authorized by the license or permit.

(b) Any licensee or permittee who surrenders, or relinquishes any right under, a license or permit will remain liable with respect to all violations and penalties incurred, and damage to persons or property caused, by the licensee or permittee as a result of activities engaged in by the licensee or permittee under the license or permit.

§ 971.804 Amendment to regulations for conservation, protection of the environment, and safety of life and property at sea.

The Administrator may amend the regulations in this part and 15 CFR part 970 at any time as the Administrator determines to be necessary and appropriate in order to provide for the conservation of natural resources, protection of the environment, or the safety of life and property at sea. The amended regulations will apply to all

exploration or commercial recovery activities conducted under any license or permit issued or maintained pursuant to this part or 15 CFR part 970, except that amended regulations which provide for conservation of natural resources will apply to activities conducted under an existing license or permit during the present term of that license or permit only if the Administrator determines that the amended regulations providing for conservation of natural resources will not impose serious or irreparable economic hardship on the licensee or permittee. Any amendment to regulations under this section will be made pursuant to the procedures in subpart I of this part.

§ 971.805 Computation of time.

Except where otherwise specified, Saturdays, Sundays and Federal Government holidays will be included in computing the time period allowed for filing any document or paper under this part or 15 CFR part 970, but when a time period expires on any of these days, that time period will be extended to include the next following Federal Government work day. Filing periods expire at the close of business on the day specified, for the office specified.

Subpart I—Uniform Procedures

§ 971.900 Applicability.

The regulations of this subpart govern the following hearings conducted by NOAA under this part and under 15 CFR part 970:

(a) All adjudicatory hearings required by section 116(b) of the Act to be held on the following actions upon a finding by the Administrator that one or more specific and material issues of fact exist which require resolution by formal process, including but not limited to:

(1) All applications for issuance or transfer of licenses or permits;

(2) All proposed TCRs on a license or permit; and

(3) All proposals to modify significantly a license or permit;

(b) Hearings conducted under section 105(b)(3) of the Act on objection by a licensee or permittee to any term, condition or restriction in a license or permit, or to modification thereto, where the licensee or permittee demonstrates, after final action by the Administrator on the objection, that a dispute remains as to a material issue of fact;

(c) Hearings conducted in accordance with section 106(b) of the Act pursuant to a timely request by an applicant or a licensee or permittee for review of:

(1) A proposed denial of issuance or transfer of a license or permit; or

(2) A proposed suspension or modification of particular activities under a license or permit after a Presidential determination pursuant to section 106(a)(2)(B) of the Act;

(d) Hearings conducted in accordance with section 308(c) of the Act to amend regulations for the purpose of conservation of natural resources, protection of the environment, and safety of life and property at sea;

(e) Hearings conducted in accordance with § 971.302 or 15 CFR 970.407 on a proposal to deny certification of an application; and

(f) Hearings conducted in accordance with 15 CFR part 970, subpart C to determine priority of right among preenactment explorers.

§ 971.901 Formal hearing procedures.

(a) *General.* (1) All hearings described in § 971.900 are governed by subpart C of 15 CFR part 904, as modified by this section. The rules in this subpart take precedence over 15 CFR part 904, subpart C, to the extent there is a conflict.

(2) Hearings held under this section will be consolidated insofar as practicable with hearings held by other agencies.

(3) For the purposes of this subpart, *involved applicant, licensee or permittee* means an applicant, licensee or permittee the status of whose application, license, permit or activities conducted under the license or permit may be altered by the Administrator as a result of proceedings under this subpart.

(b) *Decision to hold a hearing.* Whenever the Administrator finds that a formal hearing is required by the provisions of this part or 15 CFR part 970, he will provide for a formal hearing. Upon deciding to hold a formal hearing, the Administrator will refer the proceeding to the Department of Commerce Office

of Administrative Law Judges for assignment to an Administrative Law Judge to serve as presiding officer for the hearing.

(c) *Notice of formal hearing.* (1) The Administrator will publish notice of the formal hearing in the FEDERAL REGISTER at least 15 days before the beginning of the hearing, and will send written notice by registered or certified mail to any involved applicant, licensee or permittee and to all persons who submitted written comments upon the action in question, or who testified at any prior informal hearing on the action or who filed a request for the formal hearing under this part or 15 CFR part 970.

(2) Notice of a formal hearing will include, among other things:

(i) Time and place of the hearing and the name of the presiding judge, as determined under paragraph (b) of this section;

(ii) The name and address of the person(s) requesting the formal hearing or a statement that the formal hearing is being held by order of the Administrator;

(iii) The issues in dispute which are to be resolved in the formal hearing;

(iv) The due date for filing a written request to participate in the hearing in accordance with paragraphs (f)(2) and (f)(3) of this section; and

(v) Reference to any prior informal hearing from which the issues to be determined arose.

(d) *Powers and duties of the administrative law judge.* In addition to the powers enumerated in 15 CFR part 904. Subpart C, judges will have the power to:

(1) Regulate the course of the hearing and the conduct of the parties, interested persons and others submitting evidence, including but not limited to the power to require the submission of part or all of the evidence in written form if the judge determines a party will not be prejudiced thereby, and if otherwise in accordance with law;

(2) Rule upon requests submitted in accordance with paragraph (f)(2) of this section to participate as a party, or requests submitted in accordance with paragraph (f)(3) of this section to participate as an interested person in a proceeding, by allowing, denying, or limiting such participation; and

(3) Require at or prior to any hearing, the submission and exchange of evidence.

(e) *Argument.* At the close of the formal hearing, each party will be given the opportunity to submit written arguments on the issues before the judge.

(f) *Hearing participation.* (1) Parties to the formal hearing will include:

(i) The NOAA General Counsel;

(ii) Any involved applicant, licensee or permittee; and

(iii) Any other person determined by the judge, in accordance with paragraph (f)(2) below, to be eligible to participate as a full party.

(2) Any person desiring to participate as a party in a formal hearing must submit a request to the judge to be admitted as a party. The request must be submitted within ten days after the date of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. Such person will be allowed to participate if the judge finds that the interests of justice and a fair determination of the issues would be served by granting the request. The judge may entertain a request submitted after the expiration of the ten days, but such a request may only be granted upon an express finding on the record that:

(i) Special circumstances justify granting the request;

(ii) The interests of justice and a fair determination of the issues would be served by granting the request;

(iii) The requestor has consented to be bound by all prior written agreements and stipulations agreed to by the existing parties, and all prior orders entered in the proceedings; and

(iv) Granting the request will not cause undue delay or prejudice the rights of the existing parties.

(3)(i) Any interested person who desires to submit evidence in a formal hearing must submit a request within ten days after the dates of mailing or publication of notice of a decision to hold a formal hearing, whichever occurs later. The judge may waive the ten day rule for good cause, such as if the interested person, making this request after the expiration of the ten

days, the formal hearing, and the evidence he proposes to submit may significantly affect the outcome of the proceedings.

(ii) The judge may permit an interested person to submit evidence at any formal hearing if the judge determines that such evidence is relevant to facts in dispute concerning the issue(s) being adjudicated. The fact that an interested person may submit evidence under this paragraph at a hearing does not entitle the interested person to participate in other ways in the hearing unless allowed by the judge under paragraph (f)(3)(iii) below.

(iii) The judge may allow an interested person to submit oral testimony, oral arguments or briefs, or to cross-examine witnesses or participate in other ways, if the judge determines:

(A) That the interests of justice would be better served by allowing such participation by the interested person; and

(B) That there are compelling circumstances favoring such participation by the interested person.

(g) *Definition of issues.* (1) Whenever a formal hearing is conducted pursuant to this section the Administrator may certify the issues for decision to the judge, and if the issues are so certified, the formal hearing will be limited to those issues.

(2) Whenever a formal hearing is conducted pursuant to a request by an applicant, licensee or permittee for review of a denial of certification, issuance or transfer of a license or permit in accordance with section 106(a)(4) of the Act, or pursuant to an objection to any term, condition, or restriction in a permit in accordance with section 105(b)(3) or (c)(4) of the Act, no issues may be raised by any party or interested person that were not previously raised in the administrative proceedings on the action pursuant to any such section, unless the judge determines that good cause is shown for the failure to raise them. Good cause includes the case where the party seeking to raise the new issues shows that it could not reasonably have ascertained the issues at a prior stage in the administrative process, or that it could not have reasonably anticipated the relevance or materiality of the information sought to be introduced.

(h) *Decisions*—(1) *Proposed findings of fact and conclusions of law.* The judge will allow each party to file with the judge proposed findings of fact, and in appropriate cases conclusions of law, together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs must be filed within ten days after the hearing or within such additional time as the judge may allow. Such proposals and briefs must refer to all portions of the record and to all authorities relied upon in support of each proposal. Reply briefs must be submitted within ten days after receipt of the proposed findings and conclusions to which they respond, unless the judge allows additional time.

(2) *Recommended decision.* (i) As soon as practicable, but normally not later than 90 days after the conclusion of the formal hearing, the judge will evaluate the record of the formal hearing and prepare and file a recommended decision with the Administrator. The decision will contain findings of fact, when appropriate, conclusions regarding all material isuses of law, and a recommendation as to the appropriate action to be taken by the Administrator. The judge will serve a copy of the decision on each party and upon the Administrator.

(ii) Within thirty days after the date the recommended decision is served, any party may file with the Administrator exceptions to the recommended decision. The exceptions must refer to all portions of the record and to all authorities relied on in support of the exceptions.

(3) *Final decision.* (i) As soon as practicable, but normally not later than 60 days after receipt of the recommended decision, the Administrator will issue a final decision. The final decision will include findings of fact and conclusions regarding material issues of law or discretion, as well as reasons therefor. The final decision may accept or reject all or part of the recommended decision. The Administrator shall assure that the record shows the ruling on each exception presented.

(ii) With respect to hearings held pursuant to section 116(b), the Administrator may defer announcement of his findings of fact until the time he takes final action with respect to any action described in section 116(a).

(iii) The Administrator will base the final decision upon the record already made except that the Administrator may issue orders:

(A) Specifying the filing of supplemental briefs; or

(B) Remanding the matter to the judge for the receipt of further evidence, or otherwise assisting in the determination of the matter.

(i) *Filing and service of documents.* (1) Whenever the regulations in this subpart or an order issued hereunder require a document to be filed within a certain period of time, such document will be considered filed as of the date of the postmark, if mailed, or (if not mailed) as of the date actually delivered to the office where filing is required. Time periods will begin to run on the day following the date of the document, paper, or event which begins at the time period.

(2) All submissions must be signed by the person making the submission, or by the person's attorney or other authorized agent or representative.

(3) Service of a document must be made by delivering or mailing a copy of the document to the known address of the person being served.

(4) Whenever the regulations in this subpart require service of a document, such service may effectively be made on the agent for the service of process or on the attorney for the person to be served.

(5) Refusal of service of a document by the person, his agent, or attorney will be deemed effective service of the document as of the date of such refusal.

(6) A certficate of the person serving the document by personal delivery or by mailing, setting forth the manner of the service, will be proof of the service.

Subpart J—Enforcement

§ 971.1000 General.

(a) *Purpose and scope.* (1) Section 302 of the Act authorizes the Administrator to assess a civil penalty, in an amount not to exceed $25,000 for each violation, against any person found to have committed an act prohibited by section 301 of the Act. Each day of a continuing violation is a separate offense.

(2) Section 106 of the Act describes the circumstances under which the Administrator may suspend or revoke a license or permit, or suspend or modify activities under a license or permit, in addition to or in lieu of imposing of a civil penalty, or in addition to imposing a fine.

(3) Section 306 of the Act makes provisions of the customs laws relating to, among other things, the remission or mitigation of forfeitures, applicable to forfeitures of vessels and hard mineral resources. The Administrator is authorized to entertain petitions for administrative settlement of property seizures made under the Act which would otherwise proceed to judicial forfeiture.

(4) Section 114 of the Act authorizes the Administrator to place observers on vessels used by a licensee or permittee under the Act to monitor compliance and environmental effects of activities under the license or permit.

(5) Section 117 of the Act describes the circumstances under which a person may bring a civil action against an alleged violator or against the Administrator for failure to perform a nondiscretionary duty, and directs the Administrator to issue regulations governing procedures prerequisite to such a civil action.

(6) The regulations in this subpart provide uniform rules and procedures for the assessment of civil penalties (§§ 971.1001–971.1002), and license and permit sanctions (§ 971.1003); the remission or mitigation of forfeitures (§ 971.1004); observers (§ 971.1005); protection of certain information related to enforcement (§ 971.1006); and procedures requiring persons planning to bring a civil action under section 117 of the Act to give advance notice (§ 971.1007).

(b) *Filing and service of documents.* (1) Except as otherwise provided by this subpart, filing and service of documents required by this subpart will be in accordance with § 971.901(i). The method for computing time periods set forth in § 971.901(i) also applies to any

action or event, such as payment of a civil penalty, required by this subpart to take place within a specified period of time.

(2) If an oral or written request is made to the Administrator within ten days after the expiration of a time period established in this subpart for the required filing of documents, the Administrator may permit a late filing if the Administrator finds reasonable grounds for an inability or failure to file within the time periods. All extensions will be in writing. Except as provided by this paragraph, by 15 CFR 904.102 or by order of an administrative law judge, no requests for an extension of time may be granted.

§ 971.1001 Assessment procedure.

Subpart B of 15 CFR part 904 governs the procedures for assessing a civil penalty under the Act, and the rights of any person against whom a civil penalty is assessed.

§ 971.1002 Hearing and appeal procedures.

(a) *Beginning of hearing procedures.* Following receipt of a written request for a hearing timely filed under 15 CFR 904.102, the Administrator will begin procedures under this section by forwarding the request, a copy of the NOVA, and any response thereto to the Department of Commerce, Office of Administrative Law Judges.

(b) Subpart C of 15 CFR part 904 governs the hearing and appeal procedures for civil penalties assessed under the Act.

§ 971.1003 License and permit sanctions.

(a) *Application of this section.* This section governs the suspension or revocation of any license or permit issued under the Act, or the suspension or modification of any particular activity or activities under a license or permit, which suspension, revocation or modification is undertaken in addition to, or in lieu of, imposing a civil penalty under this subpart, or in addition to imposing a fine.

(b) *Basis for sanctions.* The Administrator may act under this section with respect to a license or permit issued under the Act, or any particular activity or activities under such a license or permit, if the licensee or permittee substantially fails to comply with any provision of the Act, any regulation or order issued under the Act, or any term, condition, or restriction in the license or permit.

(c) *Nature of sanctions.* In the Administrator's discretion and subject to the requirements of this section, the Administrator may take any of the following actions or combinations thereof with respect to a license or permit issued under the Act:

(1) Revoke the license or permit;

(2) Suspend the license or permit, either for a specified period of time or until certain stated requirements are met, or both; or

(3) Modify any activity under the license or permit, as by imposing additional requirements or restraints on the activity.

(d) *Notice of sanction.* (1) The Administrator will prepare a notice of sanction (NoS) setting forth the sanction to be imposed and the basis therefore. The NoS will state:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation, license or permit, or order allegedly violated;

(iii) The nature and duration of the proposed sanction;

(iv) The effective date of the sanction, which is 30 days after the date of the notice unless the Administrator establishes a different effective date under paragraph (d)(4) or paragraph (e) of this section;

(v) That the licensee or permittee has 30 calendar days from receipt of the notice in which to request or waive a hearing, under paragraph (f) of this section; and

(vi) The determination made by the Administrator under paragraph (e)(1) of this section, and any time period that the Administrator provides the licensee or permittee under paragraph (e)(1) to correct a deficiency.

(2) If a hearing is requested in a timely manner, the sanction becomes effective as provided in the final decision of the Administrator issued pursuant to paragraph (g) of this section, unless the Administrator provides otherwise under paragraph (d)(4) of this section.

(3) The NoS will be served personally or by registered or certified mail, return receipt requested, on the licensee or permittee. The Administrator will also publish in the FEDERAL REGISTER a notice of his intention to impose a sanction.

(4) The Administrator may make the sanction effective immediately or otherwise earlier than 30 days after the date of the NoS if the Administrator finds, and issues an emergency order summarizing such finding and the basis therefor, that an earlier date is necessary to:

(i) Prevent a significant adverse environmental effect; or

(ii) Preserve the safety of life and property at sea.

If the Administrator acts under this paragraph (d)(4), the Administrator will serve the emergency order as provided in paragraph (d)(3) of this section.

(5) The NoS will be accompanied by a copy of this subpart and the applicable provisions of 15 CFR part 904 and 15 CFR part 971, subpart I.

(e) *Opportunity to correct deficiencies.* (1) Prior to issuing the NoS, the Administrator will determine whether the reason for the proposed sanction is a deficiency which the licensee or permittee can correct. Such determination, and the basis therefor, will be set forth in the NoS.

(2) If the Administrator determines that the reason for the proposed sanction is a deficiency which the licensee or permittee can correct, the Administrator will allow the licensee or permittee a reasonable period of time, up to 180 days from the date of the NoS, to correct the deficiency. The NoS will state the effective date of the sanction, and that the sanction will take effect on that date unless the licensee or permittee corrects the deficiency within the time prescribed or unless the Administrator grants an extension of time to correct the deficiency under paragraph (e)(3) of this section.

(3) The licensee or permittee may, within the time period prescribed by the Administrator under paragraph (e)(2) of the section, request an extension of time to correct the deficiency. The Administrator may, for good cause shown, grant an extension. If the Administrator does not grant the request, either orally or in writing before the effective date of the sanction, the request will be considered denied.

(4) When the licensee or permittee believes that the deficiency has been corrected, the licensee or permittee shall so advise the Administrator in writing. The Administrator will, as soon as practicable, determine whether or not the deficiency has been corrected and advise the licensee or permittee of such determination.

(5) If the Administrator determines that the deficiency has not been corrected by the licensee or permittee within the time prescribed under paragraph (e)(2) or (e)(3) of this section, the Administrator may:

(i) Grant the licensee or permittee additional time to correct the deficiency, for good cause shown;

(ii) If no hearing has been timely requested under paragraph (f)(1) of this section, notify the licensee or permittee that the sanction will take effect as provided in paragraph (e)(2) or (e)(3) of this section; or

(iii) If a request for hearing has been timely filed under paragraph (f)(1) of this section, and hearing proceedings have not already begun, or if the Administrator determines under paragraph (f)(3) of this section to hold a hearing, notify the licensee or permittee of the Administrator's intention to proceed to a hearing on the matter.

(f) *Opportunity for hearing.* (1) The licensee or permittee has 30 days from receipt of the NoS to request a hearing. However, no hearing is required with respect to matters previously adjudicated in an administrative or judicial hearing in which the licensee or permittee has had an opportunity to participate.

(2) If the licensee or permittee requests a hearing, a written and dated request shall be served either in person or by certified or registered mail, return receipt requested, at the address specified in the NoS. The request shall either attach a copy of the relevant NoS or refer to the relevant NOAA case number.

(3) If no hearing is requested under paragraph (f)(2) of this section, the Administrator may nonetheless order a

hearing if the Administrator determines that there are material issues of fact, law, or equity to be further explored.

(g) *Hearing and decision.* (1) If a timely request for a hearing under paragraph (f) of this section is received, or if the Administrator orders a hearing under paragraph (f)(3) of this section, the Administrator will promptly begin proceedings under this section by forwarding the request, a copy of the NoS and any response thereto to the Department of Commerce Office of Administrative Law Judges which will docket the matter for hearing. Written notice of the referral will promptly be given to the licensee or permittee, with the name and address of the attorney representing the Administrator in the proceedings (the agency representative). Thereafter, all pleading and other documents must be filed directly with the Department of Commerce Office of Administrative Law Judges, and a copy must be served on the opposing party (respondent or agency representative).

(2) Except as provided in this section, the hearing and appeal procedures in 15 CFR part 904, subpart C apply to any hearing held under this section.

(3) If the proposed sanction is the result of a correctable deficiency, the hearing will proceed concurrently with any attempt to correct the deficiency unless the parties agree otherwise or the Administrative Law Judge orders differently.

(4) As soon as practicable, but normally not later than 90 days after the conclusion of the formal hearing, the judge will file with the Administrator a recommended decision prepared in accordance with § 971.901(h)(2).

(5) The Administrator will issue a final decision in accordance with § 971.901(h)(3). The decision will be a final order of the Administrator.

(6) The Administrator will serve notice of the final decision on the licensee or permittee in the manner described by paragraph (d)(3) of this section.

§ 971.1004 Remission or mitigation of forfeitures.

(a) Authorized enforcement officers are empowered by section 304 of the Act to seize any vessel (together with its gear, furniture, appurtenances, stores, and cargo) which reasonably appears to have been used in violation of the Act, if necessary to prevent evasion of the enforcement of this Act, or of any regulation, order or license or permit issued pursuant to the Act. Enforcement agents may also seize illegally recovered or processed hard mineral resources, as well as other evidence related to a violation. Section 306 of the Act provides for the judicial forfeiture of vessels and hard mineral resources.

(b) Subpart F of 15 CFR part 904 governs procedures regarding seized property that is subject to forfeiture or has been forfeited under the Act, including the remission or mitigation of forfeitures.

(c) Unless otherwise directed in a notice concerning the seized property, a petition for relief from forfeiture under the Act and pursuant to 15 CFR 904.506(b) shall be addressed to the Administrator and filed with the Ocean Minerals and Energy Division at the address specified in § 971.200(b).

§ 971.1005 Observers.

(a) *Purpose of observers.* Each licensee and permittee shall allow, at such times and to such extent as the Administrator deems reasonable and necessary, an observer (as used in this section, the term ''observer'' means ''one or more observers'') duly authorized by the Administrator to board and accompany any vessel used by the licensee or permittee in exploration or commercial recovery activities (hereafter referred to in this section as a ''vessel''), for the purpose of observing, evaluating and reporting on:

(1) The effectiveness of the terms, conditions, and restrictions of the license or permit;

(2) Compliance with the Act, regulations and orders issued under the Act, and the license or permit terms, conditions, and restrictions; and

(3) The environmental and other effects of the licensee's or permittee's activities under the license or permit.

(b) *Notice to licensee or permittee.* (1) If the Administrator plans to place an observer aboard a vessel, the Administrator will so notify the affected licensee or permittee.

(2) The Administrator normally will issue any such notice as far in advance of placement of the observer as is practicable.

(3) *Contents of notice.* The notice given by the Administrator will include, among other things:

(i) The name of the observer, if known at the time notice is issued;

(ii) The length of time which the observer likely will be aboard the vessel;

(iii) Information concerning activities the observer is likely to conduct, such as:

(A) Identification of special activities that the observer will monitor;

(B) Planned tests of equipment used for monitoring;

(C) Activities of the observer that are likely to require assistance from the vessel's personnel or crew or use of the vessel's equipment; and

(D) Planned tests of alternative operating procedures or technologies for mitigation of environmental effects.

(iv) Information concerning the equipment that will be brought aboard the vessel, such as a description of the monitoring equipment, and any special requirements concerning the handling, storage, location or operation of, or the power supply for, the equipment.

(c) *Initial monitoring period.* The Administrator shall require the placement of an observer on each permittee's mining vessel(s) at least once during the initial year of the permittee's commercial recovery activities.

(d) *Licensee's and permittee's responsibilities for observer placement.* (1) Upon request by the Administrator, a licensee or permittee shall facilitate observer placement by promptly notifying the Administrator regarding the timing of planned system tests and the departure date of the next voyage, or, if the vessel is at sea, suggesting a time and method for transporting the observer to the vessel.

(2) In addition, the licensee or permittee shall notify NOAA of the date of departure of planned cruises 60 days in advance of ship departure from port for purposes of NOAA's determination of whether to place Federal observers onboard. If cruise plans are changed by more than 30 days from the date stated by the exploration or commercial recovery plan, the licensee or permittee shall notify NOAA as soon as such changes are made, or 90 days prior to the previously scheduled departure.

(e) *Duties of licensee, permittee, owner or operator.* Each licensee, permittee, owner or operator of a vessel aboard which an observer is assigned shall:

(1) Allow the observer access to and use of the vessel's communications equipment and personnel when the observer deems such access necessary for the transmission and receipt of messages;

(2) Allow the observer access to and use of the vessel's navigation equipment and personnel when the observer deems such access necessary to determine the vessel's location;

(3) Provide all other reasonable cooperation and assistance to enable the observer to carry out the observer's duties; and

(4) Provide temporary accommodations and food to the observer aboard the vessel which are equivalent to those provided to officers of the vessel.

(f) *Reasonableness of observer activities.* (1) To the maximum extent practicable, observation duties will be planned and carried out in a manner that minimizes interference with the licensee's or permittee's activities under the license or permit.

(2) The Administrator will assure that equipment brought aboard a vessel by the observer is reasonable as to size, weight, and electric power and storage requirements, taking into consideration the necessity of the equipment for carrying out the observer's functions.

(3) The observer will have no authority over the operation of the vessel or its activities, or the officers, crew, or personnel of the vessel. The observer will comply with all rules and regulations issued by the licensee or permittee, and all orders of the Master or senior operations official, with respect to ensuring safe operation of the vessel and the safety of its personnel.

(g) *Non-interference with observer.* Licensees, permittees and other persons

are reminded that the Act (see, for example, sections 301(3) and 301(4)) makes it unlawful for any person subject to section 301 of the Act to interfere with any observer in the performance of the observer's duties.

(h) *Confidentiality of information.* NOAA recognizes the possibility that an observer, in performing observer functions, will record information which the licensee or permittee considers to be proprietary. NOAA intends to protect such information consistent with applicable law. The Administrator may in appropriate cases provide the licensee or permittee an opportunity:

(1) To review those parts of the observer's report which may contain proprietary information; and

(2) To request confidential treatment of such information under § 971.802.

§ 971.1006 Proprietary enforcement information.

(a) Proprietary and privileged information seized or maintained under Title III of the Act concerning a person or vessel engaged in commercial recovery will not be made available for general or public use or inspection.

(b) Although presentation of evidence in a proceeding under this subpart is not deemed general or public use of information, the Administrator will, consistent with due process, move to have records sealed, under 15 CFR part 904 subpart C, or other applicable provisions of law, in any administrative or judicial proceeding where the use of proprietary or privileged information is required to serve the purpose of the Act.

§ 971.1007 Advance notice of civil actions.

(a) *Actions against alleged violators.* (1) No civil action may be filed in a United States District Court under section 117 of the Act against any person for alleged violation of the Act, or any regulation, or license or permit term, condition, or restriction issued under the Act, until 60 days after the Administrator and any alleged violator receive written and dated notice of alleged violation.

(2) The notice shall contain:

(i) A concise statement of the facts believed to show a violation;

(ii) A specific reference to the provisions of the Act, regulation or license or permit allegedly violated; and

(iii) Any documentary or other evidence of the alleged violation.

(b) *Action against the Administrator.* (1) No civil action may be filed in a United States District Court under section 117 of the Act against the Administrator for an alleged failure to perform any act or duty under the Act which is not discretionary until 60 days after receipt by the Administrator of a written and dated notice of intent to file the action.

(2) The notice shall contain:

(i) A specific reference to the provisions of the Act, regulation or permit believed to require the Administrator to perform a nondiscretionary act or duty;

(ii) A precise description of the nondiscretionary act or duty believed to be required by such provision;

(iii) A concise statement of the facts believed to show a failure to perform the act or duty; and

(iv) Any documentary or other evidence of the alleged failure to perform the act or duty.

SUBCHAPTER E—OIL POLLUTION ACT REGULATIONS

PART 990—NATURAL RESOURCE DAMAGE ASSESSMENTS

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AUTHORITY: 33 U.S.C. 2701 *et seq.*

SOURCE: 61 FR 500, Jan. 5, 1996, unless otherwise noted.

Subpart A—Introduction

§ 990.10 Purpose.

The goal of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, is to make the environment and public whole for injuries to natural resources and services resulting from an incident involving a discharge or substantial threat of a discharge of oil (incident).

This goal is achieved through the return of the injured natural resources and services to baseline and compensation for interim losses of such natural resources and services from the date of the incident until recovery. The purpose of this part is to promote expeditious and cost-effective restoration of natural resources and services injured as a result of an incident. To fulfill this purpose, this part provides a natural resource damage assessment process for developing a plan for restoration of the injured natural resources and services and pursuing implementation or funding of the plan by responsible parties. This part also provides an administrative process for involving interested parties in the assessment, a range of assessment procedures for identifying and evaluating injuries to natural resources and services, and a means for selecting restoration actions from a reasonable range of alternatives.

§ 990.11 Scope.

The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides for the designation of federal, state, and, if designated by the Governor of the state, local officials to act on behalf of the public as trustees for natural resources and for the designation of Indian tribe and foreign officials to act as trustees for natural resources on behalf

of, respectively, the tribe or its members and the foreign government. This part may be used by these officials in conducting natural resource damage assessments when natural resources and/or services are injured as a result of an incident involving an actual or substantial threat of a discharge of oil. This part is not intended to affect the recoverability of natural resource damages when recoveries are sought other than in accordance with this part.

§ 990.12 Overview.

This part describes three phases of a natural resource damage assessment. The Preassessment Phase, during which trustees determine whether to pursue restoration, is described in subpart D of this part. The Restoration Planning Phase, during which trustees evaluate information on potential injuries and use that information to determine the need for, type of, and scale of restoration, is described in subpart E of this part. The Restoration Implementation Phase, during which trustees ensure implementation of restoration, is described in subpart F of this part.

§ 990.13 Rebuttable presumption.

Any determination or assessment of damages to natural resources made by a Federal, State, or Indian trustee in accordance with this part shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under OPA.

§ 990.14 Coordination.

(a) *Trustees.* (1) If an incident affects the interests of multiple trustees, the trustees should act jointly under this part to ensure that full restoration is achieved without double recovery of damages. For joint assessments, trustees must designate one or more Lead Administrative Trustee(s) to act as coordinators.

(2) If there is a reasonable basis for dividing the natural resource damage assessment, trustees may act independently under this part, so long as there is no double recovery of damages.

(3) Trustees may develop pre-incident or incident-specific memoranda of understanding to coordinate their activities.

(b) *Response agencies.* Trustees must coordinate their activities conducted concurrently with response operations with response agencies consistent with the NCP and any pre-incident plans developed under § 990.15(a) of this part. Trustees may develop pre-incident memoranda of understanding to coordinate their activities with response agencies.

(c) *Responsible parties*—(1) *Invitation.* Trustees must invite the responsible parties to participate in the natural resource damage assessment described in this part. The invitation to participate should be in writing, and a written response by the responsible parties is required to confirm the desire to participate.

(2) *Timing.* The invitation to participate should be extended to known responsible parties as soon as practicable, but not later than the delivery of the ''Notice of Intent to Conduct Restoration Planning,'' under § 990.44 of this part, to the responsible party.

(3) *Agreements.* Trustees and responsible parties should consider entering into binding agreements to facilitate their interactions and resolve any disputes during the assessment. To maximize cost-effectiveness and cooperation, trustees and responsible parties should attempt to develop a set of agreed-upon facts concerning the incident and/or assessment.

(4) *Nature and extent of participation.* If the responsible parties accept the invitation to participate, the scope of that participation must be determined by the trustees, in light of the considerations in paragraph (c)(5) of this section. At a minimum, participation will include notice of trustee determinations required under this part, and notice and opportunity to comment on documents or plans that significantly affect the nature and extent of the assessment. Increased levels of participation by responsible parties may be developed at the mutual agreement of the trustees and the responsible parties. Trustees will objectively consider all written comments provided by the responsible parties, as well as any other recommendations or proposals that the responsible parties submit in writing to the Lead Administrative Trustee. Submissions by the responsible parties

will be included in the administrative record. Final authority to make determinations regarding injury and restoration rest solely with the trustees. Trustees may end participation by responsible parties who, during the conduct of the assessment, in the sole judgment of the trustees, cause interference with the trustees' ability to fulfill their responsibilities under OPA and this part.

(5) *Considerations.* In determining the nature and extent of participation by the responsible parties or their representatives, trustees may consider such factors as:

(i) Whether the responsible parties have been identified;

(ii) The willingness of responsible parties to participate in the assessment;

(iii) The willingness of responsible parties to fund assessment activities;

(iv) The willingness and ability of responsible parties to conduct assessment activities in a technically sound and timely manner and to be bound by the results of jointly agreed upon studies;

(v) The degree of cooperation of the responsible parties in the response to the incident; and

(vi) The actions of the responsible parties in prior assessments.

(6) *Request for alternative assessment procedures.* (i) The participating responsible parties may request that trustees use assessment procedures other than those selected by the trustees if the responsible parties:

(A) Identify the proposed procedures to be used that meet the requirements of § 990.27 of this part, and provide reasons supporting the technical adequacy and appropriateness of such procedures for the incident and associated injuries;

(B) Advance to the trustees the trustees' reasonable estimate of the cost of using the proposed procedures; and

(C) Agree not to challenge the results of the proposed procedures. The request from the responsible parties may be made at any time, but no later than, fourteen (14) days of being notified of the trustees' proposed assessment procedures for the incident or the injury.

(ii) Trustees may reject the responsible parties' proposed assessment procedures if, in the sole judgment of the trustees, the proposed assessment procedures:

(A) Are not technically feasible;

(B) Are not scientifically or technically sound;

(C) Would inadequately address the natural resources and services of concern;

(D) Could not be completed within a reasonable time frame; or

(E) Do not meet the requirements of § 990.27 of this part.

(7) *Disclosure.* Trustees must document in the administrative record and Restoration Plan the invitation to the responsible parties to participate, and briefly describe the nature and extent of the responsible parties' participation. If the responsible parties' participation is terminated during the assessment, trustees must provide a brief explanation of this decision in the administrative record and Restoration Plan.

(d) *Public.* Trustees must provide opportunities for public involvement after the trustees' decision to develop restoration plans or issuance of any notices to that effect, as provided in § 990.55 of this part. Trustees may also provide opportunities for public involvement at any time prior to this decision if such involvement may enhance trustees' decisionmaking or avoid delays in restoration.

§ 990.15 Considerations to facilitate restoration.

In addition to the procedures provided in subparts D through F of this part, trustees may take other actions to further the goal of expediting restoration of injured natural resources and services, including:

(a) *Pre-incident planning.* Trustees may engage in pre-incident planning activities. Pre-incident plans may identify natural resource damage assessment teams, establish trustee notification systems, identify support services, identify natural resources and services at risk, identify area and regional response agencies and officials, identify available baseline information, establish data management systems, and identify assessment funding

issues and options. Potentially responsible parties, as well as all other members of the public interested in and capable of participating in assessments, should be included in pre-incident planning to the fullest extent practicable.

(b) *Regional Restoration Plans.* Where practicable, incident-specific restoration plan development is preferred, however, trustees may develop Regional Restoration Plans. These plans may be used to support a claim under § 990.56 of this part. Regional restoration planning may consist of compiling databases that identify, on a regional or watershed basis, or otherwise as appropriate, existing, planned, or proposed restoration projects that may provide appropriate restoration alternatives for consideration in the context of specific incidents.

Subpart B—Authorities

§ 990.20 Relationship to the CERCLA natural resource damage assessment regulations.

(a) *General.* Regulations for assessing natural resource damages resulting from hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, and the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1321 *et seq.*, are codified at 43 CFR part 11. The CERCLA regulations originally applied to natural resource damages resulting from oil discharges as well as hazardous substance releases. This part supersedes 43 CFR part 11 with regard to oil discharges covered by OPA.

(b) *Assessments commenced before February 5, 1996.* If trustees commenced a natural resource damage assessment for an oil discharge under 43 CFR part 11 prior to February 5, 1996 they may complete the assessment in compliance with 43 CFR part 11, or they may elect to use this part, and obtain a rebuttable presumption.

(c) *Oil and hazardous substance mixtures.* For natural resource damages resulting from a discharge or release of a mixture of oil and hazardous substances, trustees must use 43 CFR part 11 in order to obtain a rebuttable presumption.

§ 990.21 Relationship to the NCP.

This part provides procedures by which trustees may determine appropriate restoration of injured natural resources and services, where such injuries are not fully addressed by response actions. Response actions and the coordination with damage assessment activities are conducted pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300.

§ 990.22 Prohibition on double recovery.

When taking actions under this part, trustees are subject to the prohibition on double recovery, as provided in 33 U.S.C. 2706(d)(3) of OPA.

§ 990.23 Compliance with NEPA and the CEQ regulations.

(a) *General.* The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* and Council on Environmental Quality (CEQ) regulations implementing NEPA, 40 CFR chapter V, apply to restoration actions by federal trustees, except where a categorical exclusion or other exception to NEPA applies. Thus, when a federal trustee proposes to take restoration actions under this part, it must integrate this part with NEPA, the CEQ regulations, and NEPA regulations promulgated by that federal trustee agency. Where state NEPA-equivalent laws may apply to state trustees, state trustees must consider the extent to which they must integrate this part with their NEPA-equivalent laws. The requirements and process described in this section relate only to NEPA and federal trustees.

(b) *NEPA requirements for federal trustees.* NEPA becomes applicable when federal trustees propose to take restoration actions, which begins with the development of a Draft Restoration Plan under § 990.55 of this part. Depending upon the circumstances of the incident, federal trustees may need to consider early involvement of the public in restoration planning in order to meet their NEPA compliance requirements.

(c) *NEPA process for federal trustees.* Although the steps in the NEPA process may vary among different federal trustees, the process will generally involve the need to develop restoration

plans in the form of an Environmental Assessment or Environmental Impact Statement, depending upon the trustee agency's own NEPA regulations.

(1) *Environmental Assessment.* (i) *Purpose.* The purpose of an Environmental Assessment (EA) is to determine whether a proposed restoration action will have a significant (as defined under NEPA and §1508.27 of the CEQ regulations) impact on the quality of the human environment, in which case an Environmental Impact Statement (EIS) evaluating the impact is required. In the alternative, where the impact will not be significant, federal trustees must issue a Finding of No Significant Impact (FONSI) as part of the restoration plans developed under this part. If significant impacts to the human environment are anticipated, the determination to proceed with an EIS may be made as a result, or in lieu, of the development of the EA.

(ii) *General steps.* (A) If the trustees decide to pursue an EA, the trustees may issue a Notice of Intent to Prepare a Draft Restoration Plan/EA, or proceed directly to developing a Draft Restoration Plan/EA.

(B) The Draft Restoration Plan/EA must be made available for public review before concluding a FONSI or proceeding with an EIS.

(C) If a FONSI is concluded, the restoration planning process should be no different than under §990.55 of this part, except that the Draft Restoration Plan/EA will include the FONSI analysis.

(D) The time period for public review on the Draft Restoration Plan/EA must be consistent with the federal trustee agency's NEPA requirements, but should generally be no less than thirty (30) calendar days.

(E) The Final Restoration Plan/EA must consider all public comments on the Draft Restoration Plan/EA and FONSI.

(F) The means by which a federal trustee requests, considers, and responds to public comments on the Draft Restoration Plan/EA and FONSI must also be consistent with the federal agency's NEPA requirements.

(2) *Environmental Impact Statement.* (i) *Purpose.* The purpose of an Environmental Impact Statement (EIS) is to involve the public and facilitate the decisionmaking process in the federal trustees' analysis of alternative approaches to restoring injured natural resources and services, where the impacts of such restoration are expected to have significant impacts on the quality of the human environment.

(ii) *General steps.* (A) If trustees determine that restoration actions are likely to have a significant (as defined under NEPA and §1508.27 of the CEQ regulations) impact on the environment, they must issue a Notice of Intent to Prepare a Draft Restoration Plan/EIS. The notice must be published in the FEDERAL REGISTER.

(B) The notice must be followed by formal public involvement in the development of the Draft Restoration Plan/EIS.

(C) The Draft Restoration Plan/EIS must be made available for public review for a minimum of forty-five (45) calendar days. The Draft Restoration Plan/EIS, or a notice of its availability, must be published in the FEDERAL REGISTER.

(D) The Final Restoration Plan/EIS must consider all public comments on the Draft Restoration Plan/EIS, and incorporate any changes made to the Draft Restoration Plan/EIS in response to public comments.

(E) The Final Restoration Plan/EIS must be made publicly available for a minimum of thirty (30) calendar days before a decision is made on the federal trustees' proposed restoration actions (Record of Decision). The Final Restoration Plan/EIS, or a notice of its availability, must be published in the FEDERAL REGISTER.

(F) The means by which a federal trustee agency requests, considers, and responds to public comments on the Final Restoration Plan/EIS must also be consistent with the federal agency's NEPA requirements.

(G) After appropriate public review on the Final Restoration Plan/EIS is completed, a Record of Decision (ROD) is issued. The ROD summarizes the trustees' decisionmaking process after consideration of any public comments relative to the proposed restoration actions, identifies all restoration alternatives (including the preferred alternative(s)), and their environmental

consequences, and states whether all practicable means to avoid or minimize environmental harm were adopted (e.g., monitoring and corrective actions). The ROD may be incorporated with other decision documents prepared by the trustees. The means by which the ROD is made publicly available must be consistent with the federal trustee agency's NEPA requirements.

(d) *Relationship to Regional Restoration Plans or an existing restoration project.* If a Regional Restoration Plan or existing restoration project is proposed for use, federal trustees may be able to tier their NEPA analysis to an existing EIS, as described in §§ 1502.20 and 1508.28 of the CEQ regulations.

§ 990.24 Compliance with other applicable laws and regulations.

(a) *Worker health and safety.* When taking actions under this part, trustees must comply with applicable worker health and safety considerations specified in the NCP for response actions.

(b) *Natural Resources protection.* When acting under this part, trustees must ensure compliance with any applicable consultation, permitting, or review requirements, including but not limited to: the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.;* the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 *et seq.;* the Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.;* the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.;* the National Historic Preservation Act, 12 U.S.C. 470 *et seq.;* the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.;* and the Archaeological Resources Protection Act, 16 U.S.C. 470 *et seq.*

§ 990.25 Settlement.

Trustees may settle claims for natural resource damages under this part at any time, provided that the settlement is adequate in the judgment of the trustees to satisfy the goal of OPA and is fair, reasonable, and in the public interest, with particular consideration of the adequacy of the settlement to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources and services. Sums recovered in settlement of such claims, other than reimbursement of trustee costs, may only be expended in accordance with a restoration plan, which may be set forth in whole or in part in a consent decree or other settlement agreement, which is made available for public review.

§ 990.26 Emergency restoration.

(a) Trustees may take emergency restoration action before completing the process established under this part, provided that:

(1) The action is needed to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources or similar need for emergency action;

(2) The action will not be undertaken by the lead response agency;

(3) The action is feasible and likely to succeed;

(4) Delay of the action to complete the restoration planning process established in this part likely would result in increased natural resource damages; and

(5) The costs of the action are not unreasonable.

(b) If response actions are still underway, trustees must coordinate with the On-Scene Coordinator (OSC), consistent with the NCP, to ensure that emergency restoration actions will not interfere with or duplicate ongoing response actions. Emergency restoration may not address residual oil unless:

(1) The OSC's response is complete; or

(2) The OSC has determined that the residual oil identified by the trustee as part of a proposed emergency restoration action does not merit further response.

(c) Trustees must provide notice to identified responsible parties of any emergency restoration actions and, to the extent time permits, invite their participation in the conduct of those actions as provided in § 990.14(c) of this part.

(d) Trustees must provide notice to the public, to the extent practicable, of these planned emergency restoration actions. Trustees must also provide public notice of the justification for, nature and extent of, and results of emergency restoration actions within a reasonable time frame after completion of such actions. The means by

which this notice is provided is left to the discretion of the trustee.

[61 FR 500, Jan. 5, 1996, as amended at 67 FR 61492, Oct. 1, 2002]

§ 990.27 Use of assessment procedures.

(a) *Standards for assessment procedures.* Any procedures used pursuant to this part must comply with all of the following standards if they are to be in accordance with this part:

(1) The procedure must be capable of providing assessment information of use in determining the type and scale of restoration appropriate for a particular injury;

(2) The additional cost of a more complex procedure must be reasonably related to the expected increase in the quantity and/or quality of relevant information provided by the more complex procedure; and

(3) The procedure must be reliable and valid for the particular incident.

(b) *Assessment procedures available.* (1) The range of assessment procedures available to trustees includes, but is not limited to:

(i) Procedures conducted in the field;

(ii) Procedures conducted in the laboratory;

(iii) Model-based procedures, including type A procedures identified in 43 CFR part 11, subpart D, and compensation formulas/schedules; and

(iv) Literature-based procedures.

(2) Trustees may use the assessment procedures in paragraph (b)(1) of this section alone, or in any combination, provided that the standards in paragraph (a) of this section are met, and there is no double recovery.

(c) *Selecting assessment procedures.* (1) When selecting assessment procedures, trustees must consider, at a minimum:

(i) The range of procedures available under paragraph (b) of this section;

(ii) The time and cost necessary to implement the procedures;

(iii) The potential nature, degree, and spatial and temporal extent of the injury;

(iv) The potential restoration actions for the injury; and

(v) The relevance and adequacy of information generated by the procedures to meet information requirements of restoration planning.

(2) If a range of assessment procedures providing the same type and quality of information is available, the most cost-effective procedure must be used.

Subpart C—Definitions

§ 990.30 Definitions.

For the purpose of this rule, the term:

Baseline means the condition of the natural resources and services that would have existed had the incident not occurred. Baseline data may be estimated using historical data, reference data, control data, or data on incremental changes (e.g., number of dead animals), alone or in combination, as appropriate.

Cost-effective means the least costly activity among two or more activities that provide the same or a comparable level of benefits, in the judgment of the trustees.

CEQ regulations means the Council on Environmental Quality regulations implementing NEPA, 40 CFR chapter V.

Damages means damages specified in section 1002(b) of OPA (33 U.S.C. 1002(b)), and includes the costs of assessing these damages, as defined in section 1001(5) of OPA (33 U.S.C. 2701(5)).

Discharge means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping, as defined in section 1001(7) of OPA (33 U.S.C. 2701(7)).

Exclusive Economic Zone means the zone established by Presidential Proclamation 5030 of March 10, 1983 (3 CFR, 1984 Comp., p. 22), including the ocean waters of the areas referred to as ''eastern special areas'' in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, as defined in section 1001(8) of OPA (33 U.S.C. 2701(8)).

Exposure means direct or indirect contact with the discharged oil.

Facility means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes:

exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes, as defined in section 1001(9) of OPA (33 U.S.C. 2701(9)).

Fund means the Oil Spill Liability Trust Fund, established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509), as defined in section 1001(11) of OPA (33 U.S.C. 2701(11)).

Incident means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines or the Exclusive Economic Zone, as defined in section 1001(14) of OPA (33 U.S.C. 2701(14)).

Indian tribe (or tribal) means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe, as defined in section 1001(15) of OPA (33 U.S.C. 2701(15)).

Indirect costs means expenses that are jointly or commonly incurred to produce two or more products or services. In contrast to direct costs, indirect costs are not specifically identifiable with any of the products or services, but are necessary for the organization to function and produce the products or services. An indirect cost rate, developed in accordance with generally accepted accounting principles, may be used to allocate indirect costs to specific assessment and restoration activities. Both direct and indirect costs contribute to the full cost of the assessment and restoration, as provided in this part.

Injury means an observable or measurable adverse change in a natural resource or impairment of a natural resource service. Injury may occur directly or indirectly to a natural resource and/or service. Injury incorporates the terms ''destruction,'' ''loss,'' and ''loss of use'' as provided in OPA.

Lead Administrative Trustee(s) (or LAT) means the trustee(s) who is selected by all participating trustees whose natural resources or services are injured by an incident, for the purpose of coordinating natural resource damage assessment activities. The LAT(s) should also facilitate communication between the OSC and other natural resource trustees regarding their activities during the response phase.

Legal costs means the costs of attorney actions performed for the purpose of assessment or developing a restoration plan, in accordance with this part.

(1) When making a determination of the nature of attorneys' actions for purposes of this definition, trustees must consider whether:

(i) The action comprised all or part of an action specified either in this part or in OPA section 1006(c);

(ii) The action was performed prior to, or in the absence of, the filing of ligation by or on behalf of the trustee in question to recover damages; and

(iii) The action was performed by an attorney who was working for or on behalf of the trustee agency, as opposed to a prosecutorial agency.

(2) If all of the criteria in paragraph (1) of this definition are met, the costs associated with attorney's actions are deemed assessment costs. If the criteria are not met, the trustee must explain why the action was not performed for the primary purpose of furthering litigation in order to support a characterization of the action as an assessment action.

(3) Examples of common or routine assessment actions that may be most appropriately performed by trustee attorneys, in accordance with this part, include, but are not limited to:

(i) Providing written and oral advice on the requirements of OPA, this part, and other applicable laws;

(ii) Preparing public notices, including the Notice of Intent to Conduct Restoration Planning issued to responsible parties and the Notice of Availability of Draft Restoration Plans;

(iii) Developing and managing administrative records;

(iv) Preparing binding agreements with potentially responsible parties in

the context of the assessment, including study agreements, funding agreements, and restoration agreements;

(v) Preparing co-trustee cooperative agreements;

(vi) Preparing formal trustee determinations required under this part; and

(vii) Procuring title searches, title insurance, and/or conservation easements when property agreements are part of restoration packages.

NCP means the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan) codified at 40 CFR part 300, which addresses the identification, investigation, study, and response to incidents, as defined in section 1001(19) of OPA (33 U.S.C. 2701(19)).

Natural resource damage assessment (or assessment) means the process of collecting and analyzing information to evaluate the nature and extent of injuries resulting from an incident, and determine the restoration actions needed to bring injured natural resources and services back to baseline and make the environment and public whole for interim losses.

Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the Exclusive Economic Zone), any state or local government or Indian tribe, or any foreign government, as defined in section 1001(20) of OPA (33 U.S.C. 2701(20)).

Navigable waters means the waters of the United States, including the territorial sea, as defined in section 1001(21) of OPA (33 U.S.C. 2701(21)).

NEPA means the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

Oil means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. However, the term does not include petroleum, including crude oil or any fraction thereof, that is specifically listed or designated as a hazardous substance under 42 U.S.C. 9601(14)(A) through (F), as defined in section 1001(23) of OPA (33 U.S.C. 2701(23)).

On-Scene Coordinator (or OSC) means the official designated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct response actions under the NCP, or the government official designated by the lead response agency to coordinate and direct response actions under the NCP.

OPA means the Oil Pollution Act of 1990, 33 U.S.C. 2701 *et seq.*

Pathway means any link that connects the incident to a natural resource and/or service, and is associated with an actual discharge of oil.

Person means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body, as defined in section 1001(27) of OPA (33 U.S.C. 2701(27)).

Public vessel means a vessel owned or bareboat chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce, as defined in section 1001(29) of OPA (33 U.S.C. 2701(29)).

Reasonable assessment costs means, for assessments conducted under this part, assessment costs that are incurred by trustees in accordance with this part. In cases where assessment costs are incurred but trustees do not pursue restoration, trustees may recover their reasonable assessment costs provided they have determined that assessment actions undertaken were premised on the likelihood of injury and need for restoration. Reasonable assessment costs also include: administrative costs, legal costs, and other costs necessary to carry out this part; monitoring and oversight costs; costs associated with public participation; and indirect costs that are necessary to carry out this part.

Recovery means the return of injured natural resources and services to baseline.

Response (or *remove* or *removal*) means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines,

and beaches, as defined in section 1001(30) of OPA (33 U.S.C. 2701(30)).

Responsible party means:

(a) *Vessels.* In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(b) *Onshore facilities.* In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(c) *Offshore facilities.* In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(d) *Deepwater ports.* In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), the licensee.

(e) *Pipelines.* In the case of a pipeline, any person owning or operating the pipeline.

(f) *Abandonment.* In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility, as defined in section 1001(32) of OPA (33 U.S.C. 2701(32)).

Restoration means any action (or alternative), or combination of actions (or alternatives), to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and services. Restoration includes:

(a) *Primary restoration,* which is any action, including natural recovery, that returns injured natural resources and services to baseline; and

(b) *Compensatory restoration,* which is any action taken to compensate for interim losses of natural resources and services that occur from the date of the incident until recovery.

Services (or *natural resource services*) means the functions performed by a natural resource for the benefit of another natural resource and/or the public.

Trustees (or *natural resource trustees*) means those officials of the federal and state governments, of Indian tribes, and of foreign governments, designated under 33 U.S.C. 2706(b) of OPA.

United States and *State* means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States, as defined in section 1001(36) of OPA (33 U.S.C. 2701(36)).

Value means the maximum amount of goods, services, or money an individual is willing to give up to obtain a specific good or service, or the minimum amount of goods, services, or money an individual is willing to accept to forgo a specific good or service. The total value of a natural resource or service includes the value individuals derive from direct use of the natural resource, for example, swimming, boating, hunting, or birdwatching, as well as the value individuals derive from knowing a natural resource will be available for future generations.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel, as defined in section 1001(37) of OPA (33 U.S.C. 2701(37)).

[61 FR 500, Jan. 5, 1996, as amended at 67 FR 61493, Oct. 1, 2002]

Subpart D—Preassessment Phase

§ 990.40 Purpose.

The purpose of this subpart is to provide a process by which trustees determine if they have jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so.

§ 990.41 Determination of jurisdiction.

(a) *Determination of jurisdiction.* Upon learning of an incident, trustees must determine whether there is jurisdiction to pursue restoration under OPA. To make this determination, trustees must decide if:

(1) An incident has occurred, as defined in § 990.30 of this part;

(2) The incident is not:

(i) Permitted under a permit issued under federal, state, or local law; or

(ii) From a public vessel; or

(iii) From an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651, *et seq.;* and

(3) Natural resources under the trusteeship of the trustee may have been, or may be, injured as a result of the incident.

(b) *Proceeding with preassessment.* If the conditions listed in paragraph (a) of this section are met, trustees may proceed under this part. If one of the conditions is not met, trustees may not take additional action under this part, except action to finalize this determination. Trustees may recover all reasonable assessment costs incurred up to this point provided that conditions in paragraphs (a)(1) and (a)(2) of this section were met and actions were taken with the reasonable belief that natural resources or services under their trusteeship might have been injured as a result of the incident.

§ 990.42 Determination to conduct restoration planning.

(a) *Determination on restoration planning.* If trustees determine that there is jurisdiction to pursue restoration under OPA, trustees must determine whether:

(1) Injuries have resulted, or are likely to result, from the incident;

(2) Response actions have not adequately addressed, or are not expected to address, the injuries resulting from the incident; and

(3) Feasible primary and/or compensatory restoration actions exist to address the potential injuries.

(b) *Proceeding with preassessment.* If the conditions listed in paragraph (a) of this section are met, trustees may proceed under § 990.44 of this part. If one of these conditions is not met, trustees may not take additional action under this part, except action to finalize this determination. However, trustees may recover all reasonable assessment costs incurred up to this point.

§ 990.43 Data collection.

Trustees may conduct data collection and analyses that are reasonably related to Preassessment Phase activities. Data collection and analysis during the Preassessment Phase must be coordinated with response actions such that collection and analysis does not interfere with response actions. Trustees may collect and analyze the following types of data during the Preassessment Phase:

(a) Data reasonably expected to be necessary to make a determination of jurisdiction under § 990.41 of this part, or a determination to conduct restoration planning under § 990.42 of this part;

(b) Ephemeral data; and

(c) Information needed to design or implement anticipated assessment procedures under subpart E of this part.

§ 990.44 Notice of Intent to Conduct Restoration Planning.

(a) *General.* If trustees determine that all the conditions under § 990.42(a) of this part are met and trustees decide to proceed with the natural resource damage assessment, they must prepare a Notice of Intent to Conduct Restoration Planning.

(b) *Contents of the notice.* The Notice of Intent to Conduct Restoration Planning must include a discussion of the trustees' analyses under §§ 990.41 and 990.42 of this part. Depending on information available at this point, the notice may include the trustees' proposed strategy to assess injury and determine the type and scale of restoration. The contents of a notice may vary, but will typically discuss:

(1) The facts of the incident;

(2) Trustee authority to proceed with the assessment;

(3) Natural resources and services that are, or are likely to be, injured as a result of the incident;

(4) Potential restoration actions relevant to the expected injuries; and

(5) If determined at the time, potential assessment procedures to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources and services.

(c) *Public availability of the notice.* Trustees must make a copy of the Notice of Intent to Conduct Restoration Planning publicly available. The means by which the notice is made publicly available and whether public comments are solicited on the notice will depend on the nature and extent of the incident and various information requirements, and is left to the discretion of the trustees.

(d) *Delivery of the notice to the responsible parties.* Trustees must send a copy of the notice to the responsible parties, to the extent known, in such a way as will establish the date of receipt, and invite responsible parties' participation in the conduct of restoration planning. Consistent with §990.14(c) of this part, the determination of the timing, nature, and extent of responsible party participation will be determined by the trustees on an incident-specific basis.

§990.45 Administrative record.

(a) If trustees decide to proceed with restoration planning, they must open a publicly available administrative record to document the basis for their decisions pertaining to restoration. The administrative record should be opened concurrently with the publication of the Notice of Intent to Conduct Restoration Planning. Depending on the nature and extent of the incident and assessment, the administrative record should include documents relied upon during the assessment, such as:

(1) Any notice, draft and final restoration plans, and public comments;

(2) Any relevant data, investigation reports, scientific studies, work plans, quality assurance plans, and literature; and

(3) Any agreements, not otherwise privileged, among the participating trustees or with the responsible parties.

(b) Federal trustees should maintain the administrative record in a manner consistent with the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06.

Subpart E—Restoration Planning Phase

§990.50 Purpose.

The purpose of this subpart is to provide a process by which trustees evaluate and quantify potential injuries (injury assessment), and use that information to determine the need for and scale of restoration actions (restoration selection).

§990.51 Injury assessment—injury determination.

(a) *General.* After issuing a Notice of Intent to Conduct Restoration Planning under §990.44 of this part, trustees must determine if injuries to natural resources and/or services have resulted from the incident.

(b) *Determining injury.* To make the determination of injury, trustees must evaluate if:

(1) The definition of injury has been met, as defined in §990.30 of this part; and

(2)(i) An injured natural resource has been exposed to the discharged oil, and a pathway can be established from the discharge to the exposed natural resource; or

(ii) An injury to a natural resource or impairment of a natural resource service has occurred as a result of response actions or a substantial threat of a discharge of oil.

(c) *Identifying injury.* Trustees must determine whether an injury has occurred and, if so, identify the nature of the injury. Potential categories of injury include, but are not limited to, adverse changes in: survival, growth, and reproduction; health, physiology and biological condition; behavior; community composition; ecological processes and functions; physical and chemical habitat quality or structure; and public services.

(d) *Establishing exposure and pathway.* Except for injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil,

trustees must establish whether natural resources were exposed, either directly or indirectly, to the discharged oil from the incident, and estimate the amount or concentration and spatial and temporal extent of the exposure. Trustees must also determine whether there is a pathway linking the incident to the injuries. Pathways may include, but are not limited to, the sequence of events by which the discharged oil was transported from the incident and either came into direct physical contact with a natural resource, or caused an indirect injury.

(e) *Injuries resulting from response actions or incidents involving a substantial threat of a discharge.* For injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil, trustees must determine whether an injury or an impairment of a natural resource service has occurred as a result of the incident.

(f) *Selection of injuries to include in the assessment.* When selecting potential injuries to assess, trustees should consider factors such as:

(1) The natural resources and services of concern;

(2) The procedures available to evaluate and quantify injury, and associated time and cost requirements;

(3) The evidence indicating exposure;

(4) The pathway from the incident to the natural resource and/or service of concern;

(5) The adverse change or impairment that constitutes injury;

(6) The evidence indicating injury;

(7) The mechanism by which injury occurred;

(8) The potential degree, and spatial and temporal extent of the injury;

(9) The potential natural recovery period; and

(10) The kinds of primary and/or compensatory restoration actions that are feasible.

§ 990.52 Injury assessment—quantification.

(a) *General.* In addition to determining whether injuries have resulted from the incident, trustees must quantify the degree, and spatial and temporal extent of such injuries relative to baseline.

(b) *Quantification approaches.* Trustees may quantify injuries in terms of:

(1) The degree, and spatial and temporal extent of the injury to a natural resource;

(2) The degree, and spatial and temporal extent of injury to a natural resource, with subsequent translation of that adverse change to a reduction in services provided by the natural resource; or

(3) The amount of services lost as a result of the incident.

(c) *Natural recovery.* To quantify injury, trustees must estimate, quantitatively or qualitatively, the time for natural recovery without restoration, but including any response actions. The analysis of natural recovery may consider such factors as:

(1) The nature, degree, and spatial and temporal extent of injury;

(2) The sensitivity and vulnerability of the injured natural resource and/or service;

(3) The reproductive and recruitment potential;

(4) The resistance and resilience (stability) of the affected environment;

(5) The natural variability; and

(6) The physical/chemical processes of the affected environment.

§ 990.53 Restoration selection—developing restoration alternatives.

(a) *General.* (1) If the information on injury determination and quantification under §§ 990.51 and 990.52 of this part and its relevance to restoration justify restoration, trustees may proceed with the Restoration Planning Phase. Otherwise, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to this point.

(2) Trustees must consider a reasonable range of restoration alternatives before selecting their preferred alternative(s). Each restoration alternative is comprised of primary and/or compensatory restoration components that address one or more specific injury(ies) associated with the incident. Each alternative must be designed so that, as a package of one or more actions, the

alternative would make the environment and public whole. Only those alternatives considered technically feasible and in accordance with applicable laws, regulations, or permits may be considered further under this part.

(b) *Primary restoration*—(1) *General.* For each alternative, trustees must consider primary restoration actions, including a natural recovery alternative.

(2) *Natural recovery.* Trustees must consider a natural recovery alternative in which no human intervention would be taken to directly restore injured natural resources and services to baseline.

(3) *Active primary restoration actions.* Trustees must consider an alternative comprised of actions to directly restore the natural resources and services to baseline on an accelerated time frame. When identifying such active primary restoration actions, trustees may consider actions that:

(i) Address conditions that would prevent or limit the effectiveness of any restoration action;

(ii) May be necessary to return the physical, chemical, and/or biological conditions necessary to allow recovery or restoration of the injured natural resources (e.g., replacing substrate or vegetation, or modifying hydrologic conditions); or

(iii) Return key natural resources and services, and would be an effective approach to achieving or accelerating a return to baseline (e.g., replacing essential species, habitats, or public services that would facilitate the replacement of other, dependent natural resource or service components).

(c) *Compensatory restoration*—(1) *General.* For each alternative, trustees must also consider compensatory restoration actions to compensate for the interim loss of natural resources and services pending recovery.

(2) *Compensatory restoration actions.* To the extent practicable, when evaluating compensatory restoration actions, trustees must consider compensatory restoration actions that provide services of the same type and quality, and of comparable value as those injured. If, in the judgment of the trustees, compensatory actions of the same type and quality and comparable value cannot provide a reasonable range of alternatives, trustees should identify actions that provide natural resources and services of comparable type and quality as those provided by the injured natural resources. Where the injured and replacement natural resources and services are not of comparable value, the scaling process will involve valuation of lost and replacement services.

(d) *Scaling restoration actions*—(1) *General.* After trustees have identified the types of restoration actions that will be considered, they must determine the scale of those actions that will make the environment and public whole. For primary restoration actions, scaling generally applies to actions involving replacement and/or acquisition of equivalent of natural resources and/or services.

(2) *Resource-to-resource and service-to-service scaling approaches.* When determining the scale of restoration actions that provide natural resources and/or services of the same type and quality, and of comparable value as those lost, trustees must consider the use of a resource-to-resource or service-to-service scaling approach. Under this approach, trustees determine the scale of restoration actions that will provide natural resources and/or services equal in quantity to those lost.

(3) *Valuation scaling approach.* (i) Where trustees have determined that neither resource-to-resource nor service-to-service scaling is appropriate, trustees may use the valuation scaling approach. Under the valuation scaling approach, trustees determine the amount of natural resources and/or services that must be provided to produce the same value lost to the public. Trustees must explicitly measure the value of injured natural resources and/or services, and then determine the scale of the restoration action necessary to produce natural resources and/or services of equivalent value to the public.

(ii) If, in the judgment of the trustees, valuation of the lost services is practicable, but valuation of the replacement natural resources and/or services cannot be performed within a reasonable time frame or at a reasonable cost, as determined by § 990.27(a)(2)

of this part, trustees may estimate the dollar value of the lost services and select the scale of the restoration action that has a cost equivalent to the lost value. The responsible parties may request that trustees value the natural resources and services provided by the restoration action following the process described in § 990.14(c) of this part.

(4) *Discounting and uncertainty.* When scaling a restoration action, trustees must evaluate the uncertainties associated with the projected consequences of the restoration action, and must discount all service quantities and/or values to the date the demand is presented to the responsible parties. Where feasible, trustees should use risk-adjusted measures of losses due to injury and of gains from the restoration action, in conjunction with a riskless discount rate representing the consumer rate of time preference. If the streams of losses and gains cannot be adequately adjusted for risks, then trustees may use a discount rate that incorporates a suitable risk adjustment to the riskless rate.

[61 FR 500, Jan. 5, 1996, as amended at 67 FR 61493, Oct. 1, 2002]

§ 990.54 Restoration selection—evaluation of alternatives.

(a) *Evaluation standards.* Once trustees have developed a reasonable range of restoration alternatives under § 990.53 of this part, they must evaluate the proposed alternatives based on, at a minimum:

(1) The cost to carry out the alternative;

(2) The extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses;

(3) The likelihood of success of each alternative;

(4) The extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative;

(5) The extent to which each alternative benefits more than one natural resource and/or service; and

(6) The effect of each alternative on public health and safety.

(b) *Preferred restoration alternatives.* Based on an evaluation of the factors under paragraph (a) of this section, trustees must select a preferred restoration alternative(s). If the trustees conclude that two or more alternatives are equally preferable based on these factors, the trustees must select the most cost-effective alternative.

(c) *Pilot projects.* Where additional information is needed to identify and evaluate the feasibility and likelihood of success of restoration alternatives, trustees may implement restoration pilot projects. Pilot projects should only be undertaken when, in the judgment of the trustees, these projects are likely to provide the information, described in paragraph (a) of this section, at a reasonable cost and in a reasonable time frame.

§ 990.55 Restoration selection—developing restoration plans.

(a) *General.* OPA requires that damages be based upon a plan developed with opportunity for public review and comment. To meet this requirement, trustees must, at a minimum, develop a Draft and Final Restoration Plan, with an opportunity for public review of and comment on the draft plan.

(b) *Draft Restoration Plan.* (1) The Draft Restoration Plan should include:

(i) A summary of injury assessment procedures used;

(ii) A description of the nature, degree, and spatial and temporal extent of injuries resulting from the incident;

(iii) The goals and objectives of restoration;

(iv) The range of restoration alternatives considered, and a discussion of how such alternatives were developed under § 990.53 of this part, and evaluated under § 990.54 of this part;

(v) Identification of the trustees' tentative preferred alternative(s);

(vi) A description of past and proposed involvement of the responsible parties in the assessment; and

(vii) A description of monitoring for documenting restoration effectiveness, including performance criteria that will be used to determine the success of restoration or need for interim corrective action.

(2) When developing the Draft Restoration Plan, trustees must establish

restoration objectives that are specific to the injuries. These objectives should clearly specify the desired outcome, and the performance criteria by which successful restoration will be judged. Performance criteria may include structural, functional, temporal, and/or other demonstrable factors. Trustees must, at a minimum, determine what criteria will:

(i) Constitute success, such that responsible parties are relieved of responsibility for further restoration actions; or

(ii) Necessitate corrective actions in order to comply with the terms of a restoration plan or settlement agreement.

(3) The monitoring component to the Draft Restoration Plan should address such factors as duration and frequency of monitoring needed to gauge progress and success, level of sampling needed to detect success or the need for corrective action, and whether monitoring of a reference or control site is needed to determine progress and success. Reasonable monitoring and oversight costs cover those activities necessary to gauge the progress, performance, and success of the restoration actions developed under the plan.

(c) *Public review and comment.* The nature of public review and comment on the Draft and Final Restoration Plans will depend on the nature of the incident and any applicable federal trustee NEPA requirements, as described in §§ 990.14(d) and 990.23 of this part.

(d) *Final Restoration Plan.* Trustees must develop a Final Restoration Plan that includes the information specified in paragraph (a) of this section, responses to public comments, if applicable, and an indication of any changes made to the Draft Restoration Plan.

§ 990.56 Restoration selection—use of a Regional Restoration Plan or existing restoration project.

(a) *General.* Trustees may consider using a Regional Restoration Plan or existing restoration project where such a plan or project is determined to be the preferred alternative among a range of feasible restoration alternatives for an incident, as determined under § 990.54 of this part. Such plans or projects must be capable of fulfilling OPA's intent for the trustees to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources and services and compensate for interim losses.

(b) *Existing plans or projects*—(1) *Considerations.* Trustees may select a component of a Regional Restoration Plan or an existing restoration project as the preferred alternative, provided that the plan or project:

(i) Was developed with public review and comment or is subject to public review and comment under this part;

(ii) Will adequately compensate the environment and public for injuries resulting from the incident;

(iii) Addresses, and is currently relevant to, the same or comparable natural resources and services as those identified as having been injured; and

(iv) Allows for reasonable scaling relative to the incident.

(2) *Demand.* (i) If the conditions of paragraph (b)(1) of this section are met, the trustees must invite the responsible parties to implement that component of the Regional Restoration Plan or existing restoration project, or advance to the trustees the trustees' reasonable estimate of the cost of implementing that component of the Regional Restoration Plan or existing restoration project.

(ii) If the conditions of paragraph (b)(1) of this section are met, but the trustees determine that the scale of the existing plan or project is greater than the scale of compensation required by the incident, trustees may only request funding from the responsible parties equivalent to the scale of the restoration determined to be appropriate for the incident of concern. Trustees may pool such partial recoveries until adequate funding is available to successfully implement the existing plan or project.

(3) *Notice of Intent To Use a Regional Restoration Plan or Existing Restoration Project.* If trustees intend to use an appropriate component of a Regional Restoration Plan or existing restoration project, they must prepare a Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project. Trustees must make a copy of the notice publicly available. The notice must include, at a minimum:

(i) A description of the nature, degree, and spatial and temporal extent of injuries; and

(ii) A description of the relevant component of the Regional Restoration Plan or existing restoration project; and

(iii) An explanation of how the conditions set forth in paragraph (b)(1) of this section are met.

Subpart F—Restoration Implementation Phase

§ 990.60 Purpose.

The purpose of this subpart is to provide a process for implementing restoration.

§ 990.61 Administrative record.

(a) *Closing the administrative record for restoration planning.* Within a reasonable time after the trustees have completed restoration planning, as provided in §§ 990.55 and 990.56 of this part, they must close the administrative record. Trustees may not add documents to the administrative record once it is closed, except where such documents:

(1) Are offered by interested parties that did not receive actual or constructive notice of the Draft Restoration Plan and the opportunity to comment on the plan;

(2) Do not duplicate information already contained in the administrative record; and

(3) Raise significant issues regarding the Final Restoration Plan.

(b) *Opening an administrative record for restoration implementation.* Trustees may open an administrative record for implementation of restoration, as provided in § 990.45 of this part. The costs associated with the administrative record are part of the costs of restoration. Ordinarily, the administrative record for implementation of restoration should document, at a minimum, all Restoration Implementation Phase decisions, actions, and expenditures, including any modifications made to the Final Restoration Plan.

§ 990.62 Presenting a demand.

(a) *General.* After closing the administrative record for restoration planning, trustees must present a written demand to the responsible parties. Delivery of the demand should be made in a manner that establishes the date of receipt by the responsible parties.

(b) *When a Final Restoration Plan has been developed.* Except as provided in paragraph (c) of this section and in § 990.14(c) of this part, the demand must invite the responsible parties to either:

(1) Implement the Final Restoration Plan subject to trustee oversight and reimburse the trustees for their assessment and oversight costs; or

(2) Advance to the trustees a specified sum representing all trustee direct and indirect costs of assessment and restoration, discounted as provided in § 990.63(a) of this part.

(c) *Regional Restoration Plan or existing restoration project.* When the trustees use a Regional Restoration Plan or an existing restoration project under § 990.56 of this part, the demand will invite the responsible parties to implement a component of a Regional Restoration Plan or existing restoration project, or advance the trustees' estimate of damages based on the scale of the restoration determined to be appropriate for the incident of concern, which may be the entire project or a portion thereof.

(d) *Response to demand.* The responsible parties must respond within ninety (90) calendar days in writing by paying or providing binding assurance they will reimburse trustees' assessment costs and implement the plan or pay assessment costs and the trustees' estimate of the costs of implementation.

(e) *Additional contents of demand.* The demand must also include:

(1) Identification of the incident from which the claim arises;

(2) Identification of the trustee(s) asserting the claim and a statement of the statutory basis for trusteeship;

(3) A brief description of the injuries for which the claim is being brought;

(4) An index to the administrative record;

(5) The Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project; and

(6) A request for reimbursement of:

(i) Reasonable assessment costs, as defined in § 990.30 of this part and discounted as provided in § 990.63(b) of this part;

(ii) The cost, if any, of conducting emergency restoration under § 990.26 of this part, discounted as provided in § 990.63(b) of this part; and

(iii) Interest on the amounts recoverable, as provided in section 1005 of OPA (33 U.S.C. 2705), which allows for prejudgment and post-judgment interest to be paid at a commercial paper rate, starting from thirty (30) calendar days from the date a demand is presented until the date the claim is paid.

(f) *Cost accounting procedures.* Trustees must use methods consistent with generally accepted accounting principles and the requirements of § 990.27 of this part in determining past assessment and restoration costs incurred by trustees. When cost accounting for these costs, trustees must compound these costs using the guidance in § 990.63(b) of this part.

(g) *Cost estimating procedures.* Trustees must use methods consistent with generally accepted cost estimating principles and meet the standards of § 990.27 of this part in estimating future costs that will be incurred to implement a restoration plan. Trustees also must apply discounting methodologies in estimating costs using the guidance in § 990.63(a) of this part.

[61 FR 500, Jan. 5, 1996, as amended at 67 FR 61493, Oct. 1, 2002]

§ 990.63 Discounting and compounding.

(a) *Estimated future restoration costs.* When determining estimated future costs of implementing a Final Restoration Plan, trustees must discount such future costs back to the date the demand is presented. Trustees may use a discount rate that represents the yield on recoveries available to trustees. The price indices used to project future inflation should reflect the major components of the restoration costs.

(b) *Past assessment and emergency restoration costs.* When calculating the present value of assessment and emergency restoration costs already incurred, trustees must compound the costs forward to the date the demand is presented. To perform the compounding, trustees may use the actual U.S. Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis. For costs incurred by state or tribal trustees, trustees may compound using parallel state or tribal borrowing rates.

(c) Trustees are referred to Appendices B and C of OMB Circular A–94 for information about U.S. Treasury rates of various maturities and guidance in calculation procedures. Copies of Appendix C, which is regularly updated, and of the Circular are available from the OMB Publications Office (202–395–7332).

§ 990.64 Unsatisfied demands.

(a) If the responsible parties do not agree to the demand within ninety (90) calendar days after trustees present the demand, the trustees may either file a judicial action for damages or present the uncompensated claim for damages to the Oil Spill Liability Trust Fund, as provided in section 1012(a)(4) of OPA (33 U.S.C. 2712(a)(4)) or seek an appropriation from the Oil Spill Liability Trust Fund as provided in section 1012(a)(2) of OPA (33 U.S.C. 2712(a)(2)).

(b) Judicial actions and claims must be filed within three (3) years after the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project is made publicly available, in accordance with 33 U.S.C. 2717(f)(1)(B) and 2712(h)(2).

[61 FR 500, Jan. 5, 1996, as amended at 67 FR 61493, Oct. 1, 2002]

§ 990.65 Opening an account for recovered damages.

(a) *General.* Sums recovered by trustees in satisfaction of a natural resource damage claim must be placed in a revolving trust account. Sums recovered for past assessment costs and emergency restoration costs may be used to reimburse the trustees. All other sums must be used to implement the Final Restoration Plan or all or an appropriate component of a Regional Restoration Plan or an existing restoration project.

(b) *Joint trustee recoveries*—(1) *General.* Trustees may establish a joint account for damages recovered pursuant to

joint assessment activities, such as an account under the registry of the applicable federal court.

(2) *Management.* Trustees may develop enforceable agreements to govern management of joint accounts, including agreed-upon criteria and procedures, and personnel for authorizing expenditures out of such joint accounts.

(c) *Interest-bearing accounts.* Trustees may place recoveries in interest-bearing revolving trust accounts, as provided by section 1006(f) of OPA (33 U.S.C. 2706(f)). Interest earned on such accounts may only be used for restoration.

(d) *Escrow accounts.* Trustees may establish escrow accounts or other investment accounts.

(e) *Records.* Trustees must maintain appropriate accounting and reporting procedures to document expenditures from accounts established under this section.

(f) *Oil Spill Liability Trust Fund.* Any sums remaining in an account established under this section that are not used either to reimburse trustees for past assessment and emergency restoration costs or to implement restoration must be deposited in the Oil Spill Liability Trust Fund, as provided by section 1006(f) of OPA (33 U.S.C. 2706(f)).

§ 990.66 Additional considerations.

(a) Upon settlement of a claim, trustees should consider the following actions to facilitate implementation of restoration:

(1) Establish a trustee committee and/or memorandum of understanding or other agreement to coordinate among affected trustees, as provided in § 990.14(a)(3) of this part;

(2) Develop more detailed workplans to implement restoration;

(3) Monitor and oversee restoration; and

(4) Evaluate restoration success and the need for corrective action.

(b) The reasonable costs of such actions are included as restoration costs.

SUBCHAPTER F—QUALITY ASSURANCE AND CERTIFICATION REQUIREMENTS FOR NOAA HYDROGRAPHIC PRODUCTS AND SERVICES

PART 995—CERTIFICATION REQUIREMENTS FOR DISTRIBUTORS OF NOAA HYDROGRAPHIC PRODUCTS

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APPENDIX A TO SUBPART C OF PART 995—CERTIFICATION APPLICATION TEMPLATES

AUTHORITY: 33 U.S.C. 892b(b)(1).

SOURCE: 70 FR 52909, Sept. 6, 2005, unless otherwise noted.

Subpart A—General

§ 995.1 Purpose and scope.

(a) The National Oceanic and Atmospheric Administration (NOAA) produces electronic navigational charts (ENCs) as one of its products under its Nautical Charting Program. According to Federal regulations, official NOAA ENCs® meet nautical chart carriage requirements when used in a type-approved display system, such as an Electronic Chart Display and Information System (ECDIS). NOAA distributes these official ENCs to the public for free over its Web site on the Internet. This Part establishes the requirements by which entities may be certified to download, redistribute, repackage, or in some cases reformat, official NOAA ENCs and retain the NOAA ENC's official status. When a NOAA ENC® retains its official status, it will comply with Federal chart carriage requirements. These requirements for re-distributing NOAA ENC data or incorporating it into value-added navigational products are to ensure the quality and content of official NOAA ENCs remains intact throughout the redistribution process. No other processes result in redistributed NOAA ENC products that comply with Federal chart carriage requirements.

(b) Two types of certification are offered. The first type, ''Certified NOAA ENC Distributor'' (CED), covers NOAA ENC downloading, exact copying, and redistribution of those copies. The second type, ''Certified NOAA ENC Value Added Distributor'' (CEVAD), permits reformatting official NOAA ENCs into a System Electronic Navigational Chart (SENC) using type-approved software, and distribution of that SENC. Both types of certification permit, but do not require, compression, encryption, and packaging with other data. Because NOAA ENC® data is the primary concern of this rule, and it is mandatory for certification that the official NOAA ENCs remain unaltered for positional accuracy and informational content, NOAA is, in effect, certifying that a CED's or CEVAD's products contain official NOAA ENC data, and therefore meets chart carriage requirements.

(c) Any entity may continue to download from an official NOAA ENC® Web site and use NOAA ENCs for any

purpose. As long as it is not redistributed, that ENC will still be considered as official Federal data. If the NOAA ENC is successfully imported unaltered into a type-approved system, it will comply with Federal nautical chart carriage requirements. While without certification anyone can download an official NOAA ENC for any use, if a NOAA ENC® is redistributed by an uncertified entity to another entity, the NOAA ENC is no longer considered as official Federal data and thus does not comply with Federal chart carriage requirements. An example follows.

(1) One example is if an uncertified individual downloads a NOAA ENC and uses it according to Federal requirements, that individual will be meeting Federal chart carriage requirements. If an uncertified tug boat company has 9 boats in its fleet and an individual on one of the boats downloads a NOAA ENC and uses it according to Federal requirements that individual will be meeting Federal chart carriage requirements. However, if that same uncertified tug boat company downloads a NOAA ENC and redistributes it to its 9 boats, the NOAA ENC will not be considered official Federal data and therefore the 9 boats will not be meeting Federal carriage requirements. The company should become a CED or CEVAD under this part in order to be able to redistribute NOAA ENC's and retain the official status of those ENC's.

(2) To reiterate, NOAA ENCs must not be redistributed by an uncertified entity if the end output needs to have official NOAA ENCs in it that will comply with Federal carriage requirements. Any company, entity or individual must be certified if the goal is to redistribute NOAA ENCs and have those NOAA ENCs remain as official Federal data and as such continue to meet Federal carriage requirements administered by the Coast Guard.

§ 995.2 Incorporation by reference.

Certain material listed in this section is incorporated by reference with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. The materials listed in this section are incorporated by reference in the corresponding sections noted. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the National Archives and Records Administration (NARA) or at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(a) The material listed below is available for purchase from the International Hydrographic Bureau, 4 quai Antoine 1er, B.P. 445, MC 98011 MONACO CEDEX; telephone: (377) 93.10.81.00; fax: (377) 93.10.81.40; e-mail: *info@ihb.mc*. Orders may be submitted by letter, fax, or e-mail.

(1) IHO Technical Resolution A3.11—''ENC/SENC Distribution Option'', as published in the ''Resolutions of the International Hydrographic Organization'' updated June 2005, incorporation by reference approved for § 995.26.

(2) [Reserved]

(b) [Reserved]

§ 995.3 Availability of other publications.

(a) For further guidance you may obtain the following:

(1) IEC 61174—The International Electrotechnical Commission identified and described the necessary performance tests and checks for an International Maritime Organization (IMO) compliant ECDIS. The IMO Performance Standards permit National Maritime Safety Administrations to consider ECDIS as the functional equivalent to charts required by Regulation V, Chapter 20 of the 1974 SOLAS Convention. IEC Publication 61174, dated August 1998, can be purchased from the IEC Web site: *http://www.iec.ch*.

(2) IHO Special Publication S57—The IHO Transfer Standard for Hydrographic Data, edition 3.1, dated November 2000, describes the data structure and format to be used for the exchange of ENC data, product specification for the production of ENC data, and an updating profile. IHO S–57 documentation is available for free download at *http://www.iho.shom.fr*. Send written requests

to the International Hydrographic Bureau, 4 quai Antoine 1er, B.P. 445, MC 98011 MONACO CEDEX; telephone: (377) 93.10.81.00; e-mail: *info@ihb.mc*.

(3) IHO Special Publication S58—The IHO Validation Checks for Hydrographic Data, edition 2.0, dated October 2003, describes the validation checks to be used on ENC data. This document was formally published as S–57 Appendix B.1, Annex C, but has been renamed to S–58 due to the S–57 publication having been frozen (*i.e.* will not change) for a fixed time period. IHO S–58 documentation is available for free download at *http://www.iho.shom.fr*. Send written requests to the International Hydrographic Bureau, 4 quai Antoine 1er, B.P. 445, MC 98011 MONACO CEDEX; telephone: (377) 93.10.81.00; e-mail: *info@ihb.mc*.

(b) [Reserved]

§ 995.4 Definitions.

Certified NOAA ENC Distributor (CED) means an entity that is certified as a distributor of NOAA ENC files by NOAA. This certification indicates that the distributor meets certain requirements (in Subparts A, B, and D of this part) that ensure timely and accurate dissemination of NOAA ENC data.

Certified NOAA ENC Value Added Distributor (CEVAD) means an entity that creates a derived product that has been produced from NOAA ENC files using a process certified by NOAA. This certification indicates that the CEVAD meets certain requirements (in Subparts A, C, and D of this part) that ensure timely and accurate dissemination of NOAA ENC data in a non-ENC format.

Derived product means a navigational product produced by transforming the NOAA ENC files to another format while preserving the content and accuracy. It may contain information from other sources.

Distributor means a person or company that redistributes a NOAA ENC to end users in its original format.

Electronic Chart Display and Information System (ECDIS) means the internationally adopted computer-assisted navigation system which, when complying with all of the required specifications, can be accepted as the up-to-date chart required by V/20 of the 1974 SOLAS Convention.

Electronic Navigational Chart (ENC) means a database, standardized as to content, structure, and format, issued for use with ECDIS on the authority of government authorized hydrographic offices. The ENC contains all the chart information necessary for safe navigation and may contain supplementary information in addition to that contained in the paper chart (e.g., sailing directions), which may be considered necessary for safe navigation.

Entity means one person, one person within a company, or one company.

NOAA ENC® means Electronic Navigational Charts produced by the National Oceanic and Atmospheric Administration. NOAA ENC files comply with the IHO S–57 standard, Edition 3.1 and the ENC Product Specification. The phrase ''NOAA ENC'' is a registered trademark and may not be used without permission.

Redistributed means to distribute again, either as a direct copy or in a different way. A redistributed NOAA ENC is one that has been downloaded from an official NOAA ENC Web site by one entity and provided to another entity.

System Electronic Navigational Chart (SENC) means a database resulting from the transformation of the ENC by ECDIS for appropriate use, updates to the ENC by appropriate means and other data added by the mariner. It is this database that is actually accessed by ECDIS for the display generation and other navigational functions, and is equivalent to an up-to-date paper chart. The SENC may also contain information from other sources.

Value Added Distributor means a person or company that redistributes a NOAA ENC with additional data included or in a different format to create newly derived products used by end users.

§ 995.5 Abbreviations.

CED Certified NOAA ENC Distributor
CEVAD Certified NOAA ENC Value Added Distributor
CRC Cyclical Redundancy Checksum
ECDIS Electronic Chart Display and Information System
ENC Electronic Navigational Chart
IEC International Electrotechnical Commission

IHO International Hydrographic Organization
IMO International Maritime Organization
ISO International Organization for Standardization
NOAA National Oceanic and Atmospheric Administration
NOS National Ocean Service
OCS Office of Coast Survey
SENC System Electronic Navigational Chart
SOLAS Safety of Life at Sea
VAD Value Added Distributor

§ 995.6 Fees.

(a) The Office of Coast Survey, NOAA, may charge a fee for costs incurred to process each request for certification pursuant to 33 U.S.C. 892b(b)(1)(C) and 892b(b)(2). The amount of the fee, if one is charged, will be determined by the Director, Office of Coast Survey, and charged to all Applicants based on the time and effort involved.

(b) If a fee is charged, it will be charged for each application for certification submitted by an Applicant. A fee may also be charged for resubmissions of revised requests that were initially unacceptable and are sent in within 90 days as described in § 995.11(b)(2).

§ 995.7 Liability.

Distributors and value added distributors certified under this part shall indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of certified distributors or value added distributors or their employees, arising out of the use by a distributor or value added distributor, or any party acting on its behalf or under its authorization, of NOAA data.

Subpart B—Certification and Procedures

§ 995.10 Correspondence and applications.

(a) Distributors or value-added distributors desiring certification from NOAA shall provide a written request and application for certification to the Office of Coast Survey, Attention: Distribution Certification, N/CS, 1315 East West Highway, Silver Spring, Maryland 20910. Such a distributor or value-added distributor is hereafter referred to as Applicant. The Office of Coast Survey (OCS) is the approving office for certification under these requirements.

(b) Applicant shall provide an application for certification that describes how each element in the applicable sections of this part has been met. The application will also contain an acknowledgment, signed by a company principal, of all terms and conditions described in this part.

(c) Applicant shall use the appropriate template provided in Appendix A to subpart C of this part to prepare their request for certification.

(d) Applicant shall provide, with its application, a point of contact with mailing address, phone number, and e-mail address. Applicant shall immediately notify NOAA, through the Office of Coast Survey, of any changes to point of contact information. Failure to do so will be considered a violation of this part and may lead to termination of certification.

§ 995.11 Government review and approval.

(a) An application will be reviewed by NOAA within 90 days of receipt. If all requirements, as defined by this part, are adequately addressed, certification will be granted. If for any reason NOAA will be unable to process the application for certification within the 90-day time frame, Applicant will be notified and a revised date will be provided for a decision on the request.

(b)(1) NOAA will determine if the request for certification is complete and that it demonstrates that Applicant has met all of the applicable requirements described in this part.

(2) In the event that a request is incomplete or does not demonstrate that Applicant has met all of the applicable requirements, NOAA will consider the application unacceptable. NOAA will notify the Applicant of the deficiencies in writing. Applicant may re-submit a revised application within 90 days of receipt of NOAA's denial notice. NOAA will review applications received within the 90-day resubmission period in the time frame described in paragraph

(a) of this section. After the second review, if the application is still unacceptable, Applicant will be again notified of the deficiencies in writing and the process continues as stated is this section.

§ 995.12 Certification designation.

An Applicant that has been certified by NOAA as a CED may use the phrase ''Certified NOAA ENC Distributor'' on products and marketing materials. An Applicant that has been certified by NOAA as a CEVAD may use the phrase ''Certified NOAA ENC Value Added Distributor'' on products and marketing materials. Use of these phrases must include labeling to identify the product's contents and suitable use. (See § 995.24(a)(4), (5) and (6) and (b)(3), (4) and (5)). Use of the NOAA emblem is described in § 995.28 and is not automatically granted with certification.

§ 995.13 Transfer of certification.

A CED or CEVAD may not transfer its certification to another entity. If it is transferred the existing certification will be terminated.

(a) If prior to certification it is known that another entity will be assisting the entity applying for certification in the production or redistribution of the data, that other entity must be documented in the application process. Listed entities will be considered as falling under the umbrella of the parent company's certification. The name of the entity and its duties should be included as part of the application.

(b) If, subsequent to certification, a CED or CEVAD wishes to add another entity to assist it, a request in writing with the name of the entity and its duties shall be provided to the Office of Coast Survey, NOAA for acceptance. The Office of Coast Survey, NOAA will provide written notification of acceptance to the CED or CEVAD within 30 days of receipt of the request.

§ 995.14 Auditing.

NOAA reserves the right to audit CED or CEVAD to ensure that the certification requirements are being met. Such an audit may consist of: visits to the production facilities, product testing, confirmation of ISO 9001 certification, or confirmation of type approval for conversion software, and so forth.

§ 995.15 Termination of certification.

(a) In the event that NOAA determines that a CED or CEVAD is not meeting the requirements described in this part, the Office of Coast Survey, NOAA (OCS) will provide initial written notification of potential termination to the CED or CEVAD. OCS/NOAA will state in its notification to CED or CEVAD that termination of certification is under consideration.

(b) The initial notification of potential termination will be provided in writing by OCS to the CED or CEVAD, and shall state the reason for the potential termination. Reasons for termination may include, but are not limited to:

(1) CED or CEVAD contracts or in any way seeks to transfer the production or redistribution of all or part of the NOAA official data in the product to another entity.

(2) CED or CEVAD fails to, or is unable (in the opinion of NOAA) to carry out its responsibilities as described in this part.

(c) CED or CEVAD may submit written comments to OCS within 30 days of receipt of the OCS's initial written notification of potential termination, explaining why CED or CEVAD's certification should not be terminated.

(1) The written comments shall be submitted to: Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD 20910.

(2) The written comments shall contain at least:

(i) Identification and contact information of the CED or CEVAD;

(ii) A statement that CED or CEVAD is responding to an initial written notification of potential termination by OCS; and

(iii) A thorough but concise argument as to why CED or CEVAD believes that its certification should not be terminated.

(d) The Director of OCS will take all timely written comments into account before taking final action, and in no case will the Director take final action until at least 45 days after CED or

CEVAD's receipt of the initial written notification. A decision to terminate by the Director of OCS will state the reasons for termination and respond to all timely written comments submitted. Any final action taken by OCS constitutes final agency action on the matter.

(e) CED or CEVAD shall notify all recipients of its products that its certification has been revoked, and that the product may no longer be valid for use. In addition, the CED or CEVAD shall provide the dates of non-compliance.

§ 995.16 Term of certification.

The term of certification is five years from the date of issuance. At the end of the certification term, the process must be re-certified by the distributor or value added distributor submitting a request for certification as described in § 995.10. It may also be revoked prior to the end of the term under the conditions described in § 995.15.

Subpart C—Requirements for Certified Distributors and Value Added Distributors of NOAA ENC Products

§ 995.20 General.

The requirements for certification as a ''Certified NOAA ENC Distributor'' (CED) and ''Certified NOAA ENC Value Added Distributor'' (CEVAD) are described in this subpart.

§ 995.21 Registry of data users.

(a) CED or CEVAD shall maintain a registry of customers receiving NOAA ENC data. CED or CEVAD shall provide said registry to NOAA on a biannual basis for internal NOAA planning and product evaluation use. NOAA agrees to treat such information as proprietary (if requested to do so by the CED or CEVAD).

(b)(1) The registry shall include, but not be limited to:

(i) Which NOAA ENC® cells were provided to each customer;

(ii) Edition number of each cell provided;

(iii) Updates provided for each cell;

(iv) Method of distribution for each customer.

(2) The registry may also include information about the type and size of vessel that the NOAA ENC data has been provided for as well as an anonymous unique identifier for the vessel.

§ 995.22 Training of data users.

CED or CEVAD shall provide some form of product training and education materials to the customer to ensure that the end user has a sufficient level of information about the intended use of the derived product and what is needed to properly use it (e.g., requires certain equipment).

§ 995.23 Acquisition of data.

(a) CED or CEVAD shall obtain official NOAA ENC® files only by directly downloading them from an official NOAA ENC site on the Internet.

(b)(1) After downloading NOAA ENC files, CED or CEVAD shall uncompress the files and compute a CRC checksum value for each NOAA ENC file and verify that it matches the CRC checksum value contained in the CATALOG.031 file provided with the NOAA ENC files by NOAA. This is to ensure that no NOAA ENC files have been corrupted during the download process.

(2) In the event that said CRC checksum value does not match that in the CATALOG.031 file, CED or CEVAD agrees to:

(i) Repeat the download process;

(ii) In the event that said CRC checksum value for the repeat download does not match that in the CATALOG.031 file, immediately notify the NOAA ENC Production Manager at *enc.chartproduction@noaa.gov*, and;

(iii) Not redistribute any NOAA ENC that does not have a valid CRC checksum.

§ 995.24 Distribution of data.

(a) *Distribution of data by CEDs*—(1) *Format of redistributed data*—(i) *General.* Except as listed in paragraphs (a)(1)(ii) and (iii) of this section, CED agrees to redistribute NOAA ENC data only in the original form provided by NOAA after uncompressing and shall not change the file format (S–57 Edition 3.1 ENC or other formats specified by NOAA), or contents, or alter the NOAA ENC data in any way.

(ii) *Compression.* The NOAA ENC files may be compressed using a lossless compression technique provided that CED makes the decompression software available to the end user as part of the redistribution service. Decompressed files must have the same CRC checksum value as the original files. The CED agrees to make the compression/decompression software and documentation available to NOAA for testing.

(iii) *Encryption.* The NOAA ENC files may be encrypted by CED, providing that the encryption/decryption process does not result in any information loss and that CED makes the decryption software available to the end user as part of the redistribution service. Decrypted files must have the same CRC checksum value as the original files. CED shall make the encryption/decryption software and documentation available to NOAA for testing.

(2) *Frequency of distribution.* CED shall make all current editions of NOAA ENC files and all updates to or new editions of NOAA ENC files available to its customers within five working days of the files or updates being posted by NOAA. Documentation shall be provided to the customer concerning any time delays that may occur between official release of a NOAA ENC or update, and CED providing same to end users.

(3) *Distribution report.* CED shall provide a bi-annual report on when NOAA ENC files were downloaded and when they were redistributed to end-users.

(4) *Additional data.* (i) If CED provides other data to customers in addition to NOAA ENC data (e.g., ENC data from other nations, raster chart data, privately produced data, etc.), CED shall provide a clear indication to the customer which files are official NOAA ENC data and which files are not. This may be accomplished through means such as package labeling, notifications in software, or other means.

(ii) Additionally, any data that is included with NOAA ENC data must not result in embarrassment to the Department of Commerce or NOAA. There must be no conflict with any trademark rights and the inclusion of non-NOAA data will not constitute any endorsement of or favoritism toward the non-NOAA data or CED.

(5) *Identification of type and contents.* CED shall ensure that NOAA ENC® files provided to an end user are clearly identified as to the type (e.g., direct unaltered copies) and contents (cells, updates, and ancillary files) and authenticity of the exchange set. This may be accomplished through means such as package labeling, notifications in software, or other means.

(6) *Use of product.* CED shall provide a clear indication to the customer the purpose of its products; for example, indicating whether or not the product, and the data contained within it, is suitable for navigation and if it meets Federal chart carriage requirements. If only some of the files meet Federal carriage requirements, CED shall provide clear indication which files do and which files do not. This may be accomplished through means such as package labeling, notifications in software, or other means.

(b) *Distribution of data by CEVADs*—(1) *Frequency of distribution.* CEVAD shall make all current editions of NOAA ENC files and all updates to or new editions of NOAA ENC files available to its customers within five working days of the files or updates being posted by NOAA. Documentation shall be provided to the customer concerning any time delays that may occur between official release of a NOAA ENC or update, and CED providing same to end users.

(2) *Distribution report.* CEVAD shall provide a bi-annual report to NOAA on when NOAA ENC files were downloaded and when they were redistributed or made available to end users.

(3) *Additional data.* (i) If CEVAD provides products to customers that incorporate other data in addition to NOAA ENC data (e.g., ENC data from other nations, raster chart data, privately produced data, etc.), CEVAD shall provide a clear indication in the product which data are from official NOAA ENC data and which data are not. This shall be done in a way that allows the navigation system to give the end user an automatic notification or warning that particular data elements within the product are not from the official NOAA ENC. Any such data shall not

degrade the official NOAA ENC data or information.

(ii) Additionally, any data that is included with NOAA ENC data must not result in embarrassment to the Department of Commerce or NOAA. There must be no conflict with any trademark rights and the inclusion of non-NOAA data will not constitute any endorsement of or favoritism toward the non-NOAA data or CEVAD.

(4) *Identification of type and contents.* CEVAD shall ensure that data provided to an end user clearly identify which NOAA ENC® files are included in the product as to the type (e.g., NOAA ENCs in another form than that provided by NOAA without degradation to positional accuracy or informational content) and the contents (cells, updates, and ancillary files) and authenticity of the NOAA ENC files used. This may be accomplished through means such as package labeling, notifications in software, or other means.

(5) *Use of product.* CEVAD shall provide a clear indication to the customer of the purpose of its products; for example, indicating whether or not the product, and the data contained within it, is suitable for navigation and if it meets Federal chart carriage requirements. If only some of the files meet Federal carriage requirements, CEVAD shall provide clear indication which files do and which files do not. This may be accomplished through means such as package labeling, notifications in software, or other means.

§ 995.25 Quality management system.

(a) *Quality management system for CEVADs.* (1) CEVAD shall operate a quality management system, based on ISO 9001–2000 or equivalent, which embraces all elements of the process used to process and redistribute NOAA ENC files. The minimum requirements for such a quality management system are those defined in this part. The quality management system must ensure that the production process complies with all relevant requirements of this part.

(2) The quality management system must, at a minimum, include an adequate account of:

(i) The quality objectives and the organizational structure, responsibilities, and powers of management with regard to production quality;

(ii) The techniques, processes, and systematic actions that will be used for quality management throughout the production process, including NOAA ENC conversion and the quality of the product being redistributed;

(iii) The examination and tests that will be carried out before, during, and after processes essential for the quality of the product, and the frequency with which they will be carried out;

(iv) The quality records, such as inspection records and test data, qualification reports of personnel concerned resulting from the program specified herein; and

(v) The means for monitoring the achievement of the required quality of the product and the effective operation of the quality management system.

(3) Design and development changes shall be reviewed, verified, and validated as appropriate and approved by the ISO 9001 certification authority (or equivalent if another quality management system is used) before implementation.

(4) If the type approved conversion software is maintained by a third party, CEVAD shall ensure that no changes made to the conversion software render the type approval of the conversion software invalid, and shall evaluate the effects of such changes on the end users of the product.

(5) CEVAD shall analyze both internal information and that received from external parties in order to continually monitor and improve the production process and the product being redistributed.

(6) CEVAD shall ensure that personnel performing work affecting the production process are competent with regard to appropriate education, training, skills, and expertise.

(7) CEVAD shall conduct internal audits at planned intervals to determine whether the quality management system conforms to the requirements of this part and is effectively implemented and maintained. The audit program shall take into consideration the individual processes' importance in relation to the product quality, as well as results of previous audits. Selection of auditors and conducting of audits

shall, as far as practicable, insure objectivity and impartiality in the audit process.

(8) CEVAD shall ensure that actions are taken without undue delay to eliminate detected non-conformities and their causes. Follow-up activities shall include the verification of the actions taken and the reporting of verification results.

(b) [Reserved]

§ 995.26 Conversion of NOAA ENC® files to other formats.

(a) *Conversion of NOAA ENC files to other formats*—(1) *Content.* CEVAD may provide NOAA ENC data in forms other than that provided by NOAA. However, CEVAD shall not change the information content provided by the NOAA ENC. This means that all features and their associated attribution must be preserved in the CEVADs data files without degradation to positional accuracy or informational content.

(2) *Software certification.* Conversion of NOAA ENC data to other formats must be accomplished within the constraints of IHO Technical Resolution A3.11: ''ENC/SENC Distribution Option'' (incorporated by reference, see § 995.2)—in particular, paragraph three:

Distributors who are to supply the SENC service must operate under the regulations of the issuing authority. The onshore ENC to SENC conversion must be performed using type-approved software.

(3) *Error reporting.* Any errors detected during the conversion process shall be logged and investigated prior to releasing the data in which the errors occurred. Any errors that apparently originate in the NOAA ENC files shall be immediately reported to NOAA.

(4) *Format check.* CEVAD shall ensure that the converted data conforms to the CEVAD's own format specifications and shall test load the converted data to ensure that it will correctly load and display on the intended equipment.

(b) [Reserved]

§ 995.27 Format validation software testing.

Tests shall be performed verifying, as far as reasonable and practicable, that CEVAD's data testing software performs the checks, as specified by CEVAD, for verifying that the converted data conforms to its own proprietary product specification. These tests may be combined with testing of the conversion software.

§ 995.28 Use of NOAA emblem.

(a) Permission for the use of the NOAA emblem must be obtained by formally requesting such permission from NOAA and the Department of Commerce through NOAA's Office of Coast Survey.

(b) Use of the NOAA emblem must satisfy an interest of the Department; the use may not result in embarrassment to the Department; there must be no conflict with any trademark rights, as stated in § 995.24(a)(4)(ii) and (b)(3)(ii); and there can be no endorsement or favoritism toward the distributor or value added distributor using the emblem, or other appearance of impropriety.

(c) Certification under this part does not automatically grant the distributor or value added distributor the right to use the NOAA logo. Use of the NOAA logo without express permission from NOAA and the Department of Commerce will be considered grounds for denial of an application for certification or termination of certification.

(d) *Emblem use by certified distributors or certified value added distributors of NOAA electronic products.* (1) After receiving separate, written permission from NOAA and the Department of Commerce as described in paragraph (a) of this section, a CED or CEVAD may use the NOAA emblem in product labeling and advertising materials, but only in conjunction with the phrase ''Certified NOAA ENC Distributor'' or ''Certified NOAA ENC Value Added Distributor,'' as applicable, and only after receiving separate, written permission from NOAA and the Department of Commerce as described in paragraph (d)(2) of this section.

(2) If the NOAA emblem is used with products that include other data, clear indication must be provided to the customer indicating that the emblem and the phrase ''Certified NOAA ENC Distributor'' or ''Certified NOAA ENC Value Added Distributor'' does not apply to the entire product delivered.

Information on the effects of such limitation must be provided to the customer (See §995.24(a)(4) and (5) and (b)(3) and (4).)

§995.29 Limitation on endorsements.

By certifying compliance with this part, NOAA does not automatically, directly, or indirectly endorse any product or service provided, or to be provided, by distributor or value added distributor or its successors, assignees, or licensees. The distributor or value added distributor shall not in any way imply that this certification is an endorsement of any such product or service without separate, written permission from NOAA and the Department of Commerce.

APPENDIX A TO SUBPART C OF PART 995—CERTIFICATION APPLICATION TEMPLATES

Notice to respondents:

This information is being collected by NOAA to ascertain qualifications for certification as an authorized distributor of official NOAA ENC® data. NOAA developed these certification requirements under the authority of Section 104 of the Hydrographic Services Improvement Act Amendments of 2002, 33 U.S.C. 892b(b)(1).

The information on these forms is not associated with performance of agency functions.

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to *Jim.Gardner@noaa.gov*.

Responses to this collection are considered voluntary, though they are required for certification.

The information requested on these forms will not be disseminated to the public or used to support information that will be disseminated to the public. Any disclosure of propriety information will be held in confidentiality as regulated under the Trade Secrets Act. NOAA will not violate that Act's prohibitions against unauthorized agency disclosures of trade secrets or other confidential business information.

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to a penalty for failure to, comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. [OMB Control *#0648–0508* Expires *05/31/2008*]

APPLICATION FOR CERTIFICATION AS "CERTIFIED NOAA ENC DISTRIBUTOR"

Company Name
Company Address
Company Phone Number
Company Fax Number
Company E-Mail Address
Point of Contact
Point of Contact Address
Point of Contact Phone Number
Point of Contact Fax Number
Point of Contact E-Mail Address

This is a request for the above named company or individual (hereinafter referred to as Distributor) to be certified as a "Certified NOAA ENC Distributor" (CED). This document describes how each of the requirements for certification is being met. Descriptive titles after each number in parenthesis on this application correspond to section titles in 15 CFR, chapter IX, Subchapter F, Part 995—Certification requirements for Distributors of NOAA hydrographic products. The numbers after each descriptive title refer to the section number within 15 CFR part 995. The Distributor should use these section numbers to insure that the requirements are being fully understood and met by the Distributor prior to submitting the application.

(1) *Correspondence and applications/requests for certification (995.10 (a))*. Distributor acknowledges and agrees to all procedures and requirements pertaining to the certification process described in 15 CFR part 995.

(2) *Correspondence and applications/point of contact (995.10 (d))*. Distributor agrees to immediately notify the Government of any changes to point of contact information.

(3) *Transfer of certification (995.13)*. Document other entities that will be assisting in the production or redistribution of the derived product. Provide the names and duties of those entities to meet this requirement.

(4) *Auditing (995.14)*. Distributor acknowledges that NOAA reserves the right to audit Distributor to ensure that all requirements in 15 CFR part 995 are being met.

(5) *Termination of certification (995.15)*. Distributor acknowledges the conditions leading to and procedures for the termination of certification as described in this requirement.

(6) *Term of certification (995.16)*. Distributor acknowledges that the duration of certification is five years from the date of issuance.

(7) *Registry of data users (995.21)*. Include a description of the data user registry, including:

(a) What data elements it contains, specifically showing how the required elements are included;

(b) A hardcopy sample of the report that will be periodically submitted to NOAA;

(c) A short description of how the registry is maintained.

(8) *Training of data users (995.22).* Include a copy of any documentation provided to users that is intended to meet this requirement.

(9) *Acquisition of data (995.23).* Distributor asserts that all procedures described in this requirement for the acquisition of NOAA ENC® data for redistribution are being followed.

(10) *Distribution of data/general (995.24(a)(1)(i)).* Distributor asserts that all NOAA ENC® data redistributed will be in the format described by this requirement.

(11) *Distribution of data/compression (995.24(a)(1)(ii)).* Distributor shall indicate if data compression techniques are used. If Distributor uses data compression techniques, Distributor asserts that the process meets the necessary regulations described by this requirement.

(12) *Distribution of data/encryption (995.24(a)(1)(iii)).* Distributor shall indicate if data encryption techniques are used. If Distributor uses data encryption techniques, Distributor asserts that the process meets the necessary regulations described by this requirement.

(13) *Distribution of data/frequency of distribution (995.24(a)(2)).* Distributor asserts that any updates will be transmitted to their users within the time constraints described by this requirement.

(14) *Distribution of data/distribution report (995.24(a)(3)).* Distributor shall provide an example of the distribution report described by this requirement.

(15) *Distribution of data/additional data (995.24(a)(4)).* Distributor shall indicate if additional data is to be distributed with the NOAA ENC® data. If so, Distributor shall provide examples of how the data users will be informed as to the official and unofficial contents of the data as described by this requirement.

(16) *Distribution of data/identification of contents (995.24(a)(5)).* Distributor shall provide examples of how the contents of the NOAA ENC® files will be identified to the users.

(17) *Distribution of data/use of product (995.24(a)(6)).* Distributor shall provide examples of how the data users will be informed as to the purpose of its products as described in this requirement.

(18) *Use of NOAA emblem (995.28).* Distributor acknowledges that a separate request for the use of the NOAA emblem must be submitted according to the procedure described in this requirement.

(19) *Limitation on endorsements (995.29).* Distributor acknowledges that NOAA does not automatically, directly, or indirectly endorse any product or service provided, or to be provided, by Distributor, its successors, assignees, or licensees. Distributor shall not in any way imply that this certification is an endorsement of any such product or service without separate, written permission.

(20) *Liability (995.7).* By signing this request for certification, Distributor pledges to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of Distributor or its employees, arising out of the use by the Distributor, or any Party acting on its behalf or under its authorization, of NOAA ENC® data.

Signature of this request constitutes an acknowledgement by Distributor of ALL applicable terms and conditions described in the certification requirements in 15 CFR part 995.

Signed: _____

Title: _____

Date: _____

[OMB Control #*0648–0508* Expires *05/31/2008*]

APPLICATION FOR CERTIFICATION AS ''CERTIFIED NOAA ENC VALUE ADDED DISTRIBUTOR''

Company Name
Company Address
Company Phone Number
Company Fax Number
Company E-Mail Address
Point of Contact
Point of Contact Address
Point of Contact Phone Number
Point of Contact Fax Number
Point of Contact E-Mail Address

This is a request for the above named company (hereinafter referred to as Value Added Distributor) to be certified as a ''Certified NOAA ENC Value Added Distributor'' (CEVAD). This document describes how each of the requirements for certification is being met. Descriptive titles after each number in parenthesis on this application correspond to section titles in 15 CFR, chapter IX, Subchapter F, Part 995—Certification requirements for Distributors of NOAA hydrographic products. The numbers after each descriptive title refer to the section number within 15 CFR, part 995. The Distributor should use these section numbers to insure that the requirements are being fully understood and met by the Distributor prior to submitting the application.

(1) *Correspondence and applications/requests for certification (995.10 (a)).* Distributor acknowledges and agrees to all procedures and requirements pertaining to the certification process described in 15 CFR part 995.

(2) *Correspondence and applications/point of contact (995.10 (d)).* Distributor agrees to immediately notify the Government of any changes to point of contact information.

(3) *Transfer of certification (995.13).* Document other entities that will be assisting in the production or redistribution of the derived product. Provide the names and duties of those entities to meet this requirement.

(4) *Auditing (995.14).* Distributor acknowledges that NOAA reserves the right to audit Distributor to ensure that all requirements in 15 CFR part 995 are being met.

(5) *Termination of certification (995.15).* Distributor acknowledges the conditions leading to and procedures for the termination of certification as described in this requirement.

(6) *Term of certification (995.16).* Distributor acknowledges that the duration of certification is five years from the date of issuance.

(7) *Registry of data users (995.21).* Include a description of the data user registry, including:

(a) What data elements it contains, specifically showing how the required elements are included;

(b) A hardcopy sample of the report that will be periodically submitted to NOAA;

(c) A short description of how the registry is maintained.

(8) *Training of data users (995.22).* Include a copy of any documentation provided to users that is intended to meet this requirement.

(9) *Acquisition of data (995.23).* Distributor asserts that all procedures described in this requirement for the acquisition of NOAA ENC® data for redistribution are being followed.

(10) *Distribution of data/frequency of distribution (995.24(b)(1)).* Value Added Distributor asserts that any updates will be transmitted to their users within the time constraints described by this requirement.

(11) *Distribution of data/distribution report (995.24(b)(2)).* Value Added Distributor shall provide an example of the distribution report described by this requirement.

(12) *Distribution of data/additional data (995.24(b)(3)).* Value Added Distributor shall indicate if additional data is to be distributed with the NOAA ENC data. If so, Value Added Distributor shall provide examples of how the data users will be informed as to the official and unofficial contents of the data as described in this requirement.

(13) *Distribution of data/identification of contents (995.24(b)(4)).* Value Added Distributor shall provide examples of how the contents of the NOAA ENC files will be identified to the users.

(14) *Distribution of data/use of product (995.24(b)(5)).* Distributor shall provide examples of how the data users will be informed as to the purpose of its products as described in this requirement.

(15) *Quality management system (995.25).* Value Added Distributor shall provide a copy of the ISO 9001–2000 certification or certification of compliance with an equivalent program of quality management that covers the processes described in this section of the requirements.

(16) *Conversion of NOAA ENC files to other formats (995.26(a)(1)).* Value Added Distributor asserts that all NOAA ENC® content and accuracy are preserved during the conversion process as described in this section of the requirements.

(17) *Conversion of NOAA ENC files to other formats/software certification (995.26(a)(2)).* Value Added Distributor shall provide a copy of the type approval certificate for the software used to convert the NOAA ENC files to the Value Added Distributor's format.

(18) *Conversion of NOAA ENC files to other formats/error reporting (995.26(a)(3)).* Value Added Distributor asserts that they shall log and report any errors in the NOAA ENC data detected during the conversion process. Value Added Distributor shall provide an example of the report format that they will use.

(19) *Conversion of NOAA ENC files to other formats/format check (995.26(a)(4)).* Value Added Distributor asserts that all data shall be checked for conformance with Value Added Distributor's own format specifications and shall test load the converted data as described in this section of the requirements.

(20) *Format validation software testing (995.27).* The validation software used by Value Added Distributor shall be tested according to this requirement and the results stated in this section of the request for certification.

(21) *Use of NOAA emblem (995.28).* Value Added Distributor acknowledges that a separate request for the use of the NOAA emblem must be submitted according to the procedure described in this requirement.

(22) *Limitation on endorsements (995.29).* Value Added Distributor acknowledges that NOAA does not automatically, directly, or indirectly endorse any product or service provided, or to be provided, by Value Added Distributor, its successors, assignees, or licensees. Value Added Distributor shall not in any way imply that this certification is an endorsement of any such product or service without separate, written permission.

(23) *Liability (995.7).* By signing this request for certification, Value Added Distributor pledges to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of Value Added Distributor or its employees, arising out of the use by the Value Added Distributor, or any party acting on its behalf or under its authorization, of NOAA ENC data.

Signature of this request constitutes an acknowledgement by Value Added Distributor of ALL applicable terms and conditions described in the certification requirements.

Signed: _____
Title: _____
Date: _____

PART 996—QUALITY ASSURANCE AND CERTIFICATION REQUIREMENTS FOR NOAA HYDROGRAPHIC PRODUCTS AND SERVICES

Subpart A—General

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AUTHORITY: 33 U.S.C. 892b.

SOURCE: 70 FR 698, Jan. 5, 2005, unless otherwise noted.

Subpart A—General

§ 996.1 Purpose and scope.

The National Oceanic and Atmospheric Administration (NOAA) was mandated to develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator may certify hydrographic products that satisfy standards promulgated by the Administrator. ''Hydrographic products'' are any publicly or commercially available products produced by a non-Federal entity that include or display hydrographic data. The procedures established here by which hydrographic products are proposed for certification; by which standards and compliance tests are developed, adopted, and applied for those products; and by which certification may be awarded or denied are the mandated Quality Assurance Program. The execution of those procedures for specific hydrographic products is the implementation of the program.

§ 996.2 Definitions.

Agency means the National Oceanic and Atmospheric Administration.

Applicant means a non-Federal entity that is submitting a hydrographic product to the Quality Assurance Program for certification.

Certification means a determination made by NOAA that a hydrographic product submitted by a non-Federal entity has met the requirements established by NOAA for a particular hydrographic product or class.

Department means the Department of Commerce.

Hydrographic data means information acquired through hydrographic or bathymetric surveying, photogrammetry, geodetic, geospatial, or geomagnetic measurements, tide and current observations, or other methods, that is used in providing hydrographic services.

Hydrographic product means any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data.

Hydrographic product class means a group of hydrographic products with similar traits, attributes, purposes, or users.

Hydrographic services means

(1) The management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, geodetic, geospatial, geomagnetic, and tide and current information, including the production of nautical charts, nautical information databases, and other products derived from hydrographic data;

(2) The development of nautical information systems; and

(3) Related activities.

Quality Assurance Program means a set of procedures by which hydrographic products are proposed for certification; by which standards and compliance tests are developed, and, if suitable, are adopted by NOAA for those products; and by which certification of individual products may be awarded or denied.

Quality Assurance Program implementation means the execution of the Quality Assurance Program procedures for specific hydrographic products.

Sponsor means a non-Federal entity that is submitting a hydrographic product to the Quality Assurance Program for the development of standards and compliance tests.

§ 996.3 Fees.

NOAA may charge for its Quality Assurance Program activities such sums as may be permitted or required under this Act, or under other statutory authorities. Such sums are non-refundable. NOAA will attempt to identify any such charges upon first submission of a hydrographic product. However, the intent to charge and the amounts may change. NOAA will promptly notify the sponsor of any such changes, and will permit the sponsor to withdraw hydrographic products from consideration under the Quality Assurance Program should they so choose.

§ 996.4 Liability.

The Government of the United States shall not be liable for any negligence by producers of hydrographic products certified under this part.

Subpart B—The Quality Assurance Program for Hydrographic Products

§ 996.10 Submission and selection of hydrographic products for the development of standards and compliance tests.

(a) Any non-Federal entity may submit a hydrographic product to be considered for the development of standards and compliance tests under this Quality Assurance Program.

(b) Submission shall be made to the Quality Assurance Program address below, or to such other address as may be indicated in the future: Director (N/CS), ATTN: Hydrographic Product Quality Assurance Program, Office of Coast Survey, NOAA, 1315 East West Highway, Silver Spring, MD 20910.

(c) The submission shall include

(1) Name and description of the proposed hydrographic product.

(2) The non-Federal entity submitting the product for the development of standards and compliance tests, and contact information for that entity. This non-Federal entity shall be known as the sponsor.

(3) The names and contact information of proposed representatives of the affected communities who have committed to participate substantively in the writing of standards and compliance tests. Affected communities might include: manufacturers, users, regulators, resellers, developers of products that use certified hydrographic products such as datasets, and manufacturers of competing or substitute products.

(4) The names and contact information of the standards setting body, and the compliance testing body under whose authority it is proposed that the standards and compliance tests be written and adopted.

(5) Information deemed relevant by the sponsor for NOAA to consider in deciding whether to proceed with the development of standards, compliance tests, and certification. Such information should address at a minimum:

(i) The type and magnitude of the public benefits and enhancement of public safety that would be achieved;

(ii) The breadth of support for standards and certification among all the affected communities;

(iii) The practicality of writing and enforcing an effective and appropriate standard;

(iv) The availability of suitable, similar products that may already meet the needs of the public; and

(v) The required expertise needed to write an appropriate standard.

(d) NOAA may, at its option, define a hydrographic product class of which the proposed hydrographic product is a specific instance. Standards and compliance tests may then be prepared for the class rather than for an individual non-Federal entity's specific product.

(e) NOAA shall publicize, in the FEDERAL REGISTER or by other appropriate means, the hydrographic product or class in order to solicit comments on the proposal that standards and compliance tests be written and certification be offered for that hydrographic product or class. Comments might include, but are not limited to, general information; statements of interest in participating in the development of standards and compliance tests; or objections to acceptance of the hydrographic product or class into this Quality Assurance Program. Instructions for commenting and the duration of the comment period will be included in the announcement.

(f) NOAA shall decide, if its other obligations permit, within 60 calendar days of the close of the comment period whether to proceed with the development of standards, compliance tests, and certification for the proposed hydrographic product or class. NOAA may request further information, and shall have additional time as required to consider the information once received. NOAA's decision on whether to proceed shall be based on the following criteria:

(1) The magnitude of the public benefit and enhancement of public safety that would be achieved compared to the commitment of federal resources that would be required;

(2) The breadth of support for standards and certification among all the affected communities;

(3) The practicality of writing and enforcing an effective and appropriate standard;

(4) The availability of suitable, similar products that may already meet the needs of the public;

(5) NOAA's expertise related to the expertise needed to write an appropriate standard;

(6) Availability of resources; and

(7) Other relevant criteria as they become apparent.

(g) NOAA's decision as to whether the proposed hydrographic product or class is accepted into the Quality Assurance Program shall be publicly announced in the FEDERAL REGISTER or by other appropriate means, and a written notification shall be provided to the sponsor. The response shall include NOAA's reason for its decision based on the criteria enumerated above.

(h) Any party, including the sponsor, shall have an opportunity to request reconsideration of NOAA's decision. Said request shall be submitted in writing, to the Quality Assurance Program address, postmarked within 30 days of NOAA's announcement of its decision, and shall contain written material supporting the requestor's position. NOAA shall have, if its other obligations permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(i) NOAA's decision, either the original decision if unappealed within 30 days, or the decision after the request for reconsideration, shall be considered final.

(j) NOAA itself may choose to identify a hydrographic product or class, which may or may not yet exist, but for which it intends to adopt standards, compliance tests, and to offer certification. In such cases, NOAA will be considered the sponsor. The procedures to be followed for NOAA-sponsored hydrographic products or classes shall be the same as for those sponsored by non-Federal entities, including the procedures for announcement, comment, and reconsideration.

§ 996.11 Development of standards for a hydrographic product or class.

(a) NOAA shall work, to the extent practicable, through existing, recognized, standards bodies in the writing and adopting of standards for a hydrographic product or class that NOAA has accepted into this program. It shall be the responsibility of the sponsor to propose an appropriate standards writing body. NOAA may accept this body at its discretion, or may select an alternate body. NOAA will then undertake, jointly with the sponsor and acknowledged representatives of the affected communities, to submit the proposal for writing standards to, and to secure the cooperation of, the selected standards writing body.

(b) Once accepted as a work item by the standards writing body, NOAA shall undertake, jointly with representatives of the affected community, members of the standards body, other governmental representatives, and the sponsor as appropriate, to write standards for the hydrographic product or class according to the practices of the standards body and the technical needs of the product. Participation in the writing of standards shall be determined according to the procedures of the standards writing body.

(c) NOAA shall then undertake, jointly with representatives of the affected community, members of the standards body and the body itself, other governmental representatives, and the sponsor as appropriate, to have the resulting standard officially adopted by the standards body according to the procedures of that body.

(d) NOAA may, at its option, proceed without the participation of an existing, recognized, standards body should it so choose. Such action might be taken, for example, if there were no appropriate standards body. In this eventuality, NOAA shall adhere to the following general procedure.

(1) Announce, in the FEDERAL REGISTER or by other appropriate means, NOAA's intention to organize and chair a working group to write and publish standards for the proposed hydrographic product or class;

(2) Solicit, via the FEDERAL REGISTER or by other appropriate means, participation and select, reject, and/or revoke permission to participate as NOAA deems appropriate so as to proceed in an orderly and representative manner in writing a standard;

(3) Initiate, schedule, host, and chair, or designate a chair for, the work of the working group;

(4) Circulate, via the FEDERAL REGISTER or by other appropriate means, the drafts of the working group;

(5) Announce, via the FEDERAL REGISTER or by other appropriate means, the NOAA proposed standard and provide an opportunity for public comment;

(6) Announce, via the FEDERAL REGISTER or by other appropriate means, and make available as a standard, the final version of the standard; and

(7) Provide the necessary administrative support.

(e) NOAA may, at its option, adopt an existing standard as the NOAA standard for this program. In this eventuality, NOAA shall adhere to the following general procedure.

(1) Announce, in the FEDERAL REGISTER or by other appropriate means, NOAA's intention to adopt an existing standard for the proposed hydrographic product or class; and

(2) Solicit, via the FEDERAL REGISTER or by other appropriate means including public meetings, comment on the standard that NOAA proposes to adopt, and shall consider the comments received.

(f) Alternatively, NOAA may at its option, proceed by writing a standard by itself. Such action might be used, for example, in cases where the standard is obvious. Producing exact copies of existing NOAA products might be one such case. Once written, this NOAA-authored standard shall be made publicly available for comment, and comments shall be considered before NOAA publishes the final standard.

(g) At the conclusion of the standards writing, whether through an existing standards body, by a NOAA-convened working group, by adopting an existing standard, or by NOAA itself, NOAA shall consider the resulting standard and comments, and either adopt or reject the standard as the NOAA Quality Assurance Program Standard for the particular hydrographic product or

class. NOAA's decision shall be publicly announced in the FEDERAL REGISTER or by other appropriate means.

(h) Any party may request NOAA to reconsider its decision to adopt or reject the standard by submitting its request in writing to the Quality Assurance Program address within 30 days of NOAA's announcement of its decision. NOAA shall have, if its other obligations permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision. NOAA's original decision if unappealed within 30 days, or its decision upon reconsideration shall be considered final.

§ 996.12 Development of standards compliance tests for a hydrographic product or class.

(a) NOAA shall work, to the extent practicable, through existing, recognized, compliance testing bodies in the writing and adopting of compliance tests for a hydrographic product or class. It shall be the responsibility of the sponsor to propose an appropriate compliance testing body. NOAA may accept this body at its discretion, or may select an alternate body. NOAA will then undertake, jointly with the sponsor and acknowledged representatives of the affected communities, to secure the cooperation of the selected compliance testing body.

(b) NOAA shall undertake, jointly with representatives of the affected community, members of the compliance testing body, other governmental representatives, and the sponsor as appropriate, to write compliance tests for the hydrographic product or class according to the practices of the compliance testing body and the Quality Assurance Program standard adopted by NOAA. Participation in the writing of compliance tests may be determined according to the procedures of the compliance testing body.

(c) NOAA shall then undertake, jointly with representatives of the affected community, members of the compliance testing body and the body itself, other governmental representatives, and the sponsor as appropriate, to have the resulting compliance tests adopted according to the procedures of that body.

(d) NOAA may, at its option, proceed without the participation of an existing, recognized, compliance testing body should it so choose. Such action might be taken, for example, if there were no appropriate compliance testing body. In this eventuality, NOAA will adhere to the following general procedure:

(1) Announce, in the FEDERAL REGISTER or by other appropriate means, NOAA's intention to organize and chair a working group to write and publish compliance tests for the hydrographic product or class;

(2) Solicit, via the FEDERAL REGISTER or by other appropriate means, participation and select, reject, and/or revoke permission to participate as NOAA deems appropriate so as to proceed in an orderly and representative manner in writing compliance tests;

(3) Initiate, schedule, host, and chair, or designate a chair for, the work of the working group;

(4) Circulate, via the FEDERAL REGISTER, or by other appropriate means, the drafts of the working group;

(5) Announce, via the FEDERAL REGISTER or by other appropriate means, a NOAA proposed final version of the compliance tests and provide an opportunity for public comment;

(6) Announce, via the FEDERAL REGISTER or by other appropriate means, and make available the final version of the compliance tests, and

(7) Provide the necessary administrative support.

(e) NOAA may, at its option, adopt existing compliance tests as the NOAA compliance tests for this program. In this eventuality, NOAA shall adhere to the following general procedure:

(1) Announce, in the FEDERAL REGISTER or by other appropriate means, NOAA's intention to adopt existing compliance tests for the proposed hydrographic product or class; and

(2) Solicit, via the FEDERAL REGISTER or by other appropriate means including public meetings, comment on the proposed compliance tests that NOAA proposes to adopt, and shall consider the comments received.

(f) Alternatively, NOAA may, at its option, proceed by writing compliance tests by itself. Such action might be used, for example, in cases where the

tests are obvious. Producing exact copies of existing NOAA products might be one such case. Once written, these NOAA-authored tests shall be made publicly available for comment, and comments shall be considered before NOAA publishes the final compliance tests.

(g) At the conclusion of the compliance test writing, whether through an existing body, by a NOAA-convened working group, by adopting existing compliance tests, or by NOAA itself, NOAA shall consider the resulting compliance tests and comments, and either adopt or reject them as the NOAA Quality Assurance Program compliance tests for the particular hydrographic product standard. NOAA's decision shall be publicly announced in the FEDERAL REGISTER or by other appropriate means.

(h) Any party may request NOAA to reconsider its decision to adopt or reject the compliance tests by submitting its request in writing to the Quality Assurance Program address within 30 days of NOAA's announcement of its decision. NOAA shall have, if its other obligations permit, 60 calendar days after the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision. NOAA's original decision if unappealed within 30 days, or its decision upon reconsideration shall be considered final.

§ 996.13 Determination of whether to offer certification for a hydrographic product or class.

(a) Certification of a hydrographic product or class shall be at the option of NOAA. NOAA may decide at any time whether or not to offer certification for a product or class. However, it is most likely that a determination will be made only after a non-Federal entity has submitted a specific product for certification. NOAA's decision shall be based on the following criteria:

(1) The suitability of the adopted standards and tests for their intended purpose;

(2) The availability of a qualified entity to perform the compliance tests;

(3) Availability of resources; and

(4) Other relevant criteria as they become apparent.

(b) NOAA's decision as to whether certification for a hydrographic product or class is offered shall be publicly announced in the FEDERAL REGISTER or by other appropriate means.

(c) Any entity may request NOAA to reconsider its decision to offer or not offer certification by submitting its request in writing to the Quality Assurance Program address within 30 days of NOAA's announcement of its decision. NOAA shall have, if its other obligations permit, 60 calendar days after the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(d) NOAA's original decision if unappealed within 30 days, or its decision upon reconsideration, shall be considered final.

Subpart C—Certification of a Hydrographic Product and Decertification.

§ 996.20 Submission of a hydrographic product for certification.

(a) Upon adoption by NOAA of standards and compliance tests, any non-Federal entity may submit a hydrographic product for certification under a particular standard. This non-Federal entity shall be known as the applicant. Submission shall be made in writing to the Quality Assurance Program address. The submission shall include:

(1) Name and description of the hydrographic product and its product class if any;

(2) Identification and contact information for the non-Federal entity submitting the product for certification.

(3) The identification of the standard and compliance tests adopted by this Quality Assurance Program under which the hydrographic product is to be certified;

(4) A proposed, qualified, competent, independent compliance testing body to perform the compliance tests, which NOAA may accept at its discretion, or for which NOAA may select an alternative testing body;

(5) Other information deemed relevant by the sponsor or requested by NOAA.

(b) [Reserved]

§ 996.21 Performance of compliance testing.

(a) NOAA and the applicant shall submit the applicant's hydrographic product to the testing body for performance of the compliance tests. That body shall determine compliance or non-compliance of the hydrographic product with the NOAA-adopted standard, and shall provide to NOAA written documentation stating the results of the compliance tests according to its usual practices.

(b) Alternatively, NOAA may choose, at its option, to perform, have performed by a NOAA-designated entity, or waive the compliance tests for a hydrographic product. This alternative may be used, for example, when there is no qualified entity to perform the compliance tests, where the compliance tests are simple, or when self-certification of compliance would be appropriate.

(c) Items failing the compliance tests may be changed by the applicant and retested. Items passing the compliance test upon retest shall be deemed compliant as if they had passed said tests initially.

§ 996.22 Certification.

(a) A hydrographic product that has passed the compliance tests shall automatically be considered for certification by NOAA. NOAA shall make its certification determination, if its other obligations permit, within 60 calendar days following receipt of the compliance test results. NOAA shall make a certification determination based upon the following criteria:

(1) The results of the compliance tests;

(2) The potential for the hydrographic product to impair public safety;

(3) Successful completion of any administrative requirements, including the payment of required fees, as may be specified by NOAA;

(4) The potential for certification to cause embarrassment to the Agency or the Department;

(5) Other relevant criteria as they become apparent.

(b) Hydrographic products receiving a certification determination in the affirmative shall be designated as ''certified'' by NOAA. NOAA shall provide a written document to the sponsor indicating such, and shall announce its determination in the FEDERAL REGISTER or by other appropriate means. Certification shall mean that the hydrographic product has been found to be in compliance with the NOAA-adopted standard for that hydrographic product or class. Certification conveys no express or implied warranty as to the merchantability or fitness for a particular purpose; conveys no express or implied liability on the part of the Government of the United States for the hydrographic products; and conveys no automatic, direct or indirect NOAA endorsement of any product or service.

(c) Certification shall be for a term of 3 years unless otherwise specified by the Administrator.

(d) A certification may be renewed, at the request of sponsor and the option of NOAA, for a period of 2 years. Sponsors may request the renewal of a certification by writing to the Quality Assurance Program address at least 120 calendar days before the expiration of an existing certification. The request shall include:

(1) Identifying and contact information for the sponsor;

(2) Identifying information for the relevant hydrographic product(s) and the standard(s) under which they were certified;

(3) Evidence sufficient to assure NOAA that the hydrographic product still meets the standard under which it was certified; and

(4) Other information as may be requested by NOAA.

(e) NOAA shall decide within 60 calendar days, if its other obligations permit, whether to renew a certification. NOAA's decision shall be based on whether the hydrographic product continues to meet the applicable standard, and other relevant criteria as they become apparent.

(f) The sponsor shall have an opportunity to request reconsideration of NOAA's decision. Said request shall be submitted in writing, to the Quality Assurance Program address, postmarked within 30 days of NOAA's announcement of its decision, and shall contain written material supporting

the requestor's position. NOAA shall have, if its other obligations permit, 30 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(g) NOAA's decision, either the original decision if unappealed within 30 days, or the decision after the request for reconsideration, shall be considered final.

§ 996.23 Audit and decertification of hydrographic products.

(a) NOAA may audit hydrographic products it has certified. NOAA may conduct audits without advance notification. However, visits to companies' facilities will be scheduled. Audits may include, but are not limited to:

(1) The producing companies as it may affect the certified product;

(2) Certified products;

(3) Processes used in making, distributing, and marketing certified products;

(4) Use of the NOAA emblem;

(5) Examination of manufacturers' public claims about certified hydrographic products;

(6) Other relevant criteria as they become apparent.

(b) NOAA may decertify a hydrographic product based on the findings of an audit. In general, a hydrographic product may be decertified if:

(1) The results of an audit indicate that the product no longer meets the standards under which it was certified;

(2) The product has been substantively changed from the product that was tested and certified;

(3) Implied or actual claims about the product, and/or other data or products linked to the product, are judged by NOAA to be untrue or misleading;

(4) The NOAA emblem was improperly or inappropriately displayed;

(5) Other relevant reasons as they become apparent.

(c) A producing company may decline to reveal information during an audit that it declares to be proprietary or for other reasons. In this eventuality, NOAA reserves the right to decertify based on lack of information should it deem that action appropriate.

(d) The entity producing the certified hydrographic product shall be notified in writing of NOAA's intent to decertify that product. Said entity shall have 30 days to request reconsideration of that intended action in writing to the Quality Assurance Program address. Said request shall contain the identification of the hydrographic product, the requestor, and sufficient information for NOAA to make a determination on the request for reconsideration. Alternatively, the entity may correct the deficiencies cited by NOAA within 30 days, notify NOAA in writing at the Quality Assurance Program address of the corrective action taken, and provide sufficient evidence for NOAA to judge the correctness and effectiveness of the corrective action taken.

(e) If a request for reconsideration is submitted, or if the producing entity asserts that the deficiencies have been corrected, NOAA shall have 60 calendar days, if its other obligations permit, to consider the request for reconsideration or the corrective action, at which time NOAA shall issue its decertification decision. The decision and NOAA's reason for its action shall be made public in the FEDERAL REGISTER or by other appropriate means, and the producing entity shall be notified in writing.

(f) NOAA's decertification, if unappealed or uncorrected within 30 days, shall be considered final. NOAA shall notify the producing entity of this action in writing, and announce the decertification in the FEDERAL REGISTER or by other appropriate means.

(g) Upon decertification, manufacturers shall discontinue all claims of certification, and shall discontinue use of the NOAA emblem.

Subpart D—Other Quality Assurance Program Matters

§ 996.30 Use of the NOAA emblem.

(a) Use of the NOAA emblem on certified hydrographic products requires separate written permission. Use of the NOAA emblem must satisfy an interest of the Agency, and must not result in embarrassment to the Agency or the Department. If the NOAA emblem is used on products that include other data or products, clear indication shall

be made as to what is NOAA certified, and what is not NOAA certified. The inclusion of other data or products will not constitute any endorsement of, or favoritism toward, the other data or products by NOAA. Requests for use of the NOAA emblem shall be submitted in writing to the Quality Assurance Program address, and shall include:

(1) Name and description of the hydrographic product(s) on which the emblem will be displayed.

(2) Name and contact information for the entity requesting use of the NOAA emblem.

(3) Exact samples of all uses intended for the NOAA emblem including text claims with, within, or associated with the hydrographic product, its packaging, and advertising that a reasonable person might associate with the NOAA emblem.

(4) Proof of NOAA certification.

(5) Other relevant information as may later be specified.

(b) [Reserved]

§ 996.31 Termination of the Quality Assurance Program.

(a) NOAA reserves the right to terminate the Quality Assurance Program for a particular hydrographic product or class at any time before certification is awarded if it is deemed to be in the public interest to do so. NOAA shall give written notification to the sponsor and other interested parties should it decide to exercise this option, and shall state the reasons for its action. Reasons for termination may include, but are not limited to:

(1) The inability of the standards-drafting group to reach a consensus on the content of the standard;

(2) Valid objections to the existence of NOAA-certification of a particular hydrographic product or class;

(3) A negative impact on public safety should the hydrographic product receive certification;

(4) Other relevant reasons as they become apparent.

(b) The sponsor or other interested parties shall have 30 days to request a reconsideration of the termination action. Said request shall be in writing to the Quality Assurance Program address, and shall include written material supporting the appeal. NOAA shall have, if its other obligations permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(c) NOAA's decision, either the original decision if unappealed within 30 days, or the decision after the request for reconsideration, shall be considered final.

§ 996.32 Appeals.

(a) Any entity may appeal a final decision made by the Agency under this Quality Assurance Program. Said appeal shall be submitted in writing to the Quality Assurance Program address, and shall contain at least:

(1) Identification and contact information of the appealing entity;

(2) A statement that this is an appeal to a final decision of the Quality Assurance Program;

(3) A description of what decision is being appealed;

(4) A thorough but concise argument as to why the requestor believes the Quality Assurance Program decision being appealed should be set aside.

(5) Other information as may later be determined to be relevant.

(b) Appeals shall be arbitrated by the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, using procedures to be established at the time of the appeal, and which shall be appropriate to the nature and circumstances of the appeal. The determination from this arbitration shall be final for purposes of judicial review under the Administrative Procedure Act and other statutes.

§ 996.33 Acceptance of program by non-Federal entities.

By their voluntary entrance or participation in this Quality Assurance Program or its activities, all parties acknowledge and accept the procedures established by this program, including the finality of decisions. All parties acknowledge and accept that information submitted to NOAA under this Program shall be deemed to be in the public domain, and no representation is made as to the protection of confidential, proprietary or otherwise restricted information.

SUBCHAPTER G—REQUIREMENTS FOR CERTIFICATION BY NOAA OF NON-FEDERAL ASSETS INTO THE INTEGRATED COASTAL AND OCEAN OBSERVATION SYSTEM

PART 997—REGIONAL COASTAL OBSERVING SYSTEM

Subpart A—General

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Subpart B—Certification and Decertification Process for a Regional Coastal Observing System (RCOS)

997.10 Eligibility.
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Subpart C—Certification and Application Requirements for a RCOS

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997.21 Organizational structure.
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997.24 Gaps identification.
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997.26 Civil liability.

AUTHORITY: 33 U.S.C. 3602–3603.

SOURCE: 79 FR 32460, June 5, 2014, as amended at 87 FR 16634, Mar. 24, 2022, unless otherwise noted.

Subpart A—General

§ 997.1 Definitions.

Certification. For purposes of these regulations, the term ''certification'' means the granting by NOAA of status to a non-federal entity as a participating RCOS of the System authorized by section 12304 of the ICOOS Act. An applicant will not be considered to be participating in the System unless 1) it agrees to meet the certification standards issued by the Administrator issued herein, and 2) the Administrator declares the applicant to be part of the System as a certified RCOS.

Equipment. For purposes of these regulations, the term ''equipment'' is defined as a tangible asset that is functionally complete for its intended purpose and has a capital cost of over $5,000. Both individual sensors and collections of sensors on a platform are considered equipment and are subject to the $5,000 minimum cost.

Non-Federal assets. The term ''non-Federal assets'' means all relevant coastal and ocean observation technologies, related basic and applied technology research and development, and public education and outreach programs that are integrated into the System and are managed through State, regional organizations, universities, nongovernmental organizations, or the private sector.

Owned and/or operated by the RCOS. The term ''owned and/or operated by the RCOS'' means non-Federal Assets that are either owned and/or operated directly by the RCOS, or supported financially in part or in full by the RCOS.

Regional Coastal Observing System (RCOS). The term ''regional coastal observing system'' means an organizational body that is certified or established by contract or memorandum by the lead Federal agency (NOAA) designated in the ICOOS Act, and that coordinates State, Federal, local, and private interests at a regional level with the responsibility of engaging the private and public sectors in designing, operating, and improving regional coastal and ocean observing systems in order to ensure the provision of data and information that satisfy the needs of user groups from the respective regions. The term ''regional coastal observing system'' includes regional associations described in the System Plan.

Employee of a Regional Information Coordination Entity. The term ''Employee of a Regional Information Coordination Entity'' means an individual identified in § 997.23(d)(3) or (f)(1) of these Regulations and satisfies the requirements listed in § 997.26(c).

System. The term ''System'' means the National Integrated Coastal and Ocean Observation System established

in accordance with section 12304 of the ICOOS Act (33 U.S.C. 3603).

System Plan. The term ''System Plan'' means the plan contained in the document entitled ''Ocean.US Publication No. 9, The First Integrated Ocean Observing System (IOOS) Development Plan,'' as updated by the Council under these regulations.

§ 997.2 Acceptance of procedures by a RCOS.

By its voluntary entrance or participation in the System, the RCOS acknowledges and accepts the procedures and requirements established by these regulations.

Subpart B—Certification and Decertification Process for a Regional Coastal Observing System (RCOS)

§ 997.10 Eligibility.

Any non-Federal entity may submit an application for certification as an RCOS as defined in the ICOOS Act and these Regulations.

§ 997.11 Application process.

(a) The applicant for certification shall submit an application package containing the information and documentation outlined in subpart C of this part. The submission package shall include the application form, available online at *http://www.ioos.noaa.gov/certification*.

(b) Submission shall be made to NOAA at the following address, or to such other address as may be indicated in the future: Director U.S. IOOS Office, NOAA, 1315 East West Hwy., Suite 3000, Silver Spring, MD 20910. Submissions may also be made online at *http://www.ioos.noaa.gov/certification*.

[79 FR 32460, June 5, 2014, as amended at 87 FR 16634, Mar. 24, 2022]

§ 997.12 Review by NOAA.

(a) After receiving an application package, NOAA shall have up to 90 calendar days to review the application package and decide whether to certify the applicant.

(b) Before the 90 calendar days have elapsed, NOAA may request additional information, in which case NOAA shall have up to 30 additional calendar days after that additional information has been received by NOAA, above and beyond the original 90 calendar days, to review the application package and decide whether to certify the applicant.

(c) NOAA's decision whether to certify the applicant shall be based on whether the RCOS demonstrates that it satisfies the current IOOC certification criteria and these regulations.

§ 997.13 Certification process.

(a) NOAA's decision whether to certify the applicant, along with the reason for its decision, shall be delivered to the applicant via letter delivered by first class mail and by electronic means.

(b) Applicants receiving a certification determination in the affirmative shall be designated as ''certified'' RICEs by NOAA. NOAA shall memorialize this status via a memorandum of agreement with the applicant. Certification shall mean that an RCOS is incorporated into the System.

(c) A certified RCOS shall provide NOAA with written notification of the RICE's intention to substantively change its organizational structure or Strategic Operational Plan, and shall request approval from NOAA for the change. After receiving the written notification, NOAA shall have up to 30 calendar days to review the requested change and decide whether to approve the requested change. NOAA's decision, along with the reason for its decision, shall be included in a written notification to the RCOS.

§ 997.14 Certification duration and renewal.

(a) Certification of an RCOS shall be for a term of 5 years, unless otherwise specified by the NOAA Administrator.

(b) Certification may be renewed, at the request of the RCOS, for a period of five years. An RCOS seeking to renew its certification shall provide NOAA with a written request to renew at least 120 calendar days before the expiration of the existing certification. The request shall include the application form, available online at *http://www.ioos.noaa.gov/certification*, and all information providing evidence that

the applicant satisfies the IOOC certification criteria and NOAA regulations promulgated to certify and integrate non-Federal assets into the System.

(c) After receiving a written request for renewal of certification, NOAA shall have up to 90 calendar days to review the request and decide whether to renew the certification.

(d) Before the 90 calendar days have elapsed, NOAA may request additional information, in which case NOAA shall have up to 30 additional calendar days after that additional information has been received by NOAA, above and beyond the original 90 calendar days, to review the request and decide whether to renew the certification.

(e) NOAA's decision whether to renew the certification shall be based on whether the RCOS continues to demonstrate that it satisfies the current IOOC certification criteria and these regulations. NOAA's decision, along with the reason for its decision, shall be included in a written notification to the RCOS.

§ 997.15 Audit and decertification.

(a) NOAA may audit an RCOS that it has certified to ensure compliance with the IOOC certification criteria and these regulations. NOAA will notify the RCOS of its intent to conduct an audit and will coordinate with the RCOS on the audit schedule and process.

(b) NOAA may decertify an RCOS. In general, an RCOS may be decertified when:

(1) The results of an audit indicate that the RCOS no longer satisfies the requirements under which it was certified; or

(2) Other relevant reasons for decertification become apparent.

(c) NOAA's intent to decertify an RCOS, along with the identification of a specific deficiency(ies) and a recommended corrective action(s), shall be included in a written notification to the RICE. After receiving NOAA's written notification, an RCOS shall have up to 45 calendar days to request in writing that NOAA reconsider its intent to decertify the RCOS. The RCOS's request for reconsideration shall contain sufficient information for NOAA to determine whether to grant the request for reconsideration. Alternatively, the RCOS may correct the deficiency(ies) identified by NOAA within 45 calendar days, notify NOAA in writing of the corrective action(s) taken, and provide sufficient evidence for NOAA to determine the correctness and effectiveness of the corrective action(s) taken.

(d) If an RCOS submits to NOAA a written request for reconsideration or a written assertion that the identified deficiency(ies) has been corrected, NOAA shall have up to 60 calendar days after receipt of the request or assertion, to review the request for reconsideration or the assertion of corrective action. NOAA's decision, along with the reason for its decision, shall be delivered to the applicant via letter delivered by first class mail and by electronic means.

(e) Upon decertification, an RCOS shall no longer be incorporated into the System.

(f) An RCOS may act voluntarily to terminate its certification at any time by notifying NOAA in writing of its desire to do so. Upon receipt of the notification by NOAA, the RICE will no longer be incorporated into the System.

§ 997.16 Final action.

NOAA's decision, whether to certify, renew or decertify an RCOS shall be considered final agency action.

Subpart C—Certification and Application Requirements for an RCOS

§ 997.20 General.

(a) For the purposes of these certification regulations, when the verb ''describe'' is used it indicates that the RICE shall give an account in text that responds to the requirement. This text shall contain sufficient information to demonstrate how the RCOS satisfies the certification requirement. The RCOS may include a link(s) to additional information. When the verb ''document'' is used, it indicates that the RCOS shall furnish a document(s) that responds to the requirement. A text statement accompanying the document(s) will normally be necessary to provide context for the document(s)

and to demonstrate how the RCOS satisfies the certification requirement. The RICE may include a link to a document in the accompanying text statement.

(b) Documentation that addresses the certification requirements may include references to existing RCOS documents. All documents and materials may be submitted directly to the U.S. IOOSOffice or made accessible for public viewing on the RCOS's Web site.

(c) To become certified, an RCOS must submit an application that addresses each of the requirements listed in this subpart.

§ 997.21 Organizational structure.

(a) To become certified, an RCOS must demonstrate an organizational structure capable of gathering required System observation data, supporting and integrating all aspects of coastal and ocean observing and information programs within a region and that reflects the needs of State and local governments, commercial interests, and other users and beneficiaries of the System and other requirements specified in this subchapter and the System Plan.

(b) The application shall:

(1) Describe the RCOS's organizational structure (e.g., 26 U.S.C. 501(c)(3) tax-exempt organization, establishment via MOU or MOA).

(2) Document the RCOS's ability to satisfy applicable legal criteria for accepting and disbursing funds, and entering into agreements. Sufficient documentation may be provided in the form of: Evidence of a current grant, cooperative agreement, or contract in good standing with the Federal government; or evidence of fiscal agreements, standard operating procedures for financial activities, and proof of an audit process.

(3) Document the RCOS's measures for addressing issues of accountability and liability. For this criterion, accountability and liability refer to the RCOS's governance and management activities. Sufficient documentation may be provided in the form of a conflict of interest policy for the Governing Board or governing body, which clearly states that a member of the governing board will declare any conflict of interest he or she may have and will recuse him or herself from associated funding decisions that may result in the Board member or a direct family member benefiting financially, and a policy statement in the RICE's by-laws that addresses liability issues.

(4) Describe the process the RCOS uses to set priorities for distributing funds (e.g., requirement for Governing Board or governing body approval when responding to funding opportunities or adjusting to funding level changes in existing agreements); and

(5) Document the by-laws, signed articles of agreement, or any binding agreements that demonstrate how the RCOS establishes and maintains a Governing Board or governing body. The documentation shall demonstrate:

(i) How the composition of the Governing Board or governing body is selected and how it is representative of regional ocean observing interests. NOAA defines ''representative'' in this specific context to include geographic, sector, expertise, and stakeholder considerations.

(ii) How and with what frequency the RCOS solicits and receives advice on RICE participant diversity, stakeholder coordination, and engagement strategies, to ensure the provision of data and information that satisfy the needs of user groups.

(iii) How the RCOS collects and assesses user feedback to gauge the effectiveness of the regional system and subsystems in satisfying user needs, and how the RCOS responds to this user feedback in setting its priorities. Sufficient documentation may be provided in the form of a description of the method the RCOS uses in its annual planning process to assess priorities among the identified user needs in the region and to respond to those user needs, and

(iv) Steps the RCOS takes to ensure decisions on priorities and overall regional system design are transparent and available. At a minimum, RCOS priorities and regional system design decisions shall be made accessible for public viewing on the RCOS's Web site.

§ 997.22 Membership policy.

The application shall describe:

(a) The process by which individuals or organizations may formally participate in the governance activities of the RCOS;

(b) The rights and responsibilities of this participation;

(c) The process by which the RCOS strives for organizational diversity through intra-regional geographic representation, and diversity of activities and interests from both public and private sectors; and

(d) How the RCOS allows for participation from adjacent regions or nations.

§ 997.23 Strategic operational plan.

(a)(1) To become certified, an RCOS must:

(i) Develop and operate under a strategic operational plan that will ensure the efficient and effective administration of programs and assets to support daily data observations for integration into the System, pursuant to the standards approved by the Council; and

(ii) Work cooperatively with governmental and non-governmental entities to identify and provide information products of the System for multiple users within the service area of the regional information coordination entities.

(2) The application must contain a Strategic Operational Plan, which is a high-level document that outlines how an RCOS manages and operates an integrated regional observing system. This Plan should evolve as an RCOS matures, new technologies become available, regional priorities change, and new users and stakeholders are identified. The Plan may be responsive to changing funding levels, and shall contain sections that each address the requirements in paragraphs (b) through (g) of this section, referencing other plans directly when applicable.

(b) *Background and Context.* The Strategic Operational Plan shall contain a Background and Context section that describes:

(1) The role of the RCOS in furthering the development of the regional component of the System;

(2) The process by which the RCOS updates the Strategic Operational Plan at least once every five years and how the RICE seeks inputs from the broader user community; and

(3) The RCOS's primary partners and any contributing observing systems. For the purposes of §997.23, NOAA defines a primary partner as any organization or individual that contributes significant staff time, funding or other resources to project activities. This is not an exhaustive list of all RCOS partners but the primary partners the RICE is working with on a given project.

(c) *Goals and Objectives.* The Strategic Operational Plan shall contain a Goals and Objective section that describe:

(1) How the RCOS addresses marine operations; coastal hazards; ecosystems, fisheries and water quality; and climate variability and change; and

(2) The major objectives that guide the RCOS's priorities for data collection and management, development of products and services, research and development, and education and outreach.

(d) *Operational Plan for the Observing System.* The Strategic Operational Plan shall include or reference an Operational Plan for the Observing System that:

(1) Describes the desired outcomes of the observing system;

(2) Describes the elements of the operational integrated observing system that will deliver those outcomes;

(3) Documents to NOAA's satisfaction that the individual(s) responsible for RCOS operations has the necessary qualifications and possesses relevant professional education and work experience to deliver observations successfully. At a minimum the Strategic Operational Plan shall:

(i) Identify the individual(s) responsible for overall RCOS management;

(ii) Identify, as applicable, the individual(s) responsible for observations system management across the region;

(iii) Provide the curriculum vitae for each identified individual; and

(iv) Identify the procedures used to evaluate the capability of the individual(s) identified in §997.23(d)(3) to conduct the assigned duties responsibly; and

(4) Describes how the RCOS manages ongoing regional system operations

and maintenance. At a minimum the Strategic Operational Plan shall:

(i) Describe the RCOS's standard operating procedures for calibrating, validating, operating, and maintaining equipment owned and/or operated by the RCOS regularly and in accordance with manufacturer guidance or industry best practice. Equipment is defined in § 997.1; and

(ii) Describe the RCOS's standard operating procedures for maintaining equipment inventories, shipping logs and instrument history logs for equipment owned and/or operated by the RCOS.

(e) *Development of a Strategy to Sustain and Enhance the System.* The Strategic Operational Plan shall describe its strategy for balancing changes in regional priorities with the need to maintain established data sets, the primary value of which may be in their long-term records. At a minimum the description shall:

(1) Identify the guiding principles that inform the strategy;

(2) Reference and show connections to a long-term (five-to-ten-year) regional Build-out Plan for the full implementation of the regional observing system based on the RCOS's priorities and identified user needs; and

(3) Relate the annual planning process the RCOS uses to review its priorities in light of funding levels and its plans for system enhancement as outlined in the regional Build-out Plan.

(f) *Data Management and Communications (DMAC) Plan.* The Strategic Operational Plan shall include or reference a DMAC Plan that:

(1) Documents to NOAA's satisfaction that the individual(s) responsible for management of data operations for the RCOS has the necessary technical skills, and possesses relevant professional education and work experience to support DMAC capabilities and functionality for the System. At a minimum the DMAC Plan shall:

(i) Identify the individual(s) responsible for the coordination and management of observation data across the region;

(ii) Provide the curriculum vitae for the identified individual(s); and

(iii) Identify the procedures used to evaluate the capability of the individual(s) identified in § 997.23(f)(1) to conduct the assigned duties responsibly.

(2) Describes how data are ingested, managed and distributed, including a description of the flow of data through the RCOS data assembly center from the source to the public dissemination/access mechanism. The description shall include any transformations or modifications of data along the data flow pathway including, but not limited to, format translations or aggregations of component data streams into an integrated product.

(3) Describes the data quality control procedures that have been applied to data, not obtained through a federal data source, that are distributed by the RCOS. All data shall be quality controlled and QARTOD procedures shall be employed for data with QARTOD manuals. For each data stream, describe the quality control procedure applied to the data, by the RCOS or other named entity, between the data's collection and publication by the RICE. The description will also include a reference to the procedure used.

(4) Adheres to the NOAA Data Sharing Procedural Directive.[1] The System is an operational system; therefore the RICE should strive to provide as much data as possible, in real-time or near real-time, to support the operation of the System. When data are collected in part or in whole with funds distributed to an RCOS through the U.S. IOOSOffice, the RICE should strive to make the data available as soon as logistically feasible for each data stream. When data are not collected with funds distributed to an RCOS through the U.S. IOOSOffice, the data may be made available in accordance with any agreement made with the data provider.

(5) Describes how the RCOS will implement data management protocols promulgated by the IOOC and the U.S. IOOSOffice in a reasonable and timely manner as defined for each protocol; and

[1] NOAA Data Sharing Policy for Grants and Cooperative Agreements Procedural Directive, Version 2.0 *https://www.nosc.noaa.gov/EDMC/documents/EDMC_PD-DSPNG_final_v2.pdf.*

(6) Documents the RCOS's data archiving process or describes how the RICE intends to archive data at a national archive center (e.g., NODC, NGDC, NCDC) in a manner that follows guidelines outlined by that center. Documentation shall be in the form of a Submission Agreement, Submission Information Form (SIF) or other, similar data producer-archive agreement.

(g) *Budget Plan.* The Strategic Operational Plan shall include or reference a Budget Plan that:

(1) Identifies who supports the RICE financially;

(2) Identifies how RCOS priorities guide funding decisions; and

(3) Assesses funding constraints and the associated risks to the observing System that the RCOS must address for the future.

§ 997.24 Gaps identification.

(a) To become certified, an RCOS must identify gaps in observation coverage needs for capital improvements of Federal assets and non-Federal assets of the System, or other recommendations to assist in the development of annual and long-terms plans and transmit such information to the Interagency Ocean Observing Committee via the Program Office.

(b) The application shall:

(1) Document that the RCOS's asset inventory contains up-to-date information. This could be demonstrated by a database or portal accessible for public viewing and capable of producing a regional summary of observing capacity;

(2) Provide a regional Build-out Plan that identifies the regional priorities for products and services, based on its understanding of regional needs, and a description of the integrated system (observations, modeling, data management, product development, outreach, and R&D). The RCOS shall review and update the Build-out Plan at least once every five years; and

(3) Document the priority regional gaps in observation coverage needs, as determined by an analysis of the RICE asset inventory and Build-out Plan. The RCOS shall review and update the analysis of priority regional gaps in observation coverage needs at least once every five years.

§ 997.25 Financial oversight.

(a) To become certified, an RCOS must comply with all financial oversight requirements established by the Administrator, including requirement relating to audits.

(b) The application shall document compliance with the terms and conditions set forth in 2 CFR Part 215—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, Subpart C—Post Award Requirements. Subpart C prescribes standards for financial management systems, among others. (Compliance with this criterion can be demonstrated by referencing any existing grant, cooperative agreement, or contract the RICE has with NOAA.)

(c) The RCOS shall document annually the RCOS's operating and maintenance costs for all observing platforms and sensors, etc., owned and/or operated by the RCOS. This information shall be made available to NOAA upon request.

§ 997.26 Civil liability.

(a) For purposes of determining liability arising from the dissemination and use of observation data gathered pursuant to the ICOOS Act and these regulations, any non-Federal asset or regional information coordination entity incorporated into the System by contract, lease, grant, or cooperative agreement that is participating in the System shall be considered to be part of the National Oceanic and Atmospheric Administration. Any employee of such a non-Federal asset or regional information coordination entity, while operating within the scope of his or her employment in carrying out the purposes of this subtitle, with respect to tort liability, is deemed to be an employee of the Federal Government.

(b) The ICOOS Act's grant of civil liability protection (and thus the RCOS's limited status as part of NOAA) applies only to an RCOS that:

(1) Is participating in the System, meaning the RCOS has been certified by NOAA in accordance with the ICOOS Act and these regulations; and

(2) Has been integrated into the System by memorandum of agreement with NOAA.

(c) An ''employee'' of a regional information coordination entity is an individual who satisfies all of the following requirements:

(1) The individual is employed or contracted by a certified RCOS that has been integrated into the System by memorandum of agreement with NOAA, and that is participating in the System, as defined in § 997.26(b);

(2) The individual is identified by the RCOS, as required in § 997.23(d)(3) and (f)(1)(i), as one of the individuals responsible for the collection, management, or dissemination of ocean, coastal, and Great Lakes observation data; and

(3) The individual is responsive to federal government control.

(d) The protection afforded to employees of an RCOS with regard to liability applies only to specific individuals employed or contracted by an RCOS who meet the requirements of § 997.26(c) and who are responsible for the collection, management, or dissemination of ocean, coastal, and Great Lakes observation data. The RCOS must identify to NOAA's satisfaction: The individual(s) responsible for overall system management, as applicable, the individual(s) responsible for observations system management across the region, and the individual(s) responsible for management of data operations across the region. In accepting certification, the RCOS will concede to NOAA the power to ensure these individuals comply with the requirements of this rule in their daily operations and that they are responsive to NOAA through the agreement the RCOS has with NOAA.

SUBCHAPTER H—REGULATIONS OF NOAA MARINE AND AVIATION

PART 998—MARINE AND AVIATION OPERATIONS

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AUTHORITY: 33 U.S.C. 3001 *et seq.*

SOURCE: 87 FR 31708, May 25, 2022, unless otherwise noted.

Subpart A—Administrative

AUTHORITY: 33 U.S.C. 3001 *et seq.*

§ 998.1 Definitions.

As used in this part:

Administration means the National Oceanic and Atmospheric Administration (NOAA).

Administrator means the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator.

ADSO means active duty service obligation.

Chain of command means the succession of commanding officers from a superior to a subordinate through which command is exercised, and the succession of officers or civilian personnel through whom administrative control is exercised, including supervision and rating of performance.

Civilian training and advanced education means education or training above the secondary school level but does not include technical training (such as maritime and aviation training provided to a member to qualify such member to perform a specified military or operational function), workshops, or short-term training programs.

Director means the Director of NOAA Corps and the Office of Marine and Aviation Operations.

Officer candidate means an individual who is enrolled in the basic officer training program of the Administration and is under consideration for appointment as an officer under the appointment authority for graduates of the basic officer training program of the commissioned officer corps of the Administration (33 U.S.C. 3021(a)(2)(A)).

NOAA Corps means the commissioned officer corps of the National Oceanic and Atmospheric Administration.

Secretary means the Secretary of Commerce.

Written agreement means an agreement entered into between the Secretary and a NOAA Corps officer or officer candidate that describes the officer's obligated service requirements in return for appointments, training, promotions, separations, continuations, and retirements as the Secretary considers appropriate.

Subpart B—Appointment of Officer Candidates of the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration

AUTHORITY: 33 U.S.C. 3006, 3021, 3034; 37 U.S.C. 203(f).

§ 998.10 Appointments of officer candidates.

(a) The Secretary shall determine the number of appointments of officer candidates annually.

(b) Applicants for an appointment as an officer candidate shall meet all qualifications described in § 998.11.

(c) Selection and appointment of officer candidates shall be made according to the procedures described in § 998.12.

(d) The Secretary may dismiss any officer candidate from the NOAA Corps Basic Officer Training Class who, during the candidate's term as an officer candidate, the Secretary considers unsatisfactory in either academics or conduct, or not adapted for a career in the NOAA Corps. Officer candidates shall be subject to all rules governing discipline prescribed by the Director.

(e) Each officer candidate shall sign an agreement with the Secretary regarding the officer candidate's term of service in the NOAA Corps, which shall provide that the candidate agrees to:

(1) Complete the course of instruction of the NOAA Corps Basic Officer Training Class;

(2) Upon graduation from the Basic Officer Training Class program, accept an appointment, if tendered, to the grade of ensign; and

(3) Serve on active duty in the NOAA Corps for at least four years immediately after such appointment.

(f) An officer candidate or former officer candidate who is on active duty but who has not yet met their initial service obligation under paragraph (e)(3) of this section shall be considered to be in breach of their written agreement if they do not fulfill the terms of their service.

(g) An individual found to be in breach of their written agreement shall be subject to the repayment provisions of § 998.30.

§ 998.11 Qualifications of officer candidates.

(a) Original appointments to the NOAA Corps are made based on the qualifications of individual applicants and the needs of the NOAA Corps. Each applicant must:

(1) Be a citizen of the United States of good moral character;

(2) Be able to obtain and maintain a security clearance level of Secret;

(3) Meet physical and mental qualifications as the Secretary may direct, such as physical fitness, medical, dental, and mental examinations;

(4) Hold a baccalaureate degree, preferably in a major course of study related to NOAA's scientific or technical activities, awarded from an accredited postsecondary institution. All applicants, regardless of degree(s) awarded, must have completed at least 48 semester (72 quarter) hours in math, science, or engineering coursework pertaining to NOAA's mission unless waived by the Director based on the needs of the NOAA Corps; and

(5) Have not twice failed selection for promotion in another uniformed service.

(b) [Reserved]

§ 998.12 Selection of officer candidates.

(a) The Secretary shall prescribe the number of applicants to be selected for officer candidates and the basic qualifications necessary to fulfill the needs of the NOAA Corps.

(b) A personnel board convened pursuant to 33 U.S.C. 3022 shall review all qualified applicants and make recommendations for appointment to the Secretary and the President. Applicants shall be rated on collegiate record, work experience, references, the report of the interviewing officer, and all other available information.

(c) Upon review of the recommendations of the personnel board, the Secretary shall make those temporary appointments in the grade of officer candidate as deemed appropriate. An original appointment of an officer candidate, upon graduation from the Basic Officer Training Class program of the NOAA Corps, may not be made in any other grade than ensign.

(d) Officer candidates receiving appointments as ensigns upon graduation from the Basic Officer Training Class program shall take rank according to their proficiency as shown by the order of their merit at date of graduation.

Subpart C—Active Duty Service Obligations of NOAA Corps Officers

AUTHORITY: 10 U.S.C. 2005; 33 U.S.C. 3006, 3071(a)(22); 37 U.S.C. 303a(e), 373.

§ 998.20 Applicability.

This subpart applies to all active duty NOAA Corps officers and officer candidates.

§ 998.21 Purpose.

(a) This subpart establishes policies and procedures for the receipt, computation, and notice of ADSOs for all commissioned officers on the active duty lineal list. It also describes how multiple ADSOs incurred by the same officer are managed.

(b) The ADSOs are intended to assist the NOAA Corps in:

(1) Effectively managing its resources and workforce;

(2) Accomplishing its assigned missions;

(3) Maintaining an experienced and well-qualified officer force; and

(4) Ensuring a reasonable return to the NOAA Corps following an expenditure of public funds.

(c) Public funds are expended starting with the commissioning phase through the NOAA Corps Basic Officer Training Class and other commissioning programs. It continues when an officer enters active duty and enters training or education programs to qualify for specialized knowledge and skills.

§ 998.22 Policy.

(a) In general, individuals entering active duty in the NOAA Corps must complete at least four years of obligated service upon appointment.

(b) NOAA Corps officers who complete Government-funded or -sponsored formal education and training programs shall incur an ADSO. Officers must fulfill ADSOs before they are eligible for voluntary separation. The Director may grant a waiver of the ADSO as described in § 998.29. Officers will not be further obligated beyond the dates that ADSOs are fulfilled without their written consent. Officers who attend NOAA Corps and officer training programs, or civilian courses of instruction as stated in this Subpart may incur an ADSO for up to six years upon completion or termination from the course(s).

(c) All NOAA Corps officers shall enter into written agreements that describe the officer's obligated service requirements prescribed in this subpart in return for such Government-funded or -sponsored education and training. The written agreement shall document the total cost of training that may be subject to the repayment provisions of § 998.30.

§ 998.23 Service obligations for original appointments.

Officer candidates accepting an original appointment in the NOAA Corps upon graduation from the NOAA Corps Basic Officer Training Class as described in subpart B of this part shall incur an ADSO of 4 years.

§ 998.24 Service obligations for NOAA Corps or officer training and education.

(a) NOAA Corps officers who attend any NOAA Corps or uniformed service officer training or education whose course of instruction is longer than 60 days or produces a duty under instruction officer evaluation report for long term training shall incur an ADSO to begin upon completion of the course or termination of attendance. If the officer does not complete the NOAA Corps or officer training, the ADSO shall still apply. The ADSO shall be calculated according to § 998.26. For the purpose of determining ADSOs, all aviation and

maritime training longer than 60 days, not including the Basic Officer Training Class, shall be considered to be NOAA Corps or officer training. Exceptions to the computation standards in §998.26 for NOAA Corps and officer training are as follows:

(1) Officers who attend initial fixed-wing multi-engine flight training shall incur a six-year ADSO upon completion of the course or termination of attendance;

(2) Officers who attend heavy aircraft flight training for the first time shall incur a four-year ADSO upon completion of the course or termination of attendance;

(3) Officers who attend heavy aircraft flight training for a second time for the purpose of qualification on new airframes shall incur a three-year ADSO upon completion of the course or termination of attendance;

(4) Officers who attend a test pilot school longer than six months (including the U.S. Naval Test Pilot School and U.S. Air Force Test Pilot School) shall incur a four-year ADSO upon completion of the course or termination of attendance; and

(5) Officers selected as candidates for the National Aeronautics and Space Administration Astronaut Corps shall incur a three-year ADSO upon the conclusion of their detail and return to the NOAA Corps.

(b) *Concurrent obligations.* An ADSO incurred under this section shall be served concurrently with an ADSO previously incurred under any other section of this part, or any other provision of law, except as provided for officers on active duty entering into an agreement for education loan repayment under §998.27(a). When a newly incurred ADSO under this section is to be served concurrently with an existing ADSO, the obligated period will be equal to the length of the longest remaining obligation. The Commissioned Personnel Center will track each ADSO independently and notify the officer when each is fulfilled.

(c) *Consideration of NOAA Corps and officer training toward fulfillment of other service obligations.* Time spent in NOAA Corps or officer training is considered active duty service and shall be credited toward fulfilling an ADSO previously incurred under any other section of this part, or any other provision of law.

§998.25 Service obligations for civilian training and advanced education.

(a) *Full-time courses.* Officers who attend full-time courses at civilian institutions that are fully funded by NOAA for more than 60 days will incur an ADSO to begin upon completion of the course or termination of attendance. One ADSO will be incurred per written agreement for training or education, as provided under §998.22. If the officer does not complete the course of instruction, the ADSO shall still apply. The ADSO shall be calculated according to §998.26.

(b) *Part-time courses.* Officers who participate in part-time courses at civilian institutions that are fully funded by NOAA for more than 60 days will incur an ADSO upon completion of the course or termination of attendance. One ADSO will be incurred per written agreement for training or education, as provided under §998.22. If the officer does not complete the course of instruction, the ADSO shall still apply. The ADSO will equal the length of training or education, computed in days. The length of training or education will be computed from the first day of instruction until the last day, to include breaks, weekends, holidays, and summers, regardless of whether the officer attended classes during those periods.

(c) *NOAA Leadership Competencies Development Program.* NOAA Corps officers who participate in NOAA's Leadership Competencies Development Program shall incur an ADSO of two years upon graduation from the program.

(d) *Voluntary disenrollment or disenrollment for poor performance.* If an officer voluntarily terminates their enrollment or is required to disenroll due to poor performance in a program under this section, the ADSO will be based on what would have been the expected graduation date.

(e) *Disenrollment for mission needs.* Each written agreement for civilian training or advanced education under this subpart shall provide that if an officer terminates enrollment because of a recall to meet urgent mission needs

as determined by the Director, no ADSO will be incurred.

(f) *Consecutive obligations.* ADSOs resulting from more than one written agreement for civilian education under this section are to be served consecutively. For example, an officer completing a NOAA-funded graduate certificate course of instruction under one written agreement followed by a NOAA-funded master's degree under a second written agreement will incur multiple ADSOs to be served consecutively. The ADSOs will be calculated separately for each written agreement according to § 998.26. When a newly incurred ADSO is to be served consecutively with another, add the period of the new ADSO to the remaining portion of the existing ADSO. In cases where the compounded period of consecutive ADSOs exceeds six years, it will be capped at 6 years.

(g) *Concurrent obligations.* An ADSO incurred under this section can be served concurrently with an ADSO previously incurred under any other section of this part or any other provision of law. When a newly incurred ADSO under this section is to be served concurrently with an existing ADSO under another section of this part, the officer's total obligated period will be equal to the length of the longest remaining obligation. The Commissioned Personnel Center will track each ADSO independently and notify the officer when each is fulfilled.

(h) *Consideration of civilian education and training toward fulfillment of other service obligations.* Time spent at a civilian education or training program is considered active duty service and shall be credited toward fulfilling an ADSO incurred under any other section of this part or any other provision of law. The time spent attending a civilian education or training program under one written agreement will not be credited toward fulfilling an existing ADSO for a previous civilian education or training program under a previous written agreement incurred under this section.

§ 998.26 Computation of service obligations for NOAA Corps and officer training and civilian training and advanced education.

Service obligations incurred under § 998.24 and § 998.25(a) are computed as shown in this section, with the exception of fixed-period ADSOs as provided under § 998.24(a)(1) through (5). Officers may accumulate more than one ADSO from multiple obligating events. When an officer incurs an ADSO, compute the ADSO using the following rules:

(a) For obligating events that require calculation:

(1) For training greater than 60 days but equal to or fewer than 365 days:

(i) *Step 1.* Count the number of calendar days of the course of instruction using the beginning and end dates of the course, including breaks, weekends, holidays, and summers, regardless of whether the officers attended classes during those periods.

(ii) *Step 2.* Multiply the total found in Step 1 by three to get the total length of the ADSO in days.

(iii) *Step 3.* Add the number of days found in Step 2 to the end date of the training to determine the date that the ADSO will expire.

(iv) *Example.* An officer attends a semester-long civilian course of instruction that begins on January 1, 2021, and ends on May 30, 2021.

(A) *Step 1.* January 1, 2021 to May 30, 2021 = 150 training days.

(B) *Step 2.* 150 training days $\times$ 3 = 450 days, or 1 year, 85 days ADSO length.

(C) *Step 3.* May 30, 2021 + 450 days = August 23, 2022 ADSO expiration.

(2) For training greater than 365 days:

(i) *Step 1.* The first 365 days of training automatically incur three years ADSO.

(ii) *Step 2.* Count the number of additional training days from the 366th day to the end date of the course, including breaks, weekends, holidays, and summers, regardless of whether the officers attended classes during those periods.

(iii) *Step 3.* Add the number of days found in Step 2 to three years to determine the total ADSO length.

(iv) *Step 4.* Add the total ADSO length found in Step 3 to the end date of the training to determine the date that the ADSO will expire.

(v) *Example.* An officer attends a full-time civilian postgraduate program that spans three academic years, beginning on September 1, 2021 and graduating on May 31, 2024.

(A) *Step 1.* First year: September 1, 2021 to August 31, 2022 = 3 year ADSO.

(B) *Step 2.* Additional training time: September 1, 2022 to May 31, 2024 = 639 days or 1 year, 274 days.

(C) *Step 3.* 3-year ADSO + 639 days = 4 years, 274 days total ADSO length.

(D) *Step 4.* May 31, 2024 + 4 years, 274 days = March 1, 2029 ADSO expiration.

(b) The officer will ensure that supporting documents for each event are submitted to the NOAA Commissioned Personnel Center for review and verification for accurate calculation of their ADSO. The length of the ADSO shall be identified in the written agreement with the officer described in § 998.22(c).

§ 998.27 Service obligations for undergraduate assistance programs.

(a) *Education Loan Repayment Program.* An individual who enters into a written agreement to serve on active duty in the NOAA Corps as part of an education loan repayment program authorized by 33 U.S.C. 3077 shall serve one year for each maximum annual amount or portion thereof paid on behalf of the individual for qualified loans. If an individual is on active duty when entering into the agreement and has an existing ADSO, the ADSO incurred under this subsection must be served consecutively to any other existing ADSO. If an individual is not on active duty when entering into an agreement, the ADSO under this paragraph (a) may be served concurrently with an ADSO incurred under § 998.23. ADSOs incurred under § 998.24 and § 998.25 after an ADSO is incurred under this paragraph (a) may be served concurrently with the ADSO incurred under this paragraph (a).

(b) *Student Pre-Commissioning Assistance Program.* An individual entering into a written agreement for pre-commissioning education assistance authorized by 33 U.S.C. 3079 shall agree to serve on active duty for:

(1) Three years if the individual received fewer than three years of assistance; and

(2) Five years if the individual received at least three years of assistance.

(c) *Concurrent obligations.* An ADSO incurred under paragraph (b) of this section may be served concurrently with an ADSO incurred under §§ 998.23, 998.24, and 998.25.

§ 998.28 Notification and verification of active duty service obligations.

NOAA Corps officers will be informed of their ADSOs under this part as indicated:

(a) The NOAA Corps Commissioned Personnel Center shall—

(1) Maintain and make available for review to the officer a copy of the written agreement specifying the length of service obligation incurred; and

(2) Verify that officers meet the requirements of their written agreements and determine if a breach has occurred and, if so, notify the officer of such determination in writing.

(b) [Reserved]

§ 998.29 Waivers or suspension of compliance.

(a) The Secretary may waive the service obligations of an officer incurred under § 998.23, § 998.24, and § 998.27 who:

(1) Becomes unqualified to serve on active duty in the NOAA Corps because of a circumstance not within the control of that officer; or

(2) Is:

(i) Not physically qualified for appointment; and

(ii) Determined to be unqualified for service in the NOAA Corps because of a physical or medical condition that was not the result of the officer's own misconduct or grossly negligent conduct.

(b) The Secretary may waive the service obligations of an officer incurred under § 998.25 who fails to satisfy the eligibility requirements if the Secretary determines that the imposition of the repayment requirement and the termination of unpaid amounts of such assistance would be—

(1) Contrary to personnel policy or management objective;

(2) Against equity and good conscience; or

(3) Contrary to the best interest of the United States.

(c) With respect to a service obligation under §998.27(a), the Secretary may relieve an officer's ADSO and provide an alternative obligation at the discretion of the Secretary, the terms of which will be documented in a new written agreement.

(d) The authorities provided in this part to grant waivers or exceptions will be referenced in all written agreements.

§998.30 Repayment for failure to satisfy service requirements.

(a) An officer who fails to satisfy eligibility requirements or to meet the service requirements prescribed in §§998.23, 998.24, 998.25, 998.27(a), and 998.27(b) is required to reimburse the Government in an amount that bears the same ratio of the total costs of the training or education provided to that officer as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve, unless waived by the Secretary under §998.29(a) or (b). Calculation of the total cost of training subject to repayment includes tuition and matriculation fees, library and laboratory services, purchase or rental of books, materials, and supplies, but does not include travel, lodging, salary, or other allowances otherwise entitled to the individual. The total cost shall be calculated by the NOAA Commissioned Personnel Center and included in any written agreement.

(b) An obligation to reimburse the Government under this Section is, for all purposes, a debt owed to the United States.

(c) A discharge in bankruptcy under title 11 of the U.S. Code that is entered less than 5 years after the termination of a written agreement entered into under this part does not discharge the individual signing the agreement from a debt arising under such agreement.

Subpart D—National Oceanic and Atmospheric Administration Commissioned Officer Corps Whistleblower Protections

AUTHORITY: 33 U.S.C. 3071(a)(8), (a)(13), (b), and (c); 10 U.S.C. 1034 and 1090a.

SOURCE: 87 FR 59672, Oct. 3, 2022, unless otherwise noted.

§998.40 Purpose.

This subpart—

(a) Establishes policy and implements 33 U.S.C. 3071(a)(8), (a)(13), (b), and (c) to provide protection against reprisal to NOAA Corps officers for making or preparing or being perceived as making or preparing a protected communication.

(b) Assigns responsibilities and delegates authority for such protection against reprisal and prescribes procedures.

§998.41 Applicability.

This subpart applies to NOAA Corps officers, personnel boards convened by the Director of Office of Marine and Aviation Operations (OMAO) and the NOAA Corps (Director), and the Inspector General of the Department of Commerce.

§998.42 Definitions.

As used in this subpart, the following terms shall have the meaning stated:

Corrective action means any action deemed necessary to make the complainant whole, changes in agency regulations or practices, administrative or disciplinary action against offending personnel, and/or referral to the United States Attorney General of any evidence of criminal violation.

Inspector General means the Inspector General in the Office of Inspector General of the Department of Commerce or any other Inspector General, as appointed under the Inspector General Act of 1978, as amended.

Investigation report means a report issued by the Inspector General of the Department of Commerce that includes a thorough review of the facts and circumstances relevant to an allegation of reprisal against a NOAA Corps officer, the relevant documents acquired during the investigation, and summaries of interviews conducted.

Personnel action means an action taken, or the failure to take an action, that affects or has the potential to affect a NOAA Corps officer's position

and/or career. Personnel actions include disciplinary or corrective actions; a transfer or reassignment; significant changes in the duties or responsibilities of a NOAA Corps officer not commensurate with their grade; an inaccurate assessment of an officer's performance, skills, qualities, aptitudes, potential, or value to the NOAA Corps in the NOAA Corps officer's annual or semiannual officer evaluation reports; a decision concerning promotion, pay, benefits, awards, or training; separation; discharge; referral for mental health evaluations in accordance with 10 U.S.C. 1090a; the failure of a superior to respond to a retaliatory or harassment action against a NOAA Corps officer by one or more subordinate when the superior had knowledge of the retaliatory or harassment action; and conducting a retaliatory investigation against a NOAA Corps officer.

Protected communication means any lawful communication to a Member of Congress or an Inspector General; or a communication in which a NOAA Corps officer complains of, or discloses information that they reasonably believe evidences a violation of law or regulation (including sexual harassment or discrimination), gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to any of the following: a Member of Congress; an Inspector General; a member of a Department of Commerce audit, inspection, investigation, or law enforcement organization; any person or organization in the chain of command; and any other person or organization designated pursuant to regulations or other established administrative procedures to receive such communications.

Records Examination Board means a NOAA Corps personnel board convened by the Director to determine whether information contained in a NOAA Corps officer's personnel files should be corrected.

Reprisal means taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action against a NOAA Corps officer for making or preparing or being perceived as making or preparing a protected communication.

Retaliatory investigation means an investigation requested, directed, initiated, or conducted for the purpose of punishing, harassing, or ostracizing a NOAA Corps officer for making a protected communication.

§ 998.43 Requirements.

(a) No person within the Department of Commerce may restrict a NOAA Corps officer from making a lawful communication to a Member of Congress or an Inspector General.

(b) A NOAA Corps officer shall be free from reprisal for making or preparing or being perceived as making or preparing a protected communication.

(c) Any NOAA Corps officer or employee of the Department of Commerce who has the authority to take, direct others to take, or recommend or approve any personnel action shall not, under such authority, take or threaten to take a personnel action, or withhold or threaten to withhold a personnel action, as reprisal against any NOAA Corps officer for making or preparing or being perceived as making or preparing a protected communication.

§ 998.44 Responsibilities.

(a) The Inspector General of the Department of Commerce:

(1) Shall expeditiously determine whether there is sufficient evidence to warrant an investigation of an allegation that a personnel action has been taken, withheld, or threatened as reprisal for making or preparing or being perceived as making or preparing a protected communication. No investigation is required when such allegation is submitted more than 1 year after the NOAA Corps officer or former NOAA Corps officer became aware of the personnel action that is the subject of the allegation. However, the Inspector General of the Department of Commerce may consider a complaint of reprisal received more than 1 year later based on compelling reasons or circumstances. These circumstances may include situations in which the NOAA Corps officer or former NOAA Corps officer:

(i) Was actively misled regarding their rights; or

(ii) Was prevented from exercising their rights.

(2) Shall, if an investigation described in paragraph (a)(1) of this section is warranted, initiate a separate investigation of the underlying allegations contained in the protected communication if a prior investigation has not already been initiated, or if the Inspector General of the Department of Commerce determines that the prior investigation was biased or inadequate.

(3) Shall, except as provided in paragraph (a)(5) of this section, complete the investigation of the allegation of reprisal and issue a report not later than 180 days after receipt of the allegation, which shall include a thorough review of the facts and circumstances relevant to the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted. The report may also include a recommendation as to the disposition of the complaint.

(4) Shall submit a copy of the investigation report to the Secretary, the Administrator, the NOAA Deputy Under Secretary for Operations, the Director, and to the NOAA Corps officer or former NOAA Corps officer making the allegation. In the copy of the investigation report transmitted to the NOAA Corps officer or former NOAA Corps officer, the Inspector General of the Department of Commerce shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under the Freedom of Information Act (5 U.S.C. 552 *et seq.*). The Inspector General of the Department of Commerce may withhold the summaries of interviews conducted and documents acquired during the course of the investigation in the copy of the investigation report transmitted to the NOAA Corps officer or former NOAA Corps officer. If requested under this paragraph (a)(4), the summaries of interviews conducted and documents acquired during the course of the investigation shall be transmitted to the NOAA Corps officer or former NOAA Corps officer, with the exception of information that is not required to be disclosed under the Freedom of Information Act. This disclosure is separate from a disclosure resulting from a request submitted pursuant to the Freedom of Information Act or the Privacy Act (5 U.S.C. 552a *et seq.*). All other releases of information not made in accordance with this paragraph (a)(4) shall be processed pursuant to the respective disclosure statute that governs the request seeking those records. The items may be transmitted with the copy of the investigation report or within a reasonable time after the transmittal of the copy of the investigation report to the NOAA Corps officer or former NOAA Corps officer, regardless of whether the request for those items is made before or after the copy of the investigation report is transmitted to the NOAA Corps officer or former NOAA Corps officer.

(5) Shall, if a determination is made that the investigation report cannot be issued within 180 days of receipt of the allegation, notify the Secretary and the NOAA Corps officer or former NOAA Corps officer making the allegation of the current progress of the investigation, the reasons why the investigation report will not be submitted within that time, and estimate the time remaining until completion and transmittal. Every 180 days thereafter until the transmission of the investigation report, the Inspector General of the Department of Commerce shall notify the Secretary and NOAA Corps officer or former NOAA Corps officer making the allegation of the current progress of the investigation and estimated time remaining until completion and transmittal of the investigation report.

(6) At the request of the Records Examination Board, shall submit a copy of the investigation report to the Records Examination Board. If the Records Examination Board requests further evidence and a further report as provided in paragraph (b)(3) of this section, the Inspector General of the Department of Commerce shall respond within 30 days, and not later than every 30 days thereafter, until the transmission of the further report.

(b) The Records Examination Board, under directions prescribed by the Director:

(1) Shall consider an application for the correction of records made by a NOAA Corps officer or former NOAA Corps officer who has filed a complaint investigated by the Inspector General of the Department of Commerce alleging that a personnel action was taken, withheld, or threatened in reprisal for making or preparing or being perceived as making or preparing a protected communication.

(2) Shall review the investigation report issued by the Inspector General of the Department of Commerce.

(3) May ask the Inspector General to gather further evidence and issue a further report to the Records Examination Board.

(4) Shall provide a summary of the record of its proceedings, along with its recommendations, to the NOAA Corps officer or former NOAA Corps officer who has filed a complaint not later than 90 days after the NOAA Corps officer or former NOAA Corps officer made a request to convene such a Records Examination Board.

(5) Shall issue an appropriate recommendation to the Director concerning corrections, deletions, or additions to the NOAA Corps officer or former NOAA Corps officer's records not later than 90 days after the NOAA Corps officer or former NOAA Corps officer made a request to the Director to convene such a Records Examination Board. If the Records Examination Board requests a further report as provided under paragraph (b)(3) of this section and determines that it cannot issue recommendations within 90 days, the Records Examination Board shall notify the officer or former officer and the Director and provide an estimate of time remaining until completion.

(c) If the Records Examination Board determines that a personnel action was taken, withheld, or threatened in reprisal for a NOAA Corps officer making or preparing or being perceived as making or preparing a protected communication, the Records Examination Board shall forward its recommendation to the Director for appropriate correction of the NOAA Corps officer's or former NOAA Corps officer's records.

(d) When reprisal is found, the Director:

(1) Shall issue a decision concerning the correction of the NOAA Corps officer's or former NOAA Corps officer's records within 60 days of receiving the Records Examination Board's decision, but no sooner than 20 days after receiving the Records Examination Board decision to allow sufficient time for the NOAA Corps officer or former NOAA Corps officer to submit any written disagreement with the Records Examination Board's recommendations under paragraph (c) of this section, and ensure that appropriate corrective action is taken;

(2) Shall notify the Inspector General of his or her decision concerning an application for the correction of personnel records of a NOAA Corps officer or former NOAA Corps officer who alleged reprisal for making or preparing or being perceived as making or preparing a protected communication at the time the Director issues a decision under paragraph (d)(1) of this section; and

(3) Shall take appropriate administrative disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action as reprisal if those individuals are under the Director's chain of command. If those individuals are not under the Director's chain of command, refer those individuals to the Deputy Under Secretary for Operations for appropriate administrative disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action in reprisal.

(e) The Deputy Under Secretary for Operations:

(1) Shall provide an additional level of review concerning an application for the correction of personnel records of a NOAA Corps officer or former NOAA Corps officer within 90 days of the Director's decision if requested by the officer. If the Deputy Under Secretary for Operations fails to issue such a decision within that time, the NOAA Corps officer or former NOAA Corps officer shall be deemed to have exhausted their administrative remedies and the Director's decision constitutes the final agency action.

(2) Shall take appropriate administrative disciplinary action against the

individual or individuals found to have taken, withheld, or threatened a personnel action as reprisal if referred by the Director under paragraph (d) of this section.

§ 998.45 Procedures.

(a) Any NOAA Corps officer or former NOAA Corps officer who reasonably believes a personnel action was taken, withheld, or threatened in reprisal for making or preparing or being perceived as making or preparing a protected communication may file a complaint with the Department of Commerce Office of Inspector General Hotline online at *https://www.oig.doc.gov/Pages/Hotline.aspx* by phone at (800) 424–5197, or by mail addressed to: United States Department of Commerce, Office of Inspector General, 1401 Constitution Avenue NW, Washington, DC 20230.

(b) The complaint should include relevant and specific details, including the name, address, and telephone number of the complainant; the name and location of the activity where the alleged violation occurred; the personnel action taken, withheld, or threatened that is alleged to be motivated by reprisal; the name(s) of the individual(s) believed to be responsible for the personnel action; the date when the alleged reprisal occurred; the date when the NOAA Corps officer or former NOAA Corps officer became aware of the personnel action; and any information that suggests or evidences a connection between the protected communication and reprisal. The complaint should also include a description of the protected communication, including a copy of any written communication and a brief summary of any oral communication showing the date of communication, the subject matter, and the name of the person or official to whom the communication was made. Where the complaint is submitted more than 1 year after the date when the NOAA Corps officer or former NOAA Corps officer became aware of the personnel action, the complainant should include an explanation of any circumstances which caused the complaint to be submitted more than 1 year after the complainant became aware of the personnel action. These circumstances may include descriptions of how the NOAA Corps officer or former NOAA Corps officer was actively misled regarding their rights, or was prevented from exercising their rights.

(c) A NOAA Corps officer or former NOAA Corps officer who alleges reprisal for making or preparing or being perceived as making or preparing a protected communication may, within 20 days of receiving an investigation report, request in writing that the Director convene a Records Examination Board to consider an application for the correction of records.

(d) A NOAA Corps officer or former NOAA Corps officer who disagrees with the recommendations of a Records Examination Board may submit in writing the reasons for disagreement to the Director within 20 days of receiving the Records Examination Board's recommendations.

(e) A NOAA Corps officer or former NOAA Corps officer who disagrees with the Director's decision on a Records Examination Board's recommendations may request in writing a second level of review by the Deputy Under Secretary for Operations within 20 days of the Director's decision.

Subpart E—Shore Leave

AUTHORITY: 33 U.S.C. 3079b.

SOURCE: 88 FR 48725, July 28, 2023, unless otherwise noted.

§ 998.50 Applicability.

This subpart applies to professional mariners as defined in section 3079b(c) of title 33, United States Code, and in § 998.51, who are regularly assigned duties aboard a NOAA ship. An employee is considered to be regularly assigned when his or her continuing duties are such that all or a significant part of them require that he or she serve aboard a NOAA ship. Temporary assignments of a shore-based employee of the Administration, such as for limited work projects or for training, do not constitute a regular assignment. This subpart does not apply to commissioned officers of the NOAA Corps serving on NOAA ships.

§ 998.51 Definitions.

NOAA ship means a research or survey vessel owned or operated by NOAA as part of the NOAA fleet defined at 33 U.S.C. 891(2), but does not mean a vessel owned or operated by NOAA under the jurisdiction of the NOAA Small Boat Program.

Professional mariner means an individual employed by the Administration on a NOAA ship who has the necessary expertise to serve in the engineering, deck, steward, electronic technician, or survey departments.

Shore leave means a leave of absence, in addition to earned annual leave, that is earned by professional mariners serving aboard NOAA ships, as authorized by section 3079b of title 33, United States Code, and this subpart.

§ 998.52 Computation of shore leave.

(a) A professional mariner earns shore leave at the rate of one day of shore leave for each 3 and one-half consecutive days of assignment to a NOAA ship such that a total of up to 4 days of shore leave may be earned in any given pay period.

(b) For a professional mariner, an assignment begins either on the date he or she assumes their duties aboard a NOAA ship or on the date he or she comes aboard when a voyage is in progress. The assignment terminates on the date he or she ceases to be assigned to a NOAA ship or on the date on which he or she is released from assignment of their duties.

(c) In computing days of assignment, the Administration shall also include:

(1) The days a professional mariner spends traveling to join a NOAA ship to which assigned;

(2) The days a professional mariner spends traveling between NOAA ships when the employee is assigned from one NOAA ship to another; and

(3) The days on which the professional mariner is on sick leave when he or she becomes sick during an assignment (whether or not continued as a member of the crew) but not beyond the termination date of the assignment to the NOAA ship.

(d) In computing days of assignment, the Administration shall not include days the professional mariner is on any kind of leave other than sick leave.

§ 998.53 Granting shore leave.

(a) *Authority.* (1) A professional mariner has an absolute right to use shore leave, subject to the right of the head of the agency to fix the time at which shore leave may be used.

(2) A professional mariner shall submit his or her request for shore leave in writing and whenever such a request for shore leave is denied, the denial shall be in writing.

(b) *Accumulation.* Shore leave for professional mariners may be accumulated for future use without limitation and is in addition to annual leave.

(c) *Charge for shore leave.* The minimum charge for shore leave is one day and additional charges are in multiples thereof.

(d) *Lump-sum payment.* Shore leave may not be the basis for lump-sum payment on separation from the Administration.

(e) *Terminal leave.* (1) Except as provided by paragraph (e)(2) of this section, NOAA shall not grant shore leave to a professional mariner as terminal leave. For the purpose of this paragraph terminal leave means an approved absence immediately before an employee's separation when an agency knows the employee will not return to duty before the date of his or her separation.

(2) NOAA shall grant shore leave as terminal leave when the professional mariner's inability to use shore leave was due to circumstances beyond his or her control and not due to his or her own act or omission.

(f) *Forfeiture of shore leave.* Shore leave not granted before:

(1) Separation from employment with the Administration, or

(2) Official assignment (other than by temporary detail) to a position within NOAA in which the employee does not earn shore leave, is forfeited. When an official assignment will result in forfeiture of shore leave, NOAA, to the extent administratively practicable shall give an employee an opportunity to use the shore leave he or she has to his or her credit either before the reassignment or not later than 6 months after the date of his reassignment when the agency is unable to grant the shore leave before the reassignment.

§ 998.54 Pay for temporary promotion.

Professional mariners serving in a position aboard a NOAA ship to which they have been temporarily promoted pursuant to 5 CFR 335.102(f) shall be paid the difference between their temporary and permanent rates of pay for leave accrued while serving in the temporary promotion position unless:

(a) The professional mariner uses the leave before returning to their permanent position; or

(b) The professional mariner is permanently promoted to the higher position without further competition.

CHAPTER XI—NATIONAL TECHNICAL INFORMATION SERVICE, DEPARTMENT OF COMMERCE

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PART 1110—CERTIFICATION PROGRAM FOR ACCESS TO THE DEATH MASTER FILE

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AUTHORITY: Pub. L. 113–67, Sec. 203.

SOURCE: 79 FR 16670, Mar. 26, 2014, unless otherwise noted.

Subpart A—General

§ 1110.1 Description of rule; applicability.

(a) The Bipartisan Budget Act of 2013 (Pub. L. 113–67), Section 203, provides for the establishment of a fee-based certification program for persons who seek access to the Death Master File (DMF), and prohibits disclosure of DMF information for an individual during the three-calendar-year period following the individual's death, unless the person requesting the information has been certified.

(b) This part is applicable to any Person seeking access to a Limited Access DMF, as defined in this part.

§ 1110.2 Definitions used in this part.

The following definitions are applicable to this part:

Act. The Bipartisan Budget Act of 2013 (Pub. L. 113–67).

Accredited Conformity Assessment Body. A third party conformity assessment body that is accredited by an accreditation body under nationally or internationally recognized criteria such as, but not limited to, International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 27006–2011, ''Information technology—Security techniques—Requirements for bodies providing audit and certification of information security management systems,'' to attest that a Person or Certified Person has systems, facilities and procedures in place to safeguard Limited Access DMF.

Certified Person. A Person who has been certified under the certification program established under this part and is eligible to access the Limited Access DMF.

DMF. Death Master File.

Death Master File. Information on the name, social security account number, date of birth, and date of death of deceased individuals maintained by the Commissioner of Social Security, other than information that was provided to such Commissioner under section 205(r) of the Social Security Act (42 U.S.C. 405(r)).

Limited Access DMF. The DMF product made available by NTIS which includes DMF with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death. As used in this part, Limited Access DMF does not include an individual element of information (name, social security number, date of birth, or date of death) in the possession of a Person, whether or not certified, but obtained by such Person through a source independent of the Limited Access DMF. If a Person obtains, or a third party subsequently provides to

such Person, death information (*i.e.*, the name, social security account number, date of birth, or date of death) independently, such information in the possession of such Person is not part of the Limited Access DMF or subject to this part.

NTIS. The National Technical Information Service, United States Department of Commerce.

Open Access DMF. The DMF product made available by NTIS which does not include DMF with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death.

Person. Includes corporations, companies, associations, firms, partnerships, societies, joint stock companies, and other private organizations, and state and local government departments and agencies, as well as individuals.

[79 FR 16670, Mar. 26, 2014, as amended at 81 FR 34891, June 1, 2016]

Subpart B—Certification Program

§ 1110.100 Scope term.

(a) Any Person desiring access to the Limited Access DMF must certify in accordance with this part. Upon acceptance of a Person's certification by NTIS, such Person will be a Certified Person, will be entered into the publicly available list of Certified Persons maintained by NTIS, and will be eligible to access the Limited Access DMF made available by NTIS through subscription.

(b) Certification under this part is not required for any Person to access the Open Access DMF made available by NTIS; however, a Certified Person may also access the Open Access DMF.

§ 1110.101 Submission of certification; attestation.

(a) In order to become certified under the certification program established under this part, a Person must submit a completed certification statement and any required documentation, using the most current version of the Limited Access Death Master File Subscriber Certification Form, and its accompanying instructions at *https://dmf.ntis.gov,* together with the required fee.

(b) In addition to the requirements under paragraph (a) of this section, in order to become certified, a Person must submit a written attestation from an Accredited Conformity Assessment Body that such Person has systems, facilities, and procedures in place as required under § 1110.102(a)(2). Such attestation must be based on the Accredited Conformity Assessment Body's review or assessment conducted no more than three years prior to the date of submission of the Person's completed certification statement, but such review or assessment need not have been conducted specifically or solely for the purpose of submission under this part.

[81 FR 34891, June 1, 2016]

§ 1110.102 Certification.

In order to be certified to be eligible to access the Limited Access DMF under the certification program established under this part, a Person shall certify, in the manner set forth in this part and pursuant to section 1001 of title 18, United States Code, that

(a) Such Person's access to the Limited Access DMF is appropriate because:

(1) Such Person has a legitimate fraud prevention interest, or has a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty, and shall specify the basis for so certifying;

(2) Such Person has systems, facilities, and procedures in place to safeguard the accessed information, and experience in maintaining the confidentiality, security, and appropriate use of accessed information, pursuant to requirements reasonably similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986;

(3) Such Person agrees to satisfy such similar requirements; and

(4) Such Person shall not, with respect to Limited Access DMF of any deceased individual:

(i) Disclose such deceased individual's Limited Access DMF to any person other than a person who meets the requirements of paragraphs (a)(1) through (3) of this section;

(ii) Disclose such deceased individual's Limited Access DMF to any person who uses the information for any

purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty;

(iii) Disclose such deceased individual's Limited Access DMF to any person who further discloses the information to any person other than a person who meets the requirements of paragraphs (a)(1) through (3) of this section; or

(iv) Use any such deceased individual's Limited Access DMF for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty.

(b) The certification required in this section shall state whether such Person intends to disclose such deceased individual's DMF to any person, and if so, shall state the manner of such disclosure and how such Person will ensure compliance with paragraphs (a)(4)(i) through (iii) of this section.

[79 FR 16670, Mar. 26, 2014, as amended at 81 FR 34892, June 1, 2016]

§ 1110.103 Disclosure to a certified person.

Disclosure by a Person certified under this part of Limited Access DMF to another Person certified under this part shall be deemed to satisfy the disclosing Person's obligation to ensure compliance with §1110.102(a)(4)(i) through (iii).

[81 FR 34892, June 1, 2016]

§ 1110.104 Revocation of certification.

False certification as to any element of §1110.102(a)(1) through (4) shall be grounds for revocation of certification, in addition to any other penalties at law. A Person properly certified who thereafter becomes aware that the Person no longer satisfies one or more elements of §1110.102(a) shall promptly inform NTIS thereof in writing.

[81 FR 34892, June 1, 2016]

§ 1110.105 Renewal of certification.

(a) A Certified Person may renew its certification status by submitting, on or before the date of expiration of the term of its certification, a completed certification statement in accordance with §1110.101, together with the required fee, indicating on the form NTIS FM161 that it is a renewal, and also indicating whether or not there has been any change in any basis previously relied upon for certification.

(b) Except as may otherwise be required by NTIS, where a Certified Person seeking certification status renewal has, within a three-year period preceding submission under paragraph (a) of this section, previously submitted a written attestation under §1110.101(b), or has within such period been subject to a satisfactory audit under §1110.201, such Certified Person shall so indicate on the form NTIS FM161, and shall not be required to submit a written attestation under §1110.101(b).

(c) A Certified Person who submits a certification statement, attestation (if required) and fee pursuant to paragraph (a) of this section shall continue in Certified Person status pending notification of renewal or non-renewal from NTIS.

(d) A Person who is a Certified Person before November 28, 2016 shall be considered a Certified Person under this part, and shall continue in Certified Person status until the date which is one year from the date of acceptance of such Person's certification by NTIS under the Temporary Certification Program, provided that if such expiration date falls on a weekend or a federal holiday, the term of certification shall be considered to extend to the next business day.

[81 FR 34892, June 1, 2016]

Subpart C—Penalties and Audits

§ 1110.200 Imposition of penalty.

(a) *General.* (1) Any Person certified under this part who receives Limited Access DMF, and who:

(i) Discloses Limited Access DMF to any person other than a person who meets the requirements of §1110.102(a)(1) through (3);

(ii) Discloses Limited Access DMF to any person who uses the Limited Access DMF for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant

to a law, governmental rule, regulation, or fiduciary duty;

(iii) Discloses Limited Access DMF to any person who further discloses the Limited Access DMF to any person other than a person who meets the requirements of §1110.102(a)(1) through (3); or

(iv) Uses any such Limited Access DMF for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty; and

(2) Any Person to whom such Limited Access DMF is disclosed, whether or not such Person is certified under this part, who further discloses or uses such Limited Access DMF as described in paragraphs (a)(1)(i) through (iv) of this section, shall pay to the General Fund of the United States Department of the Treasury a penalty of $1,000 for each such disclosure or use, and, if such Person is certified, shall be subject to having such Person's certification revoked.

(b) *Limitation on penalty*. The total amount of the penalty imposed under this part on any Person for any calendar year shall not exceed $250,000, unless such Person's disclosure or use is determined to be willful or intentional. For the purposes of this part, a disclosure or use is willful when it is a ''voluntary, intentional violation of a known legal duty.''

(c) *Disclosure to a Certified Person*. No penalty shall be imposed under paragraphs (a)(1)(i) through (iii) of this section on a first Certified Person who discloses, to a second Certified Person, Limited Access DMF, where the sole basis for imposition of penalty on such first Certified Person is that such second Certified Person has been determined to be subject to penalty under this part.

[81 FR 34892, June 1, 2016]

§1110.201 Audits.

Any Person certified under this part shall, as a condition of certification, agree to be subject to audit by NTIS, or, at the request of NTIS, by an Accredited Conformity Assessment Body, to determine the compliance by such Person with the requirements of this part. NTIS may conduct, or request that an Accredited Conformity Assessment Body conduct, periodic scheduled and unscheduled audits of the systems, facilities, and procedures of any Certified Person relating to such Certified Person's access to, and use and distribution of, the Limited Access DMF. NTIS may conduct, or request that an Accredited Conformity Assessment Body conduct, field audits (during regular business hours) or desk audits of a Certified Person. Failure of a Certified Person to submit to or cooperate fully with NTIS, or with an Accredited Conformity Assessment Body acting pursuant to this section, in its conduct of an audit, or to pay an audit fee to NTIS, will be grounds for revocation of certification.

[81 FR 24893, June 1, 2016]

Subpart D—Administrative Appeal

SOURCE: 81 FR 34893, June 1. 2016, unless otherwise noted.

§1110.300 Appeal.

(a) *General*. Any Person adversely affected or aggrieved by reason of NTIS denying or revoking such Person's certification under this part, or imposing upon such Person under this part a penalty, may obtain review by filing, within 30 days (or such longer period as the Director of NTIS may, for good cause shown in writing, fix in any case) after receiving notice of such denial, revocation or imposition, an administrative appeal to the Director of NTIS.

(b) *Form of appeal*. An appeal shall be submitted in writing to Director, National Technical Information Service, at NTIS's current mailing address as found on its Web site: *www.ntis.gov.*, ATTENTION DMF APPEAL, and shall include the following:

(1) The name, street address, email address and telephone number of the Person seeking review;

(2) A copy of the notice of denial or revocation of certification, or the imposition of penalty, from which appeal is taken;

(3) A statement of arguments, together with any supporting facts or information, concerning the basis upon

which the denial or revocation of certification, or the imposition of penalty, should be reversed;

(4) A request for hearing of oral argument before the Director, if desired.

(c) *Power of attorney*. A Person may, but need not, retain an attorney to represent such Person in an appeal. A Person shall designate any such attorney by submitting to the Director of NTIS a written power of attorney.

(d) *Hearing*. If requested in the appeal, a date will be set for hearing of oral argument before a representative of the Director of NTIS, by the Person or the Person's designated attorney, and a representative of NTIS familiar with the notice from which appeal has been taken. Unless it shall be otherwise ordered before the hearing begins, oral argument will be limited to thirty minutes for each side. A Person need not retain an attorney or request an oral hearing to secure full consideration of the facts and the Person's arguments.

(e) *Decision*. After a hearing on the appeal, if a hearing was requested, the Director of NTIS shall issue a decision on the matter within 120 days, or, if no hearing was requested, within 90 days of receiving the appeal. The decision of the Director of NTIS shall be made after consideration of the arguments and statements of fact and information in the Person's appeal, and the hearing of oral argument if a hearing was requested, but the Director of NTIS at his or her discretion and with due respect for the rights and convenience of the Person and the agency, may call for further statements on specific questions of fact or may request additional evidence in the form of affidavits on specific facts in dispute. After the original decision is issued, an appellant shall have 30 days (or a date as may be set by the Director of NTIS before the original period expires) from the date of the decision to request a reconsideration of the matter. The Director's decision becomes final 30 days after being issued, if no request for reconsideration is filed, or on the date of final disposition of a decision on a petition for reconsideration.

Subpart E—Fees

SOURCE: 79 FR 16670, Mar. 26, 2016, unless otherwise noted. Redesignated at 81 FR 34893, June 1, 2016.

§ 1110.400 Fees.

Fees sufficient to cover (but not to exceed) all costs to NTIS associated with evaluating Certification Forms and auditing, inspecting, and monitoring certified persons under the certification program established under this part, as well as appeals, will be published (as periodically reevaluated and updated by NTIS) and available at *https://dmf.ntis.gov*. NTIS will not set fees for attestations or audits by an Accredited Conformity Assessment Body.

Subpart F—Accredited Conformity Assessment Bodies

SOURCE: 81 FR 34893, June 1. 2016, unless otherwise noted.

§ 1110.500 Accredited conformity assessment bodies.

This subpart describes Accredited Conformity Assessment Bodies and their accreditation for third party attestation and auditing of the information safeguarding requirement for certification of Persons under this part. NTIS will accept an attestation or audit of a Person or Certified Person from an Accredited Conformity Assessment Body that is:

(a) Independent of that Person or Certified Person; or

(b) Is firewalled from that Person or Certified Person, and that in either instance is itself accredited by a nationally or internationally recognized accreditation body.

§ 1110.501 Independent.

(a) An Accredited Conformity Assessment Body that is an independent third party conformity assessment body is one that is not owned, managed, or controlled by a Person or Certified Person that is the subject of attestation or audit by the Accredited Conformity Assessment Body.

(1) A Person or Certified Person is considered to own, manage, or control

a third party conformity assessment body if any one of the following characteristics applies:

(i) The Person or Certified Person holds a 10 percent or greater ownership interest, whether direct or indirect, in the third party conformity assessment body. Indirect ownership interest is calculated by successive multiplication of the ownership percentages for each link in the ownership chain;

(ii) The third party conformity assessment body and the Person or Certified Person are owned by a common ''parent'' entity;

(iii) The Person or Certified Person has the ability to appoint a majority of the third party conformity assessment body's senior internal governing body (such as, but not limited to, a board of directors), the ability to appoint the presiding official (such as, but not limited to, the chair or president) of the third party conformity assessment body's senior internal governing body, and/or the ability to hire, dismiss, or set the compensation level for third party conformity assessment body personnel; or

(iv) The third party conformity assessment body is under a contract to the Person or Certified Person that explicitly limits the services the third party conformity assessment body may perform for other customers and/or explicitly limits which or how many other entities may also be customers of the third party conformity assessment body.

(2) A state or local government office of Inspector General or Auditor General and a Person or Certified Person that is a department or agency of the same state or local government, respectively, are not considered to be owned by a common ''parent'' entity under paragraph (a)(1)(ii) of this section.

(b) [Reserved]

§ 1110.502 Firewalled.

(a) A third party conformity assessment body must apply to NTIS for firewalled status if it is owned, managed, or controlled by a Person or Certified Person that is the subject of attestation or audit by the Accredited Conformity Assessment Body, applying the characteristics set forth under § 1110.501(a)(1).

(b) The application for firewalled status of a third party conformity assessment body under paragraph (a) of this section will be accepted by NTIS where NTIS finds that:

(1) Acceptance of the third party conformity assessment body for firewalled status would provide equal or greater assurance that the Person or Certified Person has information security systems, facilities, and procedures in place to protect the security of the Limited Access DMF than would the Person's or Certified Person's use of an independent third party third party conformity assessment body; and

(2) The third party conformity assessment body has established procedures to ensure that:

(i) Its attestations and audits are protected from undue influence by the Person or Certified Person that is the subject of attestation or audit by the Accredited Conformity Assessment Body, or by any other interested party;

(ii) NTIS is notified promptly of any attempt by the Person or Certified Person that is the subject of attestation or audit by the third party conformity assessment body, or by any other interested party, to hide or exert undue influence over an attestation, assessment or audit; and

(iii) Allegations of undue influence may be reported confidentially to NTIS. To the extent permitted by Federal law, NTIS will undertake to protect the confidentiality of witnesses reporting allegations of undue influence.

(c) NTIS will review each application and may contact the third party conformity assessment body with questions or to request submission of missing information, and will communicate its decision on each application in writing to the applicant, which may be by electronic mail.

§ 1110.503 Attestation by accredited conformity assessment body.

(a) In any attestation or audit of a Person or Certified Person that will be submitted to NTIS under this part, an Accredited Conformity Assessment Body must attest that it is independent of that Person or Certified

Person. The Accredited Conformity Assessment Body also must attest that it has read, understood, and agrees to the regulations in this part. The Accredited Conformity Assessment Body must also attest that it is accredited to a nationally or internationally recognized standard such as the ISO/IEC Standard 27006–2011 ''Information technology—Security techniques—Requirements for bodies providing audit and certification of information security management systems,'' or any other similar nationally or internationally recognized standard for bodies providing audit and certification of information security management systems. The Accredited Conformity Assessment Body must also attest that the scope of its accreditation encompasses the safeguarding and security requirements as set forth in this part.

(b) Where a Person seeks certification, or where a Certified Person seeks renewal of certification or is audited under this part, an Accredited Conformity Assessment Body may provide written attestation that such Person or Certified Person has systems, facilities, and procedures in place as required under §1110.102(a)(2). Such attestation must be based on the Accredited Conformity Assessment Body's review or assessment conducted no more than three years prior to the date of submission of the Person's or Certified Person's completed certification statement, and, if an audit of a Certified Person by an Accredited Conformity Assessment Body is required by NTIS, no more than three years prior to the date upon which NTIS notifies the Certified Person of NTIS's requirement for audit, but such review or assessment or audit need not have been conducted specifically or solely for the purpose of submission under this part.

(c) Where review or assessment or audit by an Accredited Conformity Assessment Body was not conducted specifically or solely for the purpose of submission under this part, the written attestation or assessment report (if an audit) shall describe the nature of that review or assessment or audit, and the Accredited Conformity Assessment Body shall attest that on the basis of such review or assessment or audit, the Person or Certified Person has systems, facilities, and procedures in place as required under §1110.102(a)(2).

(d) Notwithstanding paragraphs (a) through (c) of this section, NTIS may, in its sole discretion, require that review or assessment or audit by an Accredited Conformity Assessment Body be conducted specifically or solely for the purpose of submission under this part.

§1110.504 Acceptance of accredited conformity assessment bodies.

(a) NTIS will accept written attestations and assessment reports from an Accredited Conformity Assessment Body that attests, to the satisfaction of NTIS, as provided in §1110.503.

(b) NTIS may decline to accept written attestations or assessment reports from an Accredited Conformity Assessment Body, whether or not it has attested as provided in §1110.503, for any of the following reasons:

(1) When it is in the public interest under Section 203 of the Bipartisan Budget Act of 2013, and notwithstanding any other provision of this part;

(2) Submission of false or misleading information concerning a material fact(s) in an Accredited Conformity Assessment Body's attestation under §1110.503;

(3) Knowing submission of false or misleading information concerning a material fact(s) in an attestation or assessment report by an Accredited Conformity Assessment Body of a Person or Certified Person;

(4) Failure of an Accredited Conformity Assessment Body to cooperate in response to a request from NTIS to verify the accuracy, veracity, and/or completeness of information received in connection with an attestation under §1110.503 or an attestation or assessment report by that Body of a Person or Certified Person. An Accredited Conformity Assessment Body ''fails to cooperate'' when it does not respond to NTIS inquiries or requests, or it responds in a manner that is unresponsive, evasive, deceptive, or substantially incomplete; or

(5) Where NTIS is unable for any reason to verify the accuracy of the Accredited Conformity Assessment Body's attestation.

PART 1180—TRANSFER BY FEDERAL AGENCIES OF SCIENTIFIC, TECHNICAL AND ENGINEERING INFORMATION TO THE NATIONAL TECHNICAL INFORMATION SERVICE

Sec.

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APPENDIX TO PART 1180—SAMPLE FUNDING AGREEMENT CLAUSE FOR DIRECT SUBMISSION OF PRODUCTS

AUTHORITY: Sec. 108 of Pub. L. 102–245, 106 Stat. 7 (15 U.S.C. 3704b–2).

SOURCE: 59 FR 10, Jan. 3, 1994, unless otherwise noted.

§ 1180.1 Purpose and scope.

(a) The purpose of this regulation is to facilitate public access to the vast amount of scientific, technical and engineering information (STEI) that is produced by and for federal agencies.

(b) This regulation provides a variety of methods for federal agencies to adopt to ensure the timely transfer to the National Technical Information Service (NTIS) of all unclassified STEI that is available for public dissemination and that results from federal funding. It is issued pursuant to the authority contained in Section 108 of the American Technology Preeminence Act (Pub. L. 102–245).

§ 1180.2 Definitions.

Agency means a federal agency as that term is defined in Section 4 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3703(8));

Director means the Director of the National Technical Information Service.

Federally funded refers to STEI which results from federal research and development activities funded in whole or in part with federal funds, whether performed by the agency itself or by contractors, grantees, cooperative research partners, joint venture partners, or under any similar arrangement involving federal funds.

Final when used to describe an STEI product means a product that the originating agency or contractor/grantee thereof intends for public dissemination and may exclude interim status reports routinely furnished to agencies by contractors and grantees for monitoring and other internal purposes and which are not intended for public dissemination.

Product includes, but is not limited to, any report, manual, standard, specification, book, paper, chart, map, graph, data collection, data file, data compilation, software, audio/video production, technology application assessment generated pursuant to Section 11(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(c)), as well as materials pertaining to training technology and other federally owned or originated technologies, and applies to items produced in-house or outside the agency through the Government Printing Office, its contractors, Federal Prison Industries or any other producer, provided that such material is intended by the agency for public dissemination.

Scientific, technical and engineering information means—

(1) Basic and applied research that results from the efforts of scientists and engineers in any medium (including new theory and information obtained from experimentation, observation, instrumentation or computation in the form of text, numeric data or images), and

(2) Information that bears on business and industry generally, such as economic information, market information and related information, if the agency determines such information would be of value to consumers of the information described in paragraph (1) of this definition.

Summary means information relating to an ongoing research project likely to result in a final product.

§ 1180.3 General rule.

Unless an exception applies under section 1180.7, each federal agency shall, within the time period specified in this regulation, transfer to NTIS—

(a) At least one copy of every final STEI product resulting from the agency's federally funded research and development activities, and

(b) A summary of the agency's new and on-going research that is likely to result in a final STEI product

if such final product or summary is unclassified and is intended by the agency for public dissemination.

§ 1180.4 Preparing a product for transfer.

(a) Every final STEI product or summary shall, to the extent practicable, be prepared in a format that is consistent with one of the various formats found in NTIS guidelines. In addition, every such product shall—

(1) Be accompanied by a report documentation page (SF 298) or its electronic equivalent;

(2) Be in a form capable of high quality reproduction appropriate to the medium;

(3) In the case of software, be accompanied by relevant documentation, such as operating manuals, but not including printed source code; and

(4) In the case of a product not printed by the Government Printing Office, be accompanied by a statement as to whether the product has been made available for depository distribution by the Government Printing Office.

(b) Each federal agency shall transfer or have transferred to NTIS those STEI products funded by it that are protected by copyright only if there is a license reserved to the Government. In such cases, the agency shall inform NTIS of the terms of the license. Suggested language for inclusion in agency funding instruments is contained in the Appendix to this part.

(c) If an agency has generated or funded an STEI product which should be available for public dissemination but has embedded within it any copyrighted material, the designated liaison appointed pursuant to §1180.8 should work with NTIS to determine if it would be appropriate to seek a license from the copyright holder in order to make the STEI product available.

§ 1180.5 Timeliness.

A single copy of a final product or summary described in §1180.3 must be transferred to NTIS within fifteen days of the date it is first made available for public dissemination through any distribution channel, and, whenever practical, as soon as it has been approved by the agency for final printing or other reproduction, unless the agency and the Director have otherwise agreed.

§ 1180.6 Production of additional copies.

Unless the agency determines that such action would not be feasible, it shall make appropriate arrangements to enable NTIS, from time to time and at NTIS's own discretion and expense, to ride agency printing and other reproduction orders.

§ 1180.7 Exceptions.

(a) An agency shall not be required to take any further action to submit a copy of a final STEI product to NTIS or one of its affiliates if—

(1) It has designated NTIS to receive a single copy of each STEI product once it has been produced, has made the arrangements specified in §1180.6, if appropriate, and has made arrangements to receive appropriate certification from a contractor, grantee or other external performer of federally funded research that a copy has been sent to NTIS or one of its affiliates within the appropriate time period pursuant to obligations incurred in the applicable funding agreement (see Appendix to this part) or pursuant to such other system as the agency has established to ensure timely transfer;

(2) The agency and the Director have executed an appropriate agreement or memorandum of understanding establishing an alternative system for compliance; or

(3) The federally funded STEI is protected by copyright for which no license has been reserved to the Government that would allow distribution by NTIS;

(4) The product is an agency generated article that is published in a privately produced journal; or

(5) The agency and the Director, pursuant to paragraph (b) of this section, have agreed that the transfer of a product otherwise covered by these regulations would not be appropriate.

(b) An agency and the Director shall be deemed to be in agreement within the meaning of paragraph (a)(3) of this section if the Director has not objected within 30 days to an agency's written notification of its determination that timely transfer of a product or category of products would not be appropriate under section 108 of the American Technology Preeminence Act. Examples of inappropriate transfers include:

(1) Transfers that could cause significant harm to an agency's existing dissemination program that is operating on a cost recovery basis, is operating in compliance with the policies described by OMB Circular A–130, and for which special arrangements that would permit supplemental distribution by NTIS cannot be negotiated.

(2) Federally funded STEI that has received, or is likely to receive, widespread distribution to most potential users at no charge.

§ 1180.8 Appointment of Agency Liaison Officers.

The head of each agency shall appoint or designate an officer or employee to serve as the STEI Liaison. The Liaison shall, to the extent authorized by the head of the agency—

(1) In cooperation with the Director, determine what products or summaries produced by the Government shall be transferred to NTIS on an ongoing basis;

(2) Determine which funding agreements are to require contractors and grantees to submit products directly to NTIS (for which purpose the Appendix to this part contains suggested language that agencies may wish to include in applicable funding instruments);

(3) Appoint additional liaison officers for major units or components of an agency if the Director and Liaison officer agree this would further the purposes of this regulation; and

(4) Enter into appropriate agreements with the Director and perform any other agency responsibilities described in this regulation.

§ 1180.9 Affiliates.

(a) The Director may recognize any federal agency or component of an agency as an affiliate for the purpose of receiving, on behalf of NTIS, any STEI product that is required to be transferred under these regulations if NTIS has entered into a memorandum of understanding with the Liaison Officer under which the recognized affiliate agrees to the ongoing transfer of all STEI products to NTIS in a timely manner and otherwise agrees to assume the role of an affiliate.

(b) A transfer by an agency to an approved affiliate shall be deemed a transfer to NTIS within the meaning of these regulations.

§ 1180.10 NTIS permanent repository.

A product, or category of product, will normally be accepted and maintained as part of NTIS' permanent repository as a service to agencies unless the Director advises the Liaison Officer that it has not been so accepted. In general, transferred products will not be accepted if they have not been properly prepared as required by Section 1180.4 or if NTIS believes that the cost of adding them to the repository will significantly exceed anticipated benefits to the public as measured by foreseeable demand. A product announced by NTIS as being available from NTIS shall be deemed to have been accepted by NTIS as part of its permanent repository.

§ 1180.11 Relation to other laws and procedures.

(a) Nothing in these regulations shall be deemed to exempt an agency from any of the following requirements:

(1) Compliance with the Freedom of Information Act (5 U.S.C. 552);

(2) Compliance with any requirements to protect material that contains classified national security information;

(3) Compliance with requirements to protect personal or other information that may not be disclosed without appropriate authority under applicable

laws and procedures, such as the Privacy Act (5 U.S.C. 552a);

(4) Compliance with laws and regulations applicable to federal records under Title 44 of the United States Code or regulations issued by the National Archives and Records Administration (36 CFR, chapter XII);

(5) Compliance with requirements to distribute publications through the Depository Library Program either directly or through NTIS as prescribed in subsection (d) of this section; and

(6) In the case of an agency that is also a component of an agency as that term is defined in §1180.2, compliance with all applicable requirements and procedures of the parent agency regarding these regulations.

(b) Nothing in these regulations shall be deemed to require an agency to take any of the following actions:

(1) To use NTIS as an agency's exclusive distribution channel;

(2) To transfer to NTIS information on matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order; or

(3) to transfer, produce, or disseminate any other information that is required by law to be withheld, which the agency is authorized to withhold, or which is not intended by the agency for public dissemination.

(c) No contractor, grantee, or employee of a Federal agency shall submit a final STEI product directly to NTIS unless authorized to do so by the Liaison or the Liaison's designate, which authorization may be provided in an approved funding agreement (see Appendix to this part).

(d) In order to facilitate cooperation between agencies and the Depository Libraries—

(1) NTIS will, as soon as possible, but not later than six months from the effective date of these regulations, provide each Depository Library at no charge, online access to a current list of all final STEI products provided to NTIS under these regulations that have been entered into the NTIS system.

(2) The online system described in subsection (d) of this section will include an option that will allow each Depository Library thirty days from the date a product is added to the online listing to identify a product that it wishes to receive and that has not otherwise been made available to it.

(3) NTIS will accumulate these requests and, within a reasonable time, transfer them to the originating agency for fulfillment of each of the identified products.

(4) In lieu of the procedures described in paragraph (d)(3) of this section, NTIS will offer to enter into simple cost recovery arrangements with the originating agency to duplicate and ship the identified products to the requesting Libraries in the format that the agency determines to be most cost effective, including microfiche, paper, diskette, or disc.

(5) NTIS will also establish, as soon as practical, a system of full text online access to final STEI products for the Depository Libraries at no charge to them. Those final STEI products provided to NTIS in a format prescribed by NTIS as suitable for online dissemination under this system will be made available to the Libraries at no charge to the originating agency, will be maintained online indefinitely, and will be available to the Libraries without regard to the thirty day selection time limit described in paragraph (d)(2) of this section.

(6) The services in this paragraph will be provided to Depository Libraries on the condition that they agree to ensure that online access to the NTIS listing described in paragraph (d)(1) of this section is restricted to the Library and its staff and that the full text products provided online pursuant to paragraph (d)(5) of this section are available only to the community served by that Library.

Appendix to Part 1180—Sample Funding Agreement Clause for Direct Submission of Products

Agencies electing to allow for their contractors, grantees, etc. to submit final products directly to NTIS are encouraged to employ a provision similar to the following in the applicable funding agreement:

''The (contractor)/(recipient) shall certify to the (contracting) (grants) officer—

''(1) a copy of all scientific, technical and engineering information products created or finalized in whole or in part with the funds requested has been or will be transferred to NTIS or a recognized affiliate (at the same time that it is provided to the sponsoring agency) (when the agency has determined that the product is approved for public dissemination) but no later than fifteen days after it is first made available for public dissemination through any other distribution channel, and

''(2) NTIS, or a recognized affiliate, has been advised as to whether the product is protected by copyright and, if so, a copy of the terms of any licenses reserved to the Government has been sent to NTIS, along with a copy of the SF 298.''

PARTS 1181–1199 [RESERVED]

CHAPTER XIII—EAST-WEST FOREIGN TRADE BOARD

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1301–1399	[Reserved]	

PART 1300—REPORTS ON EXPORTS OF TECHNOLOGY

§ 1300.1 Reporting of exports of technology to nonmarket economy countries.

(a) For purposes of complying with the reporting requirements of section 411 of the Trade Act of 1974 (19 U.S.C. 2441) relating to the export of technology to a nonmarket economy country, exporters of such technology shall be deemed to have complied with the requirements of such section by complying with the applicable provisions of the export control regulations of the Department of Commerce (15 CFR 368.1 through 399.2) issued pursuant to the Export Administration Act of 1969, as amended, (50 U.S.C. App. 2401 through 2413).

(b) Nonmarket Economy Country. For purposes of section 411(b) of the Trade Act of 1974 (19 U.S.C. 2441) the term ''nonmarket economy country'' includes those countries included in Country Groups Q, W, Y, and Z of the export control regulations of the Department of Commerce (15 CFR Part 370 (Supplement 1)).

(Sec. 411, Pub. L. 93–618, 88 Stat. 2065 (19 U.S.C. 2441); E.O. 11846 (40 FR 14291))

[40 FR 29534, July 14, 1975]

PARTS 1301–1399 [RESERVED]

CHAPTER XIV—MINORITY BUSINESS DEVELOPMENT AGENCY

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PART 1400—DETERMINATION OF GROUP ELIGIBILITY FOR MBDA ASSISTANCE

Sec.
1400.1 Purpose and scope.
1400.2 Definitions.
1400.3 Request for determination.
1400.4 Evidence of social or economic disadvantage.
1400.5 Decision.
1400.6 Construction.

AUTHORITY: 15 U.S.C. 1512, E.O. 11625, 3 CFR 616 (1971–75), 36 FR 19967 (1971); and E.O. 12432, 3 CFR 198 (1983), 48 FR 32551 (1983).

SOURCE: 49 FR 42698, Oct. 24, 1984, unless otherwise noted.

§ 1400.1 Purpose and scope.

(a) The purpose of this part is to set forth regulations for determination of group eligibility for MBDA assistance.

(b) In order to be eligible to receive assistance from MBDA funded organizations, a concern must be a minority business enterprise as defined in 15 U.S.C. 9501(9). The purpose of this regulation is to provide guidance to groups not previously designated as eligible for assistance who believe they are entitled to formal designation as ''socially or economically disadvantaged.'' Upon adequate showing by representatives of the group that the group is, as a whole, socially or economically disadvantaged, the group will be so designated and its members will be eligible for MBDA assistance. Designation under this regulation will not establish eligibility for any other Federal or Federally funded program.

[49 FR 42698, Oct. 24, 1984, as amended at 89 FR 101467, Dec. 16, 2024]

§ 1400.2 Definitions.

For the purpose of this part:

(a) Minority business enterprise is defined in 15 U.S.C. 9501(9).

(b) Socially disadvantaged persons means those persons who have been subjected to cultural, racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.

(c) Economically disadvantaged persons means those persons whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities because of their identity as members of a group without regard to their individual qualities, as compared to others in the same line of business and competitive market area.

(d) Person means a citizen of the United States or an alien lawfully admitted for permanent residence.

[49 FR 42698, Oct. 24, 1984, as amended at 89 FR 101467, Dec. 16, 2024]

§ 1400.3 Request for determination.

A group wishing to apply for designation as socially or economically disadvantaged under this part shall submit a written application to the Director of the Minority Business Development Agency, United States Department of Commerce, Washington, DC, 20230, containing the following information:

(a) *Statement of request:* a brief statement clearly indicating that the applicant seeks formal recognition as socially or economically disadvantaged.

(b) *Description of applicants:* a detailed sociological, ethnic and/or racial description, as appropriate, of the group they represent which indicates that the group and the traits of its members are sufficiently distinctive to warrant a determination of social or economic disadvantage.

(c) *Summary of the applicant's submission:* a brief summary of their Submission.

(d) *Presentation of argument:* a narrative description of the documentation in support of their claim of social or economic disadvantage.

NOTE 1 TO PARAGRAPH (d): Applicants should support their claim of social or economic disadvantage with the criteria described under 1400.4 ''Evidence of Social or Economic Disadvantage''

(e) *Conclusion:* summary of applicant's arguments in support of the claims of social or economic disadvantage.

(Approved by the Office of Management and Budget under control number 0640–0011)

[49 FR 42698, Oct. 24, 1984, as amended at 89 FR 101467, Dec. 16, 2024]

§ 1400.4 Evidence of social or economic disadvantage.

(a) The representatives of the group requesting formal designation should

establish social or economic disadvantage by a preponderance of the evidence. Social or economic disadvantage must be chronic, long standing, and substantial, not fleeting or insignificant. In determining whether a group has made an adequate showing that it has suffered chronic racial or ethnic prejudice or cultural bias for the purposes of this regulation, a determination will be made as to whether this group has suffered the effects of discriminatory practices over which its members have no control. Applicants must demonstrate that such social or economic conditions have produced impediments in the business world for members of the group which are not common to all business people in the same or similar business and market place.

(b) Evidence which will be considered in determining whether groups are socially or economically disadvantaged includes but is not limited to:

(1) Statistical profile outlining the national income level and standard of living enjoyed by members of the group in comparison to the income level and standard of living enjoyed by individuals not considered to be members of socially or economically disadvantaged groups.

(2) Evidence of employment discrimination suffered by members of the group in comparison to employment opportunities available to individuals not considered to be members of socially or economically disadvantaged groups.

(3) Evidence of educational discrimination in comparison to educational opportunities available to individuals not considered to be members of socially or economically disadvantaged groups.

(4) Evidence of denial of access to organizations, groups, or professional societies, whether in business or in school, based solely upon racial and/or ethnic considerations.

(5) Kinds of businesses and business opportunities available to group members in comparison to the kinds of businesses and business opportunities available to individuals not considered to be members of socially or economically disadvantaged groups.

(6) Availability of capital to group members in comparison to the availability of capital to individuals not considered to be members of socially or economically disadvantaged groups.

(7) Availability of technical and managerial resources to group members in comparison to the technical and managerial resources available to individuals not considered to be members of socially or economically disadvantaged groups.

(8) Any other evidence of denial of opportunity or access to those things which would enable the individual to participate more successfully in the American economic system, available to individuals not considered to be members of social or economically disadvantaged groups.

§ 1400.5 Decision.

(a) *Procedure.* After receipt of an application requesting formal designation as a socially or economically disadvantaged group, the Department of Commerce will publish a notice in the FEDERAL REGISTER that formal designation of this group will be considered. This notice will request comment from the public on the propriety of such a designation. The Department may gather additional information which supports or refutes the group's request. Any member of the public, including Government representatives, may submit information in written form. It is the responsibility of the applicant, however, to submit all relevant information which it wishes considered in its request for a determination of group eligibility.

(b) *Decision.* A decision will be made within 180 days of the receipt of the request. The decision will be published in the FEDERAL REGISTER. Applicants will also be informed in writing.

(c) *Appeal.* All questions of eligibility and procedural requirements shall be resolved by the Director, MBDA whose decision shall be final. An applicant may appeal this decision to the Secretary of Commerce. Applicants requesting an appeal should provide any information discovered subsequent to the Director's initial decision which would further their claim. The right to appeal shall be granted at the absolute discretion of the Secretary.

§ 1400.6 Construction.

Nothing in this regulation shall be construed as subjecting any functions vested in, or assigned pursuant to law to any Federal department or agency or head thereof to the authority of any other agency or office exclusively, or as abrogating or restricting such functions in any manner.

PARTS 1401–1499 [RESERVED]

CHAPTER XV—OFFICE OF THE UNDER-SECRETARY FOR ECONOMIC AFFAIRS, DEPARTMENT OF COMMERCE

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PART 1500—CONCRETE MASONRY RESEARCH, EDUCATION, AND PROMOTION

Subpart A—Concrete Masonry Products Research, Education, and Promotion Order

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AUTHORITY: 15 U.S.C. 8701–8717.

SOURCE: 86 FR 23276, May 3, 2021, unless otherwise noted.

Subpart A—Concrete Masonry Products Research, Education, and Promotion Order

SOURCE: 86 FR 51478, Sept. 15, 2021, unless otherwise noted.

DEFINITIONS

§ 1500.0 Order.

Order means this subpart A, Concrete Masonry Products Research, Education, and Promotion Order.

§ 1500.1 Act.

Act means the Concrete Masonry Products Research, Education, and Promotion Act of 2018 (15 U.S.C. 8701 *et seq.;* Pub. L. 115–254, section 1301, 132 Stat. 3469–3485 (2018)), and any amendments thereto.

§ 1500.2 Block machine.

Block machine means a piece of equipment that utilizes vibration and compaction to form concrete masonry products.

§ 1500.3 Board.

Board means the ''Concrete Masonry Products Board'' established under § 1500.40 of this Order.

§ 1500.4 Cavity.

Cavity means the open space in the mold of a block machine capable of forming a single concrete masonry unit having nominal plan dimensions of 8 inches by 16 inches.

§ 1500.5 Concrete masonry products.

Concrete masonry products means a broader class of products, including concrete masonry units as well as hardscape products such as concrete pavers and segmental retaining wall units, manufactured on a block machine using dry-cast concrete.

§ 1500.6 Concrete masonry unit.

Concrete masonry unit means a concrete masonry product that is a manmade masonry unit having an actual width of 3 inches or greater and manufactured from dry-cast concrete using a block machine. Such term includes concrete block and related concrete units used in masonry applications.

§ 1500.7 Conflict of interest.

Conflict of interest means with respect to a member or employee of the Board, a situation in which such member or employee has a direct or indirect financial or other interest in a person that performs a service for, or enters into a contract with, for anything of economic value.

§ 1500.8 Department.

Department means the United States Department of Commerce.

§ 1500.9 Dry-cast concrete.

Dry-cast concrete means a composite material that is composed essentially of aggregates embedded in a binding medium composed of a mixture of cementitious materials (including hydraulic cement, pozzolans, or other cementitious materials) and water of such a consistency to maintain its shape after forming in a block machine.

§ 1500.10 Education.

Education means programs that will educate or communicate the benefits of concrete masonry products in safe and environmentally sustainable development, advancements in concrete masonry product technology and development, and other information and programs designed to generate increased demand for commercial, residential, multi-family, and institutional projects using concrete masonry products and to generally enhance the image of concrete masonry products.

§ 1500.11 Geographic regions.

Geographic Regions means the groupings of states as delineated in this Order (at § 1500.40(c)), for the purpose of supporting research, education, and promotion plans and projects.

§ 1500.12 Machine cavities.

Machine cavities means the cavities with which a block machine could be equipped.

§ 1500.13 Machine cavities in operation.

Machine cavities in operation means those machine cavities associated with a block machine that have produced concrete masonry units within the last six months of the date set for determining eligibility and is fully operable and capable of producing concrete masonry units.

§ 1500.14 Manufacturer.

Manufacturer means any person engaged in the manufacturing of commercial concrete masonry products in the United States.

§ 1500.15 Masonry unit.

Masonry unit means a noncombustible building product intended to be laid by hand or joined using mortar, grout, surface bonding, post-tensioning or some combination of these methods.

§ 1500.16 [Reserved]

§ 1500.17 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative or any other entity.

§ 1500.18 Promotion.

Promotion means any action, including paid advertising, to advance the image and desirability of concrete masonry products with the express intent of improving the competitive position and stimulating sales of concrete masonry products in the marketplace.

§ 1500.19 Research.

Research means studies testing the effectiveness of market development

and promotion efforts, studies relating to the improvement of concrete masonry products and new product development, and studies documenting the performance of concrete masonry.

§ 1500.20 Secretary.

Secretary means the Secretary of the United States Department of Commerce.

§ 1500.21 United States.

United States means the several States and the District of Columbia.

CONCRETE MASONRY PRODUCTS BOARD

§ 1500.40 Establishment and membership.

(a) The Board is hereby established to carry out a program of generic promotion, research, and education regarding concrete masonry products. The Board shall consist of manufacturers and of not fewer than 15 and not more than 25 members appointed by the Secretary, from nominations submitted as set forth in §1500.41. No employee of an industry trade organization exempt from tax under paragraph (3) or (6) of section 501(c) of the Internal Revenue Code of 1986 representing the concrete masonry industry or related industries shall serve as a member of the Board and no member of the Board may serve concurrently as an officer of the board of directors of a national concrete masonry products industry trade association.

(b) The initial Board and all subsequent Boards, unless modified by the Board as provided in paragraph (d) of this section, shall be subject to the following:

(1) To ensure fair and equitable representation of the concrete masonry products industry, the composition of the Board shall reflect the geographical distribution of the manufacture of concrete masonry products in the United States, the types of concrete masonry products manufactured, and the range in size of manufacturers in the United States.

(2) No company or its affiliates shall have more than two members on the Board.

(c) To the extent possible, dependent on the nominees submitted, the Secretary will strive to appoint at least two members from each region. Similarly, the Secretary will strive to appoint at least one member from each of the following districts:

Table 1 to paragraph (c)

Region	District	States
1	1	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
	2	New York
	3	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, and West Virginia
2	4	North Carolina, South Carolina, and Virginia
	5	Alabama, Georgia, Mississippi, and Tennessee
	6	Florida
3	7	Indiana, Kentucky, and Ohio
	8	Illinois, Michigan, and Wisconsin
	9	Iowa, Minnesota, Nebraska, North Dakota, and South Dakota
4	10	Arkansas, Kansas, Missouri, and Oklahoma
	11	Louisiana, and Texas
	12	Arizona, and New Mexico
5	13	Colorado, Utah, and Wyoming
	14	Alaska, Idaho, Montana, Oregon, and Washington
	15	California, Hawaii, and Nevada

(d) Three years after the assessment of concrete masonry units commences pursuant to implementation of this Order, and at the end of each three-year period thereafter, the Board, subject to the review and approval of the Secretary, shall, if warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the manufacture of concrete masonry products and the types of concrete masonry products manufactured. Additionally, at any time, the Board may make recommendations to the Secretary to modify the composition of the regions and districts set forth in paragraph (c) of this section.

§ 1500.41 Nominations and appointments.

(a) For the initial Board, nominations shall be made and submitted to the Secretary by manufacturers. The Secretary shall consider the nominations submitted and other manufacturers for appointment, as the Secretary may deem appropriate. The Secretary

shall appoint the members and alternate members of the initial Board.

(b) From the nominations, the Secretary shall appoint the 15–25 members of the Board and 6 alternate members of the Board within a reasonable time after receiving nominations. If a voting member vacates the appointment, the Secretary will appoint one of the alternate members to fill the unexpired term. The Secretary will provide the Board an opportunity to offer a nominee as successor to fill the term of the alternate member. In any case in which the Board fails to submit nominations for any open position, the Secretary shall appoint a member qualifying for the position under the criteria set forth in § 1500.40.

(c) As terms expire or vacancies occur among members and alternate members, nominations and those interested in being considered for Board membership, including self-nominations, may submit such nominations to the Board. For each expired or vacant position, the Board will evaluate the nominations received, verify the willingness of nominees to serve, and then will submit to the Secretary at least three nominees for each such position. The Secretary may also receive nominations and may forward them to the Board for their consideration. The Secretary is not bound by the recommendations of the Board; in selecting members, the Secretary will consider the recommendations of the Board, individual expertise, distribution of appointments, and more expansive input from sources available to the Secretary. For the initial Board, from the list of nominees not selected for appointment, the Secretary will choose and appoint six alternate members for the Board. Alternate members will be non-voting members of the Board.

§ 1500.42 Term of office.

(a) Board members and any alternates will serve for a term of three years, except for the initial members as described below. Board members and any alternates will be able to serve a maximum of two consecutive three-year terms and may serve additional terms, of up to two consecutive three-year terms, after rotating off the Board. When the Board is first established, the initial members will be assigned initial terms of two, three and four years. Initial terms will be staggered to assure continuity. Each term of office will end on December 31, with new terms of office beginning on January 1. Members serving the initial terms of two and three years will be eligible to serve a second term of three years.

(b) Thereafter, each of the positions will carry a full three-year term. Notwithstanding the limitations on consecutive terms, a Board member or alternate Board member may continue to serve until a successor is appointed by the Secretary.

§ 1500.43 Vacancies.

Should any Board member position become vacant, an alternate will be appointed by the Secretary for the remainder of the term. Successors to fill the unexpired terms of the former alternate member shall be appointed in the manner specified in § 1500.41.

§ 1500.44 Disqualification.

(a) In the event that any Board member or alternate Board member who was appointed as a manufacturer ceases to qualify as a manufacturer, such Board member or alternate Board member shall be disqualified from serving on the Board. The replacement may be at the Secretary's initiative or the Board may recommend to the Secretary that the member be removed.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office.

(c) All members serve at the pleasure of the Secretary.

§ 1500.45 Procedure.

(a) The Board will meet at least annually. A Board meeting will be conducted only when a quorum is present. A majority of the Board members will constitute a quorum. If participation by telephone or other means is permitted, members participating by such means shall count as present in determining quorum or other voting requirements set forth in this section.

(b) At the start of each fiscal period, the Board will select a Chair, Vice-Chair, Secretary-Treasurer and other officers as appropriate who will serve in leadership roles throughout that period.

(c) The Board will provide members and manufacturers a minimum of 14 days advance notice of all Board meetings.

(d) Each Board member will be entitled to one vote on any matter put to vote, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members participating, with the exception of the affirmative vote of two-thirds of voting members required to change the assessment rate as specified in §1500.51(c).

(e) The Board may form committees as necessary. Committees may consist of individuals other than Board members. Committee members shall serve without compensation.

(f) When the Board Chair determines that a vote outside a convened Board meeting is necessary, such vote may take place via electronic means only if members are given fourteen days prior notice, and if a majority of the voting Board members participate prior to the established deadline. Any action so taken shall have the same force and effect as though such action had been taken at a regularly convened meeting of the Board.

(g) All votes shall be recorded in Board minutes.

(h) There shall be no voting by proxy.

(i) Board members shall each have one vote. Alternate members shall not vote. The Chair and all Board officers shall be elected from voting members of the Board.

(j) The organization of the Board and the procedures for the conducting of meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

(k) Meetings of the Board and committees may be conducted by electronic communications, provided that each member and committee member, if such committee member is not a member of the Board, is given prior written notice of the meeting and has the opportunity to be present either physically or by electronic connection.

§1500.46 Compensation and reimbursement.

(a) Members and any alternates of the Board shall serve without compensation.

(b) If approved by the Board, members or alternates shall be reimbursed for reasonable travel expenses, which may include per diem allowance or actual subsistence incurred while away from their homes or regular places of business in the performance of services for the Board.

§1500.47 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer this Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board;

(c) To make such rules as may be necessary to administer this Order, including activities to be carried out under this Order;

(d) To meet, organize, and select from among the members of the Board a Chair, Vice Chair, Secretary-Treasurer and other officers, committees, and subcommittees, and to vest in such committees and subcommittees such responsibilities and authorities as the Board determines to be appropriate;

(e) To establish regional committees to administer regional initiatives;

(f) To recommend to the Secretary modifications to the geographical regions as described in §1500.40(c);

(g) To establish working committees of persons other than Board members;

(h) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(i) To prepare and submit for the approval of the Secretary a budget as described in §1500.50(a);

(j) To borrow funds necessary for the startup expenses of this Order;

(k) To develop and carry out generic research, education, and promotion

programs and projects relating to concrete masonry products, and to pay the costs of such programs and projects with assessments collected under §1500.51 and other income of the Board as provided under §§1500.50(j) and 1500.62;

(l) To enter into contracts or agreements which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, education, and promotion relating to concrete masonry products, including with manufacturer associations or other entities as considered appropriate by the Secretary;

(m) To develop programs and projects, and enter into contracts or agreements related thereto, which must be approved by the Secretary before becoming effective, targeted specifically toward the Geographic Regions described in §1500.40(c) to be recommended by the relevant regional committees for marketing and research projects to benefit manufacturers in such Geographic Regions pursuant to the goals of any programs or projects as set forth under this Order. The contracts or agreements related to such programs and projects as described in this §1500.46(m) shall be subject to the requirements of all contracts or agreements described in §1500.46(l);

(n) To keep minutes, books, and records that reflect the actions and transactions of the Board, and promptly report minutes of each Board meeting to the Secretary;

(o) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe and to make the records available to the Secretary for inspection and audit; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(p) At the end of each fiscal year and at such other times as the Secretary may request, to have the books and records audited by an independent auditor and submit a report of the audit directly to the Secretary;

(q) To give the Secretary the same notice of meetings of the Board and committees as is given to members, including committee members if committee members are not members of the Board, in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board and all committees to the Secretary;

(r) To furnish to the Secretary any information or records that the Secretary may request;

(s) To receive, investigate, and report to the Secretary all complaints of violations of this Order;

(t) To recommend to the Secretary such amendments to this Order as the Board considers appropriate;

(u) To recommend adjustments to the assessments as provided in this Order;

(v) To notify manufacturers of all Board meetings through press releases or other means;

(w) To invest assessments collected under this Order in accordance with §1500.50; and

(x) To periodically prepare and make available to the public and manufacturers reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended.

§1500.48 Prohibited activities.

(a) The Board shall not engage in any program or project to, nor shall any funds received by the Board under the Act be used to:

(1) Influence legislation, elections, or governmental action;

(2) Engage in an action that would be a conflict of interest;

(3) Engage in advertising that is false or misleading;

(4) Engage in any research, education, or promotion that would be disparaging to other construction materials; or

(5) Engage in any promotion or project that would benefit any individual manufacturer.

(b) Paragraph (a) of this section does not preclude:

(1) The development and recommendation of amendments to the Order;

(2) The communication to appropriate government officials of information relating to the conduct, implementation, or results of research, education, and promotion activities under the Order except communications described in paragraph (a)(1) of this section; or

(3) Any lawful action designed to market concrete masonry products directly to a foreign government or political subdivision of a foreign government.

EXPENSES AND ASSESSMENTS

§ 1500.50 Budget and expenses.

(a) Prior to the beginning of each fiscal year, and during the fiscal year as may be necessary, the Board shall prepare and submit to the Secretary for approval a budget for the fiscal year covering its anticipated expenses and disbursements in administering this Order, including the probable cost of each promotion, research, and education activity proposed to be developed or carried out by the Board and a section that annotates and explains any shortcomings, overruns, and shift of funds from the previous year's budget. Such budget shall be deemed approved if the Secretary fails to approve or reject the budget within 60 days of receipt, unless the Secretary proposes to the Board and to Congress, reasonable justification for the delay and provides a reasonable date by which approval or disapproval will be made. The Department may provide such justification in any written format.

(b) In addition to paragraph (a) of this section, each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project, with a comparative for the preceding year—annotating the success and explaining the shortcomings of the preceding year's programs, plans, and projects

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(c) Each budget shall provide adequate funds to defray its proposed expenditures.

(d) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program or project to another. A shift of funds from one approved category to another, and not exceeding 10% of the funds in either category, which does not cause an increase in the Board's approved budget and which is consistent with governing bylaws need not have prior approval by the Secretary. If the Secretary fails to approve or reject a budget, or an amendment or addition to an approved budget, within 60 days of receipt, such budget shall be deemed approved, unless the Secretary provides to the Board and to Congress, in writing, reasonable justification for the delay and provides a reasonable date by which approval or disapproval will be made. The Department may provide such justification in any written format.

(e) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this Order. Such expenses shall be paid from funds received by the Board.

(f) Limitations on obligation of funds:

(1) In each fiscal year, through fiscal year 2030, the Board may not obligate an amount greater than the sum of—

(i) 73 percent of the amount of assessments estimated to be collected under § 1500.51 in such fiscal year);

(ii) 73 percent of the amount of assessments actually collected under § 1500.51 in the most recent fiscal year for which an audit report has been submitted as of the beginning of the fiscal year for which the amount that may be obligated is being determined, less the estimate made pursuant to paragraph (e)(1) of this section for such most recent fiscal year; and

(iii) Amounts permitted in preceding fiscal years to be obligated that have not been obligated.

(iv) For fiscal years 9 and 10 (ending September 2028 and 2029) there is a special rule for estimates. Specifically, the amounts estimated to be collected shall be 62 percent of the amount of assessments actually collected in the most recent fiscal year for which an audit report has been submitted as of the beginning of the fiscal year for which the amount be obligated is being determined.

(2) Assessments collected in excess of the amount permitted to be obligated in a fiscal year shall be deposited in an escrow account until the end of the 11th fiscal year or September 2030.

(3) Prior to the end of the 11th fiscal year or September 30, 2030, the Board may not obligate, expend, or borrow against amounts deposited in the escrow account. Any interest earned on such amounts shall be deposited in the escrow account and shall be unavailable for obligation until the end of the 11th fiscal year or September 30, 2030.

(g) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays.

(h) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration and supervision of this Order, including all referendum costs in connection with this Order.

(i) Following the third fiscal year of operation of the Board, the total cost of collection of expenses and administrative staff incurred by the Board during any fiscal year shall not exceed 10 percent of the projected total assessments to be collected and other income received by the Board for that fiscal year after any fees owed to the Department are paid. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

(j) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this section in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any state or any political subdivision of a state;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System; or

(4) Obligations fully guaranteed as to principal interest by the United States.

(k) Investment income and revenue earned under paragraph (i) of this section are earnings obtained from assessments that are subject to budget approval under paragraph (a) of this section.

§ 1500.51 Assessments.

(a) The collection of assessments on concrete masonry units will be the responsibility of the manufacturer who sells the concrete masonry units. There shall be an assessment on the first sale of concrete masonry units only and not on subsequent sales of concrete masonry units already assessed. The manufacturer will be required to collect and remit its individual assessments no less than quarterly. Manufacturers shall identify the total amount due in assessments on all sales receipts, invoices or other commercial documents of sale as a result of the sale of concrete masonry units. Within 180 days of their initial meeting, the Board will provide for review and approval by the Secretary a proposed evaluation and compliance program and its plan to evaluate program effectiveness and to verify compliance with the Act. The evaluation and compliance program will provide the method and metrics that will help determine program effectiveness and will outline the way the Board will receive assessments, how they will verify compliance, determine the best method to track sales, and how to document all actions including the process by which the Board will use to ensure it meets or exceeds the legislatively-mandated disbursement of received assessments.

(b) Such assessments shall be levied at a rate of $0.01 per concrete masonry unit sold by a manufacturer. The Board may make assessments effective as of

the effective date of this Order. Submission of funds may be made to the Board within 60 days of the end of the first quarter after the Board is established; thereafter submission of funds will be to the board within 60 days of the end of each quarter.

(c) At any time following the conduct of the initial referendum conducted pursuant to this Order, the assessment rate will be reviewed by the Board and, upon the affirmative vote of two-thirds of voting members of the Board, may be modified; provided that the assessment rate may be raised to a maximum of $0.05 cents per unit, that only one increase may be implemented in any one-year period, and each individual increase may not exceed $0.01

(d) Not less than 50 percent of the assessments (less administration expenses) paid by a manufacturer shall be used to support research, education, and promotion programs and projects in support of the Geographic Region of the manufacturer.

(e) All assessment payments and reports will be submitted to the Board quarterly. All quarterly payments are to be received no later than 60 days after the conclusion of each quarter. A late payment charge shall be imposed on any manufacturer who fails to remit to the Board the total amount for which any such manufacturer is liable on or before the due date established by the Board. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the manufacturer is liable. The rate of interest and late payment charges shall be specified by the Secretary.

(f) Manufacturers failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

(g) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(h) The Board shall provide manufacturers submitting assessments under this Order with the opportunity to apply for rebates on assessments remitted to the Board for concrete masonry units not covered by this Order and for assessments remitted to the Board for concrete masonry units sold to a purchaser that subsequently failed to remit payment due to bankruptcy, bad debt or other reasons causing the money intended to be collected from such sale to be uncollectible. Those requesting rebates in such circumstances must provide all necessary documentation as the Board shall determine.

§ 1500.60 Programs and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program or project authorized under this Order. Such programs or projects shall be consistent with the purpose of the Act (*see* 15 U.S.C. 8701) and provide for:

(1) The establishment of annual research, education, and promotion objectives and metrics for each fiscal year. Objectives and performance metrics should consider and where possible reflect those listed in 15 U.S.C. 8716 (Study and report by the Government Accounting Office).

(2) The establishment, issuance, effectuation and administration of appropriate programs for research, education, and promotion with respect to concrete masonry products; and

(3) The establishment and conduct of research with respect to the image, desirability, use, marketability, quality or production of concrete masonry products, to the end that the marketing and use of concrete masonry products may be encouraged, expanded, improved or made more acceptable and to advance the image, desirability or quality of concrete masonry product.

(b) No program or project shall be implemented prior to its approval by the Secretary. Once a program or project is so approved, the Board shall take appropriate steps to implement it. If the Secretary fails to approve or reject a contract or agreement for a program or project within 60 days of receipt, the contract or agreement shall be deemed approved, unless the Secretary provides to the Board and to Congress, in writing, reasonable justification for the delay and provides a reasonable date by which approval or disapproval will be made. The Department may provide such justification in

any written format. Any such contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program or project together with a budget or budgets that specifies the cost to be incurred to carry out the program or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically;

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor; and

(5) The contract or agreement shall become effective on the approval of the Secretary.

(c) Each program or project implemented under this Order shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of research, education, or promotion. If it is found by the Board that any such program or project does not contribute to an effective program of research, education, or promotion, then the Board shall, with the approval of the Secretary, terminate such program or project.

(d) Any educational or promotional activity undertaken with funds provided by the Board shall include a statement that such activities were supported in whole or in part by the Board.

(e) Every 2 years the Board shall prepare and make publicly available a comprehensive and detailed report that includes an identification and description of all programs and projects undertaken by the Board during the previous 2 years as well as those planned for the subsequent 2 years and detail the allocation or planned allocation of Board resources for each such program or project. Such report shall also include:

(1) The overall financial condition of the Board;

(2) A summary of the amounts obligated or expended during the 2 preceding fiscal years; and

(3) A description of the extent to which the objectives of the Board were met according to the metrics required under § 1500.50.

§ 1500.61 Independent evaluation.

The Board shall authorize and fund an independent evaluation of the effectiveness of this Order and other programs conducted by the Board beginning five years after October 5, 2018, and every 3 years thereafter. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1500.62 Patents, copyrights, trademarks, information, publications, and product formulations.

Ownership and allocation of rights to patents, copyrights, inventions, or publications, developed through the use of non-Federal funds remitted to the Board under the Order shall be determined by written agreement between the Board and the party(ies) receiving funds for the development of such inventions, patents, copyrights or publications.

Reports, Books, and Records

§ 1500.70 Reports.

(a) Each manufacturer subject to this Order may be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number and type of concrete masonry units manufactured;

(2) Number and type of concrete masonry units on which an assessment was paid;

(3) Name and address of the manufacturer; and

(4) Date assessment was paid on each concrete masonry unit sold.

(b) All reports required under this section are due to the Board 60 days after the end of each quarter.

(c) All reports or information submitted pursuant to this paragraph shall be subject to the confidentiality restrictions in §1500.72.

§ 1500.71 Books and records.

Each manufacturer subject to this Order shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this Order, including such records as are necessary to verify any reports required. Such records shall be retained for at least 7 years beyond the fiscal period of their applicability.

§ 1500.72 Confidential treatment.

(a) Trade secrets and commercial or financial information that is privileged or confidential obtained from books, records, or reports under the Act, this Order shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or manufacturers. Only those persons having a specific need for such information to effectively administer the provisions of this Order shall have access to such information. Such information may be disclosed only if the Secretary considers the information relevant; and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party. Any officer, employee, or agent of the Department of Commerce or any officer, employee, or agent of the Board who willfully violates this paragraph shall be fined not more than $1,000 and imprisoned for not more than 1 year, or both. Nothing in this section shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of persons subject to this Order or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(2) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this Order, together with a statement of the particular provisions of this Order violated by such person.

(b) For any officer, employee, or agent of the Department of Commerce, these provisions are consistent with and do not supersede, conflict with, or otherwise alter any obligations, rights, or liabilities created by existing statute or Executive order relating to classified information, communications to Congress, the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this Order and are controlling.

MISCELLANEOUS

§ 1500.80 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1500.81 Referenda.

(a) A referendum will be held to determine whether manufacturers favor enactment of this Order. A manufacturer shall be considered eligible to vote if the manufacturer has manufactured concrete masonry products during a period of at least 180 days prior to the first day of the period during which voting in the referendum will occur. For the initial referendum, an eligible person is a manufacturer of concrete units that is subject to the initial rate of assessment in §1500.51. Each manufacturer eligible to vote in the referendum shall be entitled to one vote. This Order became effective after approval by a majority of manufacturers voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum.

(b) After the initial referendum, the Secretary shall conduct a referendum upon the request of the Board, or effective beginning November 30, 2026, and at 5-year intervals thereafter, by petition from not less than 25% of manufacturers eligible to vote. Each manufacturer eligible to vote in subsequent referenda shall be entitled to one vote. The Order will remain in effect if approved by a majority of manufactures voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum.

(c) For any new proposed order, voter eligibility will be based on the scope of such proposed order. A future proposed Order becomes effective if approved by a majority of manufacturers voting and any other criteria established by the Secretary based on the scope of such future proposed order.

§ 1500.82 Suspension or termination.

(a) The Secretary shall suspend or terminate an order or a provision of an order if the Secretary finds that an order or provision of an order obstructs or does not tend to effectuate the purpose of the Act, or if the Secretary determines that the order or a provision of an order is not favored by a majority of all votes cast in the referendum as provided in §1500.81. If the Secretary suspends or terminates a provision of an order, the order remains in effect minus the suspended or terminated provision.

(b) If, as a result of a referendum conducted under §1500.81 of this Order, the Secretary determines that the Order is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate collection of assessments under this Order; and

(2) As soon as practical, suspend or terminate activities under this order in an orderly manner.

§ 1500.83 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Order, or the issuance of any amendment, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen, or which may thereafter arise in connection with any provision of this Order;

(b) Release or extinguish any violation of this Order; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1500.84 Notice and advance registration.

At least 30 days before a referendum is to be conducted under this Order, the Secretary shall notify all manufacturers of the period during which the referendum will occur through publication in the FEDERAL REGISTER. The notice shall explain any registration and voting procedures. A manufacturer who chooses to vote in any referendum conducted under this Order shall register with the Secretary prior to the voting period.

§ 1500.85 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, when they exercise their discretionary duties of their office, in good faith, while acting within the scope of their authority, to any person for errors in judgment, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct

§ 1500.86 Separability.

If any provision of this Order is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this Order or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1500.87 Amendments.

The Secretary may, from time to time, amend an Order. Amendments to this Order may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary. The provisions of the Act applicable to an order shall be applicable to any amendment to this Order.

§ 1500.88 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, is OMB control number 0605–0028.

Subpart B—Referendum Procedures

AUTHORITY: 15 U.S.C. 8706.

§ 1500.100 General.

Agents will conduct a referendum in accordance with this subpart.

§ 1500.101 Definitions.

The following definitions apply to this subpart:

(a) *Agent* means the Department of Commerce (Department) employee(s) the Secretary designates to conduct the referendum.

(b) *Eligible manufacturer* means any person who is currently a manufacturer of concrete masonry units and has manufactured a concrete masonry unit within 180 days of the referendum period.

(c) *Employer Identification Number* means the number generally issued to businesses by the U.S. Department of Treasury. An Employer Identification Number (EIN) is also known as a Federal Tax Identification Number and is used to identify a business entity. For more information on EINs and how to apply go to *https://www.irs.gov/businesses*.

(d) *Lead Executive* means the individual or individuals the Secretary designates to oversee the conduct of the referendum and is a member of the Senior Executive Service.

(e) *Referendum period* means the period of time, not less than 30 days, that the Secretary or his agent determines appropriate for conducting the referendum.

(f) *Registration* means the form and process eligible manufacturers who wish to vote must complete and follow in order to vote. Voters must register by midnight of the day prior to the beginning of the referendum period.

§ 1500.102 Voting.

(a) Each eligible manufacturer shall be entitled to cast one vote.

(b) The order shall become effective only if the Secretary determines that the order has been approved by a majority of manufacturers voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum.

(c) In order to vote, a manufacturer must register by midnight of the day prior to the start of the referendum period.

(d) For referendum purposes the Department will use Employer Identification Numbers (EIN) to identify unique manufacturers.

(e) An officer or employee of an eligible manufacturer, or an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity provided that any individual so voting shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of an agent, the individual shall submit adequate evidence of such authority. The Secretary does not authorize proxy voting.

(f) Voters are to cast ballots by the means specified by the Secretary, such means could include in person, mail-in, fax, via internet link, or through use of voting software. In the case of the initial referendum, the Department will use a combination of mail-in and fax to allow voters to cast ballots.

(g) If the Department requests, manufacturers shall provide proof of sales, proof of cavities in operation, or any other such proof the Department deems necessary to establish voting eligibility. Failure to provide the requested proof to the Department will result in ineligibility to participate in the referendum.

§ 1500.103 Instructions.

The agent(s) shall conduct the referendum, in the manner provided in this subpart, under the supervision of

the Secretary. The Secretary may prescribe additional instructions, consistent with the provisions of this subpart, to govern the procedure to be followed by the agent(s). Such agent(s) shall:

(a) Determine the period during which voters may cast ballots;

(b) Provide notification to allow interested voters to register in advance of the referendum period. The Department will restrict the information requested to that information needed to ensure eligibility of request or to participate in the referendum. Types of information will include name, contact information (address, phone number, email), status as a manufacturer of concrete masonry units, affirmation of having manufactured concrete masonry units within 180 days prior to the beginning of the referendum period, the number of machine cavities in operation, their Employer Identification Number, and similar identifying information;

(c) Provide ballots and related material to voters for use in the referendum. The ballot shall provide for recording essential information, including information needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter. The Department will restrict the information requested to that information needed to determine a voter's eligibility. Information will include the name and address of the manufacturer, status as a manufacturer of concrete masonry units, affirmation that they have manufactured concrete masonry units within 180 days of the beginning of the referendum period, manufacturer Employer Identification Number, the number of machine cavities the manufacturer has in operation, and similar verification information;

(d) Give reasonable public notice of the referendum:

(1) By using available media or public information sources, without incurring advertising expense, to publicize the dates, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to webinars and other such media vehicles; and

(2) By such other means as the agent may deem advisable;

(e) Send to eligible manufacturers whose names and addresses are known to the agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed order;

(f) At the end of the referendum period, collect, open, number, and review the ballots and tabulate the results in the presence of the Lead Executive authorized to monitor the referendum process;

(g) Prepare a report on the referendum; and

(h) Announce the results to the public.

§ 1500.104 Agents.

The Secretary may appoint agent(s) to conduct the referendum. Agent(s) may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions under this subpart. The agent authorizes each individual so appointed to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1500.105 Ballots.

(a) The agent(s) shall accept all ballots cast. However, if an agent determines a need for additional review for any reason, the agent shall endorse above the voter's signature on the ballot with a statement to the effect that the ballot needs additional scrutiny. The agent will attach to the ballot information regarding the reasons for additional review, the results of any investigations made with respect to the review, and the final disposition of the review. Agents will not count ballots found to be invalid or late, a non-exhaustive list of examples include:

(1) The ballot is blank, missing a vote, has no signature;

(2) Both voting boxes are marked in the vote section;

(3) The ballot arrives after midnight of the last day of the referendum period;

(4) The ballot is in a state that agents cannot determine the vote; or

(5) The ballot has a name that is different on the ballot from that of the

registered voter, except for votes cast by power of attorney with sufficient documentation to prove such power of attorney.

(b) As stated in §1500.102(e), the Secretary does not authorize proxy voting. However, agents will accept power of attorney votes with proper documentation.

§1500.106 Referendum report.

Unless otherwise directed, the Lead Executive shall prepare and submit to the Secretary a report on the results of the referendum, the manner in which the agent(s) conducted the referendum, the kind of public notice given, and other information the Lead Executive finds pertinent to the analysis of the referendum and its results.

§1500.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the order and the voter list shall be strictly confidential and shall not be disclosed.

§1500.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, is OMB control number 0605–0029.

PARTS 1501–1599 [RESERVED]

Subtitle C—Regulations Relating to Foreign Trade Agreements

CHAPTER XX—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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PART 2000 [RESERVED]

PART 2001—CREATION, ORGANIZATION, AND FUNCTIONS

Sec.
2001.0 Scope and purpose.
2001.1 Creation and location.
2001.2 Organization.
2001.3 Functions.

AUTHORITY: Pub. L. 93–618, 88 Stat. 1978; 76 Stat. 902, 19 U.S.C. 1872, as amended; E.O. 11846 of March 27, 1975, 40 FR 14291, March 31, 1975.

SOURCE: 40 FR 18419, Apr. 28, 1975, unless otherwise noted.

§ 2001.0 Scope and purpose.

(a) This chapter sets out terms of reference of the Office of the United States Trade Representative (hereinafter the ''Office''), and the procedures whereby it carries out its general responsibilities under the trade agreements program.

(b) One of the primary purposes of these regulations is to inform the public of the unit known as the Trade Policy Staff Committee, which replaces and assumes the functions formerly performed by The Trade Staff Committee and the Trade Information Committee. One of the functions of the Trade Policy Staff Committee is to afford an opportunity for interested parties to present oral and written statements concerning the trade agreements program and related matters.

§ 2001.1 Creation and location.

(a) The Office was established as an agency in the Executive Office of the President by Executive Order 11075 of January 15, 1963 (28 FR 473), as amended by Executive Order 11106 of April 18, 1963 (28 FR 3911), and Executive Order 11113 of June 13, 1963 (28 FR 6183). The Office subsequently was reestablished as an agency in the Executive Office of the President by section 141 of the Trade Act of 1974 (Pub. L. 93–618, 88 Stat. 1978, hereinafter referred to as the ''Trade Act''), and was delegated certain functions under the Trade Act by Executive Order 11846 of March 27, 1975.[1]

(b) The Office is located at 1800 G Street NW., Washington, DC 20506.

§ 2001.2 Organization.

(a) The Office is headed by the United States Trade Representative (hereinafter, the ''Trade Representative'') as provided in section 141(b)(1) of the Trade Act. The Trade Representative reports directly to the President and the Congress as described in § 2001.3(a)(2) of this part, and has the rank of Ambassador Extraordinary and Plenipotentiary.

(b) The Office also consists of two Deputy Trade Representatives (hereinafter ''Deputy Trade Representatives'') as provided in section 141(b)(2) of the Trade Act, each of whom holds the rank of Ambassador, and of a professional and nonprofessional staff.

(c) The Trade Policy Committee, an interagency committee composed of the heads of specified Executive departments and offices, was established by section 3 of Executive Order 11846 (see Appendix), as authorized by section 242(a) of the Trade Expansion Act of 1962, as amended,[2] under the chairmanship of the United States Trade Representative, as provided by section 141(c)(1)(E) of the Trade Act. Two subordinate bodies of the Trade Policy Committee, the Trade Policy Committee Review Group, and the Trade Policy Staff Committee, provided for in §§ 2002.1 and 2002.2 respectively, are established by, and under the direction and administrative control of the Trade Representative.

§ 2001.3 Functions.

(a) The Trade Representative:

(1) Except where otherwise provided by statute, Executive order, or instructions of the President, is the chief representative of the United States for each negotiation under the trade agreements program as defined in section 1 of Executive Order 11846, and participates in other negotiations which may have a direct and significant impact on trade;

(2) Reports directly to the President and the Congress, and is responsible to the President and the Congress, with

[1] 40 FR 14291, March 31, 1975.

[2] 76 Stat. 902, 19 U.S.C. 1872; Pub. L. 93–618, 88 Stat. 1978, section 602(b).

respect to the administration of the trade agreements program as defined in section 1 of Executive Order 11846;

(3) Advises the President and the Congress with respect to tariff and nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements program;

(4) Performs the functions of the President under section 102 of the Trade Act concerning notice to, and consultation with, Congress, in connection with agreements on nontariff barriers to, and other distortions of, trade, and prepares for the President's transmission to Congress all proposed legislation and other documents necessary or appropriate for the implementation of, or otherwise required in connection with, trade agreements (except that where implementation of an agreement on nontariff barriers to, and other distortions of trade requires a change in a domestic law, the department or agency having the primary interest in the administration of such domestic law prepares and transmits to the Trade Representative any proposed legislation necessary for such implementation);

(5) Is responsible for making reports to Congress with respect to the matters set forth in paragraphs (a) (1) and (2) of this section and prepares, for the President's transmission to Congress, the annual report on the trade agreements program required by section 163(a) of the Trade Act ;

(6) Is chairman of the Trade Policy Committee, and designates the chairman of the Trade Policy Committee Review Group and the Trade Policy Staff Committee, which are provided for in part 2002 of these regulations;

(7) Is responsible for the preparation and submission of any Proclamation which relates wholly or primarily to the trade agreements program;

(8) Performs the functions of the President under section 131(c) of the Trade Act concerning requests for, and receipt of, advice from the International Trade Commission with respect to modifications of barriers to (and other distortions of) international trade;

(9) Performs the functions of the President under section 132 of the Trade Act with respect to advice of departments of the Federal government and other sources, and under section 133 of the Trade Act with respect to certain public hearings;

(10) Performs the functions of the President under section 135 of the Trade Act with respect to advisory committees, (including functions under the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, which are applicable to such committees, except that of reporting annually to Congress), and, acting through the Secretaries of Commerce, Labor, and Agriculture, as appropriate, performs the functions of the President in establishing and organizing general policy advisory committees and sector advisory committees under section 135(c) of the Trade Act;

(11) Determines ad valorem amounts and equivalents pursuant to sections 601 (3) and (4) of the Trade Act, taking into account advice from the International Trade Commission and in consultation with the Trade Policy Committee;

(12) Requests, where appropriate, information from the International Trade Commission in connection with import relief findings or actions under sections 202(d) and 203(i) (1) and (2) of the Trade Act;

(13) Acting through the Section 301 Committee provided for in §2002.3 of this chapter as appropriate, provides opportunities for the presentation of views under sections 301(d) and 301(e) of the Trade Act, with respect to certain foreign restrictions, acts, practices or policies and United States actions in response thereto;

(14) At the request of a complainant, made in accordance with §2003.3 of these regulations, under section 301(d)(2) of the Trade Act, or of an interested person under section 301(e)(2), provides for appropriate public hearings by the Trade Policy Staff Committee on alleged foreign restrictions, acts, policies, or practices under section 301(d)(2), and on any action by the United States with respect to the import treatment of any foreign product or the treatment of any foreign service under section 301(e)(2);

(15) Requests, where appropriate, the views of the International Trade Commission as to the probable impact on the economy of the United States of any action under section 301(a) of the Trade Act;

(16) Is responsible, in consultation with the Secretary of State, for the administration of the generalized system of preferences under Title V of the Trade Act;

(17) Is responsible for such other functions as the President may direct.

(b)(1) Each Deputy Trade Representative shall have as his principal function the conduct of trade negotiations under this Act, and shall have such other functions as the Trade Representative may direct;

(2) A Deputy Trade Representative, designated by the Trade Representative, is chairman of the Trade Policy Committee Review Group provided for in § 2002.1;

(3) A Deputy Trade Representative, designated by the Trade Representative, is chairman of the Adjustment Assistance Coordinating Committee established by section 281 of the Trade Act.

[40 FR 18419, Apr. 28, 1975, as amended at 40 FR 39497, Aug. 28, 1975]

PART 2002—OPERATION OF COMMITTEES

Sec.

2002.0 Trade Policy Committee.
2002.1 Trade Policy Committee Review Group.
2002.2 Trade Policy Staff Committee.
2002.3 Section 301 Committee.
2002.4 Participation by other agencies.

AUTHORITY: Pub. L. 93–618, 88 Stat. 1978; 76 Stat. 902, 19 U.S.C. 1872, as amended; E.O. 11846 of March 27, 1975, 40 FR 14291, March 31, 1975.

§ 2002.0 Trade Policy Committee.

(a) The Trade Policy Committee was created by section 3 of Executive Order 11846 of March 27, 1975 (40 FR 14291, March 31, 1975), as authorized by section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872), as amended by section 602(b) of the Trade Act.

(b) The Trade Policy Committee is composed of:

(1) The Special Representative for Trade Negotiations, Chairman;
(2) The Secretary of State;
(3) The Secretary of the Treasury;
(4) The Secretary of Defense;
(5) The Attorney General;
(6) The Secretary of the Interior;
(7) The Secretary of Agriculture;
(8) The Secretary of Commerce;
(9) The Secretary of Labor;
(10) The Assistant to the President for Economic Affairs;
(11) The Executive Director of the Council on International Economic Policy.

In addition, the Committee may invite the participation in its activities of any agency or office not listed above when matters of interest to such agency or office are under consideration.

(c) The Trade Policy Committee meets at such times and with respect to such functions as the President or the Chairman of the Committee directs. It has the functions conferred by the Trade Expansion Act of 1962, as amended, upon the interagency organization referred to in section 242 thereof, as amended, the functions delegated to it by the provisions of Executive Order 11846 (see Appendix), and such other functions as the President or the chairman may from time to time direct. Recommendations and advice of the Committee are submitted to the President by the chairman.

[40 FR 18420, Apr. 28, 1975]

§ 2002.1 Trade Policy Committee Review Group.

(a) The Trade Executive Committee, established by regulations appearing by 36 FR 23620, December 11, 1971 (15 CFR 2002.1), is abolished and there is hereby established as a subordinate body of the Trade Policy Committee the Trade Policy Committee Review Group (hereinafter referred to as the ''Review Group''). The Review Group consists of a Deputy Trade Representative, designated by the Trade Representative, as chairman, and of high level officials designated from their respective agencies or offices by the Secretaries of Agriculture, Commerce, Defense, Interior, Labor, State and Treasury, and the Executive Director of the Council on International Economic Policy. The Special Representative or

the Deputy Special Representative, as appropriate, and each head of an agency or office, may designate from his respective agency or office high level officials to serve as alternate members of the Review Group in the event the regular member is unable to attend any meeting of the Review Group.

(b) The Review Group performs the following functions unless such functions are assigned to a different body by the Special Representative or his designee:

(1) Coordinates interagency activities concerning the trade agreements program and related matters;

(2) Recommends policies and actions, and transmits appropriate materials, to the Special Representative concerning the trade agreements program and related matters, or, when appropriate, approves such policies and actions; and

(3) As appropriate, reviews and approves recommendations of the Trade Policy Staff Committee on policies and actions concerning any proposed trade agreements, the trade agreements program, and related matters.

(4) [Reserved]

(5) Performs such other functions as the Special Representative or a Deputy Special Representative may from time to time direct.

[40 FR 18420, Apr. 28, 1975, as amended at 40 FR 39497, Aug. 28, 1975; 40 FR 60042, Dec. 31, 1975; 42 FR 55611, Oct. 18, 1977]

§ 2002.2 Trade Policy Staff Committee.

(a) The Trade Staff Committee and the Trade Information Committee, established by regulations appearing at 36 FR 23620, December 11, 1971 (15 CFR 2002.2, and 2002.3, respectively) are abolished and there is hereby established as a subordinate body of the Trade Policy Committee and the Trade Policy Review Group the Trade Policy Staff Committee (hereinafter referred to as ''the Committee''). The Committee consists of a chairman designated by the Special Representative from his Office, and of senior trade policy staff officials designated from their respective agencies or offices by the Secretaries of Agriculture, Commerce, Defense, Interior, Labor, State, and Treasury, by the Executive Director of the Council on International Economic Policy,'' so that the sentence reads: The Committee consists of a chairman designated by the Special Representative from his Office, and of senior trade policy staff officials designated from their respective agencies or offices by the Secretaries of Agriculture, Commerce, Defense, Interior, Labor, State, and Treasury, by the Executive Director of the Council on International Economic Policy, and by the Chairman of the International Trade Commission. Each Secretary or head of an agency or office and the Chairman of the Commission may designate from his respective agency officials to serve as alternate members of the Committee in the event the regular member is unable to attend any meeting of the Committee. The Special Representative may from time to time designate officials from his agency other than the chairman, to serve as acting chairmen of the Committee. The representative of the International Trade Commission shall be a nonvoting member of the Committee.

(b) The Committee performs the following functions unless such functions are assigned to a different body by the Special Representative or his designee:

(1) Monitors the trade agreements programs, reviews the information received pursuant to paragraphs (b) (2) through (8) of this section, and transmits summaries of such information together with recommendations of action to the Special Representative, or through him to the Trade Policy Review Group or the Trade Policy Committee, concerning the trade agreements program and related matters, or when appropriate approves such policies and actions.

(2) Obtains information and advice from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the Office of the Special Representative for Trade Negotiations, and from such other sources as the Special Representative, a Deputy Special Representative, or the Chairman of the Committee may deem appropriate concerning any proposed trade agreement and other aspects of the trade agreements program and related matters, and concerning the Generalized System of Preferences

in accordance with Title V of the Trade Act;

(3) Provides an opportunity, by the holding of public hearing and by such other means as the Special Representative, the Deputy Special Representative or the Chairman of the Committee deems appropriate, for interested persons to present their views concerning any article on a list published pursuant to section 131 of the Trade Act, any article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to a proposed trade agreement;

(4) Provides an opportunity, by the holding of public hearings and by such other means as the Special Representative, a Deputy Special Representative, or the Chairman of the Committee deems appropriate, for any interested party to present by oral or written statement his views concerning articles being considered for designation as eligible articles for purposes of the Generalized System of Preferences;

(5) [Reserved]

(6) Provides an opportunity where deemed appropriate by the Special Representative, the Deputy Special Representative, or the Chairman, by the holding of public hearings upon request by an interested party, and by such other means as the Special Representative, the Deputy Special Representative or the Chairman deems appropriate, for any interested party to present an oral or written statement concerning any other aspect of the trade agreements program and related matters;

(7) Reviews all materials required to be furnished by the International Trade Commission to the President through the Special Representative, and transmits such materials, together, where appropriate with recommendations of action with respect thereto, to the Special Representative or a Deputy Special Representative.

(8) Reviews reports of hearings and reviews conducted by the section 301 Committee provided for in §2002.3 and recommendations resulting therefrom, and makes recommendations to the Special Representative with respect thereto.

(9) When circumstances warrant, terminates section 301 reviews provided for in §2002.3

(10) Receives and reviews requests pertaining to the duty-free treatment accorded to articles under the Generalized System of Preferences, and handles such requests and reviews in accordance with Part 2007 of these regulations;

(11) Issues regulations governing the conduct of its public hearings and the performance of such of its other functions as it deems necessary;

(12) Performs such other functions as the Special Representative or the Deputy Special Representative may from time to time direct.

[40 FR 18420, Apr. 28, 1975, as amended at 40 FR 39497, Aug. 28, 1975; 40 FR 60042, Dec. 31, 1975; 42 FR 55611, Oct. 18, 1977]

§2002.3 Section 301 Committee.

(a) There is hereby established, as a subordinate body of the Trade Policy Staff Committee, the Section 301 Committee. The Chairman of the Section 301 Committee shall be designated by the Deputy Special Representative from the Office of the Special Representative for Trade Negotiations. The Committee shall consist of the Chairman and, with respect to each complaint, such members as may be designated by agencies which have an interest in the issues raised by the particular complaint and whose participation is invited by the Chairman of the Committee.

(b) The Section 301 Committee performs the following functions unless such functions are assigned to a different body by the Special Representative, or his designee:

(1) Reviews complaints received pursuant to section 301 of the Trade Act of 1974.

(2) Provides an opportunity by the holding of public hearings upon request by a complainant or an interested party, as appropriate, and by such other means as the Special Representative, a Deputy Special Representative or the Chairman of the section 301 Committee deems appropriate, for any interested party to present his views to the section 301 Committee concerning foreign restrictions, acts, policies, and practices affecting U.S. commerce, and

United States actions in response thereto, as provided for in section 301 of the Trade Act (Pub. L. 93–618, 88 Stat. 1978).

(3) Reports to the Trade Policy Staff Committee the results of reviews and hearings conducted with respect to complaints received pursuant to section 301 of the Trade Act.

(4) On the basis of its review of petitions filed under section 301 and of the views received through hearings or otherwise on such petitions, makes recommendations to the TPSC for review by that committee.

[40 FR 39497, Aug. 28, 1975, as amended at 42 FR 55611, Oct. 18, 1977]

§ 2002.4 Participation by other agencies.

The chairman of the Trade Policy Committee, the Trade Policy Committee Review Group, the Section 301 Committee, and the Trade Policy Staff Committee may invite the participation in the activities of their committees of any other agencies when matters of interest to such agencies are under consideration.

[40 FR 18420, Apr. 28, 1975. Redesignated and amended at 40 FR 39497, Aug. 28, 1975]

PART 2003—REGULATIONS OF TRADE POLICY STAFF COMMITTEE

Sec.

2003.0 Office, mailing address, telephone number, and hours.
2003.1 Notice of public hearings.
2003.2 Testimony and submission of written briefs.
2003.3 [Reserved]
2003.4 Presentation of oral testimony at public hearings.
2003.5 Information open to public inspection.
2003.6 Information exempt from public inspection.

AUTHORITY: Pub. L. 93–618, 88 Stat. 1978; 76 Stat. 902, 19 U.S.C. 1872, as amended; E.O. 11846 of March 27, 1975, 40 FR 14291, March 31, 1975.

SOURCE: 40 FR 18421, Apr. 28, 1975, unless otherwise noted.

§ 2003.0 Office, mailing address, telephone number, and hours.

(a) The office of the Committee is at room 729, 1800 G Street NW., Washington, DC 20506.

(b) All communications to the Committee should be addressed to the ''Secretary, Trade Policy Staff Committee, Office of the Special Representative for Trade Negotiations, room 729, 1800 G Street, NW., Washington, DC 20506.''

(c) The telephone number of the office of the Committee is (202) 395–3395.

(d) The regular hours of the office of the Committee are from 9 a.m. to 5:30 p.m. on each business day, Monday through Friday.

§ 2003.1 Notice of public hearings.

The Committee shall publish in the FEDERAL REGISTER a notice of a proposed public hearing, the subject matter of the proposed public hearing, the period during which written briefs may be submitted, the period during which requests may be submitted to present oral testimony, and the time and place of the proposed public hearing, in the following instances:

(a) Upon publication of lists of articles by the President under section 131(a), or sections 503(a) and 131(a), of the Trade Act as a result of which public hearings are required to be held by section 133 of the Trade Act with respect to any matter relevant to a proposed trade agreement, or with respect to any matter relevant to the granting of generalized tariff preferences for the listed articles;

(b) Whenever the Special Representative or the Deputy Special Representative determines that public hearings in connection with the review of a request submitted pursuant to Part 2007 of these regulations, pertaining to the duty-free treatment accorded to articles under the GSP, are in the public interest.

(c) Upon instructions of the Special Representative.

[40 FR 18421, Apr. 28, 1975, as amended at 40 FR 39498, Aug. 28, 1975; 40 FR 60042, Dec. 31, 1975]

§ 2003.2 Testimony and submission of written briefs.

(a) Participation by an interested party in a public hearing announced under § 2003.1 shall require the submission of a written brief before the close of the period announced, in the public notice for its submission. Such brief may be, but need not be, supplemented by the presentation of oral testimony in accordance with § 2003.4.

(b) A written brief by an interested party concerning any aspect of the trade agreements program or any related matter not subject to paragraph (a) of this section, and submitted pursuant to a public notice shall be submitted before the close of the period announced in the public notice for its submission.

(c) A written brief shall state clearly the position taken and shall describe with particularity the evidence supporting such position. It shall be submitted in not less than twenty (20) copies which shall be legibly typed, printed, or duplicated.

(d) In order to assure each party an opportunity to contest the information provided by other interested parties, the Committee will entertain rebuttal briefs filed by any party within a time limit specified by the Committee. Rebuttal briefs shall conform, in form and number, to the provisions of paragraph (c) of this section. Rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearings and should be as concise as possible.

(e) A written brief by an interested party concerning any aspect of the Trade Agreements Program or any related matter not subject to paragraph (a) or (b) of this section may be submitted at any time.

(f) The requirements in paragraphs (a) through (d) of this section may be waived by the Special Representative, the Deputy Special Representative, or the Chairman of the Committee for reasons of equity and the public interest.

[40 FR 18421, Apr. 28, 1975, as amended at 40 FR 39498, Aug. 28, 1975]

§ 2003.3 [Reserved]

§ 2003.4 Presentation of oral testimony at public hearings.

(a) A request by an interested party to present oral testimony at a public hearing shall be submitted in writing before the close of the period announced in the public notice for its submission, and shall state briefly the interest of the applicant and the position to be taken by the applicant. Such request will be granted only if a written brief has been prepared and submitted in accordance with § 2003.2. The requirements of this subpart may be waived by the Special Representative, the Deputy Special Representative or the Chairman of the Committee for reasons of equity and the public interest.

(b) After receipt and consideration of a request to present oral testimony at a public hearing, the Secretary of the Committee shall notify the applicant whether the request conforms to the requirements of paragraph (a) of this section, and if so, the time and place for the hearing and for his appearance, and the amount of time allotted for his oral testimony, and if not, will give the reasons why the request does not conform to the requirements.

(c) In presenting testimony, the interested party should supplement the information contained in the written brief, and should be prepared to answer questions relating to such information.

(d) A stenographic record shall be made of every public hearing.

[40 FR 18421, Apr. 28, 1975, as amended at 40 FR 39498, Aug. 28, 1975]

§ 2003.5 Information open to public inspection.

(a) With the exception of information subject to § 2003.6, an interested party may, upon request, inspect at the office of the Committee:

(1) Any written request, brief, or similar submission of information;

(2) Any stenographic record of a public hearing;

(3) Other public written information concerning the trade agreements program and related matters.

(b) [Reserved]

§ 2003.6 Information exempt from public inspection.

(a) The Committee shall exempt from public inspection business information submitted by an interested party if the Committee determines that such information concerns or relates to trade secrets and commercial and financial information the disclosure of which is not authorized by the interested party furnishing such information and is not required by law.

(b) A party requesting that the Committee exempt from public inspection business information submitted in writing shall clearly mark each page ''BUSINESS CONFIDENTIAL'' at the top.

(c) The Committee may deny a request that it exempt from public inspection any particular business information if it determines that such information is not entitled to exemption under paragraph (a) of this section. In the event of such denial, the party submitting the particular business information will be notified of the reasons for the denial and will be permitted to withdraw his submission.

PART 2004—DISCLOSURE OF RECORDS AND INFORMATION

Subpart A—Definitions

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2004.0 Definitions.

Subpart B—Freedom of Information Act Policies and Procedures

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2004.2 Proactive disclosures.
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2004.4 How will we handle confidential commercial information?
2004.5 Who is responsible for responding to your FOIA request?
2004.6 When will we respond to your FOIA request?
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2004.8 What can I do if I am dissatisfied with USTR's response to my FOIA request?
2004.9 Fees.

Subpart C—Privacy Act Policies and Procedures

2004.20 Definitions.
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2004.22 How do I make a Privacy Act request?
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Subpart D—Production or Disclosure of USTR Records, Information and Employee Testimony in Legal Proceedings

2004.30 Purpose and scope.
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2004.34 Submitting demands and requests.
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2004.39 Fees.

AUTHORITY: 19 U.S.C. 2171(e)(3).

SOURCE: 81 FR 89846, Dec. 13, 2016, unless otherwise noted.

Subpart A—Definitions

AUTHORITY: 19 U.S.C. 2171(e)(3).

§ 2004.0 Definitions.

For purposes of this part:

Days, unless otherwise indicated, means working days, and does not include Saturdays, Sundays, and legal public holidays. If the last day of a specified period falls on a Saturday, Sunday, or legal public holiday, the period will be extended until the next working day.

FOIA means the Freedom of Information Act, as amended, 5 U.S.C. 552.

Privacy Act means the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

OGIS means the Office of Government Information Services of the National Archives and Records Administration. OGIS offers FOIA dispute resolution services, which is a voluntary process. If USTR agrees to participate in the dispute resolution services provided by OGIS, USTR will actively engage as a partner to the process in an attempt to resolve the dispute.

USTR means the Office of the United States Trade Representative.

[81 FR 89846, Dec. 13, 2016, as amended at 82 FR 18985, Apr. 25, 2017]

Subpart B—Freedom of Information Act Policies and Procedures

AUTHORITY: 5 U.S.C. 552; 19 U.S.C. 2171(e)(3); Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012, Mar. 27, 1987.

SOURCE: 81 FR 90717, Dec. 15, 2016, unless otherwise noted.

§ 2004.1 Purpose and scope.

(a) This subpart contains the rules we follow when processing requests for records under the FOIA, a Federal law that provides a right of access to certain records and information Federal agencies maintain and control. You should read this subpart in conjunction with the text of the FOIA and the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines). Additionally, our FOIA Reference Guide, which is available on our Web site at *http://www.ustr.gov*, contains information about the specific procedures for making FOIA requests and descriptions of the types of records we maintain.

(b) To maximize the amount of information we can provide to you, we may process requests you make for records about yourself under both this subpart and subpart C to part 2004, our rules implementing the Privacy Act.

(c) We administer the FOIA with a presumption of openness.

§ 2004.2 Proactive disclosures.

You can access records that the FOIA requires us to make available for public inspection and copying in an electronic format through our Web site: *http://www.ustr.gov*. You also can find press releases, links to FEDERAL REGISTER notices and comments, fact sheets, speeches and remarks, reports, information about current initiatives, and historical information about U.S. trade issues. If you need assistance to locate a particular record, you can contact the Office of Public and Media Affairs at *MEDIA@ustr.eop.gov* or the FOIA Office at *FOIA@ustr.eop.gov*.

§ 2004.3 How do I make a request for records under the FOIA?

(a) *General information*—(1) *Where do I send my written request?* To make a request for records, you should write directly to the FOIA Office. Heightened security delays mail delivery. To avoid mail delivery delays, we strongly suggest that you email your request to *FOIA@ustr.eop.gov*. Our mailing address is: FOIA Office, Office of the United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington, DC 20509. To ensure that the FOIA Office receives your request without delay, you should include the notation ''FOIA Request'' in the subject line of your email or on the front of your envelope and also at the beginning of your request.

(2) *Security concerns.* To protect our computer systems, we will not open attachments to emailed requests—you must include your request within the body of the email. We will not process email attachments.

(3) *Verifying your identity.* (i) If you are making a request for records about yourself or about another individual, you may receive greater access by verifying your identity if the records are about you, or the other individual's identity if the records are about them. To verify identity, you must provide an unsworn declaration under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury. To fulfill this requirement, you must include the following statement just before the signature on your request letter:

''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].''

(ii) If the other individual is deceased, you should submit proof of death such as a copy of a death certificate or an obituary. As an exercise of administrative discretion, we may require that you provide additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *How do I describe the records I want?* (1) You must describe the records you seek in sufficient detail to enable USTR personnel to locate them with a reasonable amount of effort. To satisfy this requirement, you should be as detailed as possible when describing the records you seek. To the extent possible, you should include specific information that may help us identify the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. For example, we generally will ask you to clarify a request for all records related to a particular trade negotiation or agreement or a request for all communications between USTR and a particular third party. We suggest that you include a date limitation, particular topics, and if asking for correspondence, the subject matter and the relevant parties with contact information such as their email addresses.

(2) If a request does not provide sufficient specific descriptive information for the FOIA Office reasonably to ascertain exactly which records you are requesting and to locate them, our response may be delayed. Please note that in response to a FOIA request, we are not required to create records, conduct research for you, analyze data, answer written questions, or parse your narrative to try and determine the specific records you are seeking. You can contact the FOIA Office before you submit your request for assistance in describing the records you are seeking. If we determine that your request does not reasonably describe the records sought, we will explain why we cannot process your request and ask for additional information. For example, we might ask you to clarify your request if you ask for all documents in a certain date range but do not include a specific subject matter, topic or personnel. We can help you reformulate or modify your request.

(c) *Form or format of responsive records.* You can specify the preferred form or format (including electronic formats) for the records you seek. We will try to accommodate your request if the record is readily reproducible in that form or format.

(d) *Contact information.* You must provide contact information, such as your phone number, email address, and mailing address, so we will be able to communicate with you about your request and provide released records. If we cannot contact you, or you do not respond within thirty calendar days to our requests for clarification, we will close your request.

§ 2004.4 How will we handle confidential commercial information?

(a) *Definitions.* For purposes of this section:

(1) *Confidential commercial information* means commercial or financial information that we obtain from a submitter that may be protected from disclosure under exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation or a State or foreign government, but not including another Federal Government entity, which provides information, either directly or indirectly to the Federal Government.

(b) *How does a submitter designate confidential commercial information?* At the time of submission, the submitter of confidential commercial information must use good faith efforts to designate by appropriate markings any portion of its submission that it considers to be protected from disclosure under exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). These designations expire ten years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When will we notify a submitter?* (1) We promptly will notify the submitter of confidential commercial information in writing whenever we receive a FOIA request or appeal for records containing such information if we determine that we may have to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under exemption 4 of the FOIA, 5 U.S.C. 552(b)(4); or

(ii) We have reason to believe that the requested information may be protected from disclosure exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), but have not yet determined whether the information is protected from disclosure under that exemption or any other applicable FOIA exemption.

(2) Our notice either will describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, we may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure without publicly disclosing the records, instead of sending individual notifications.

(3) We promptly will notify the submitter whenever a requester files a lawsuit seeking to compel the disclosure of the submitter's confidential commercial information.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) We determine that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has officially been made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987, *Predisclosure notification procedures for confidential commercial information;* or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, we will give the submitter written notice of any final decision to disclose the information and a reasonable time period within which to object to disclosure under paragraph (e) of this section.

(e) *How can a submitter object to disclosure?* (1) If a submitter has any objections to disclosure, it should provide to us within the period listed in the notice a detailed written statement that specifies all grounds for withholding the particular information under any FOIA exemption. In order to rely on exemption 4 as a basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential.

(2) A submitter who does not respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. We will not consider any information we receive after the date of any disclosure decision. Any information provided by the submitter under this section may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* We will consider the submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* We will notify the submitter whenever we decide to disclose information over the submitter's objection. Our written notice will include:

(1) A statement of the reasons why we did not sustain each of the submitter's disclosure objections;

(2) A description of the information to be disclosed or copies of the records as we intend to release them; and

(3) A specified disclosure date, which will be a reasonable time after the notice.

(h) *When will we notify a requester?* We will notify the requester whenever we provide the submitter with notice and an opportunity to object to disclosure; whenever we notify the submitter of our intent to disclose the requested information; and whenever the submitter files a lawsuit to prevent the disclosure of the information.

§ 2004.5 Who is responsible for responding to your FOIA request?

(a) *In general.* The FOIA Office is authorized to grant or to deny any requests for agency records that USTR maintains. In determining which records are responsive to a request, we ordinarily will include only the agency records in our possession as of the date that we begin our search. We will notify you if we use any other date.

(b) *Consultation, referral and coordination.* If we believe that another Federal agency is better able to determine whether a record we locate in response to your request is exempt from disclosure under the FOIA, then we will proceed in one of the following ways:

(1) *Consultation.* When records originated with USTR but contain within them information of significance to another Federal agency or office, we typically consult with that other entity prior to making a release determination.

(2) *Referral.* If we believe that a different Federal agency is best able to determine whether to disclose the record, we typically refer responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. Whenever we refer any part of the responsibility for responding to a request to another agency, we will notify you of the referral, including the name of the agency and that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the Federal agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, we will coordinate with the originating agency to seek its views on disclosure of the record. We then will notify you of the release determination for the record that is the subject of the coordination.

(c) *Classified information.* On receipt of any request involving classified information, we will determine whether the information is currently and properly classified. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another Federal agency, we will refer responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever an agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), we will refer responsibility for responding to that portion of the request to the agency that classified the underlying information.

(d) *Timing of responses to consultations and referrals.* We will handle all consultations and referrals we receive according to the date that the first agency received the perfected FOIA request.

(e) *Agreements regarding consultations and referrals.* We may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

§ 2004.6 When will we respond to your FOIA request?

(a) *In general.* We ordinarily will respond to a request within twenty working days based on the order in which we receive the request. We may toll the twenty-day period if we need additional information from you in order to process the request or need to clarify fee assessment issues.

(b) *Multitrack processing.* We use a multitrack processing system that distinguishes between simple and more complex requests based on the estimated amount of work or time we need to process the request. Among the factors we consider are the number of records requested, the number of pages involved in processing the request, and

the need for consultations or referrals. We will tell you if we place your request into other than the simple track, and if appropriate, we will offer you an opportunity to narrow or modify your request so that it can be placed in a different processing track.

(c) *Unusual circumstances*—(1) *What is an unusual circumstance?* We will notify you if we extend the twenty-day period for processing your request. The notice will include the unusual circumstances—the need to search for and collect the requested records from separate offices or facilities, a request that involves a voluminous amount of separate and distinct records, or the need for consultation, and the date by which we estimate we will complete processing your request. If the extension exceeds ten days, we will give you the opportunity to modify your request or arrange an alternative time period for processing the original or modified request. If you need assistance, you can contact our FOIA Public Liaison at *FOIA@ustr.eop.gov*, or OGIS at *OGIS@nara.gov*.

(2) *Aggregating requests.* We may aggregate requests if it reasonably appears that multiple requests submitted either by a single requester or by a group of requesters acting in concert, involve related matters and constitute a single request that otherwise would involve unusual circumstances. For example, we may aggregate multiple requests for similar information filed within a short period of time.

(d) *Expedited processing*—(1) *How do I request expedited processing?* When you submit your request or appeal, you can ask us to expedite processing. If you seek expedited processing, you must submit a statement, certified to be true and correct, explaining in detail the basis for your expedited processing request.

(2) *When will we grant expedited processing?* We will process requests and appeals on an expedited basis if we determine that:

(i) Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about a specific actual or alleged Federal Government activity that is the subject of the request or appeal that extends beyond the public's right to know about government activity generally.

(3) *When will we respond to your request for expedited processing?* We will notify you within ten calendar days of the receipt of a request for expedited processing of our decision whether to grant or deny expedited processing. If we grant your request, we will give your request or appeal priority, place it in the processing track for expedited requests, and process it as soon as practicable. If we deny your request, we will process any appeal of that decision expeditiously.

[81 FR 90717, Dec. 15, 2016, as amended at 88 FR 47772, July 25, 2023]

§ 2004.7 What will our response to your FOIA request include?

(a) *In general.* We will notify you in writing of our determination regarding your request. To the extent practicable, we will communicate with you electronically.

(b) *Acknowledgement of requests.* We will acknowledge your request in writing, including a brief description of the records you are seeking, and assign an individualized tracking number. If we think that we will be unable to make a determination on your request within twenty days, we will send an acknowledgment within ten days and we may ask you to clarify your request or arrange for a longer period for processing.

(c) *Granting requests.* If we decide to grant your request in full or in part, our response will include the records we are disclosing unless we have assessed fees under § 2004.9. If your request involves a voluminous amount of material or searches in multiple locations, we may provide interim responses, releasing the records on a rolling basis. If we assessed fees, we will disclose the records promptly upon payment. If you need assistance, you can contact our FOIA Public Liaison at *FOIA@ustr.eop.gov*, or OGIS at *OGIS@nara.gov*.

(d) *Adverse determinations of requests*—(1) *What is an adverse determination?* Adverse determinations, or denials of requests, include decisions that: the requested record is exempt in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(2) *Our response*. If we make an adverse determination denying your request in any respect, our response will include:

(i) The name and title or position of the person responsible for the determination;

(ii) A brief statement of the reasons for the denial, including any FOIA exemption(s) we applied;

(iii) An estimate of the volume of any records or information we withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(iv) Information about our FOIA Public Liaison and the dispute resolution services provided by OGIS; and

(iv) Your right to appeal our decision under § 2004.8.

(3) *Markings on released documents*. If technically feasible, we will clearly mark records that we are disclosing in part to indicate the location and show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption.

[81 FR 89846, Dec. 13, 2016, as amended at 82 FR 18985, Apr. 25, 2017]

§ 2004.8 What can I do if I am dissatisfied with USTR's response to my FOIA request?

(a) *How do I make an appeal?*—(1) *What can I appeal?* You can appeal any adverse determination in writing to our FOIA Appeals Committee within ninety calendar days after the date of our response. Examples of adverse determinations are provided in § 2004.7(d). You should specify the records that are the subject of your appeal and explain why the Committee should sustain the appeal.

(2) *Where do I send my appeal?* To avoid mail delivery delays caused by heighted security, we strongly suggest that you email any appeal to *FOIA@ustr.eop.gov*. Our mailing address is: FOIA Office, Office of the United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington DC 20509. To make sure that the FOIA Office receives your appeal without delay, you should include the notation ''Freedom of Information Act Appeal'' and the individualized tracking number in the subject line of your email or on the front of your envelope and also at the beginning of your appeal.

(b) *Who will decide your appeal?* (1) The FOIA Appeals Committee or designee will act on all appeals under this section.

(2) We ordinarily will not adjudicate an appeal if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the FOIA Appeals Committee must take appropriate action to ensure compliance with applicable classification rules.

(c) *Decisions on appeals*. The FOIA Appeals Committee will notify you of its appeal decision in writing within twenty days from the date it receives the appeal. A decision that upholds the FOIA Office's determination in whole or in part will identify the reasons for the affirmance, including any FOIA exemptions applied, and notify you of your statutory right to seek judicial review. The notice also will inform you of the dispute resolution services offered by OGIS as a non-exclusive alternative to litigation. If the FOIA Appeals Committee remands or modifies the original response, the FOIA Office

will further process the request in accordance with the appeal determination and will respond directly to you.

(d) *When appeal is required.* Before seeking review by a court of an adverse determination, you generally first must submit a timely administrative appeal under this section.

[81 FR 89846, Dec. 13, 2016, as amended at 82 FR 18985, Apr. 25, 2017]

§ 2004.9 Fees.

(a) *In general.* We will assess a fee to process your FOIA request in accordance with the provisions of this section and the OMB Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requesters: Commercial use requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters. Different fees are assessed depending on the category. You can seek a fee waiver, which we will consider in accordance with the requirements in paragraph (h) of this section. We will contact you to resolve any fee issues that arise under this section. We will conduct searches, review and duplication in the most efficient and least expensive manner. We ordinarily will collect all applicable fees before sending copies of records to you. You must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade or profit interest, which can include furthering those interests through litigation. Our decision to place you in the commercial use category will be made on a case-by-case basis based on your intended use of the information. We will notify you of your placement in this category.

(2) *Direct costs* are the expenses we incur in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to your FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record, or the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. You must show that your FOIA request is made in connection with your role at the educational institution. We may seek verification that you are seeking the records to further scholarly research and not for a commercial use. To fall within this fee category, your request must serve the scholarly research goals of the institution rather than an individual research goal. We will advise you of your placement in this category.

Example 1. We would presume that a request from a professor of economics for records relating to the economic effects of a trade agreement, written on letterhead of the university's department of economics, is a request from an educational institution.

Example 2. We would not presume that a request from the same professor of economics seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing is a request from an educational institution, regardless of whether it was written on institutional stationery.

Example 3. We would presume that a request from a student in furtherance of their coursework or other school-sponsored activities evidenced by a course syllabus or other reasonable documentation indicating the research purpose for the request would qualify as part of this fee category.

(5) *Noncommercial scientific institution* is an institution that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry and not on a commercial basis, as defined in paragraph (b)(1) of this section. To fall within this fee category, you must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records you seek are to further scientific research and

not for a commercial use. We will advise you of your placement in this category.

(6) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. We will not consider a request for records supporting a news-dissemination function to be for a commercial use. We will consider freelance journalists who demonstrate a solid basis for expecting publication through a news media entity as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, we also may consider your past publication record in making this determination. We will advise you of your placement in this category.

(7) *Review* is the examination of a record located in response to a request in order to determine if any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including redacting the record and marking the appropriate exemptions. Review costs are properly charged even if we ultimately do not disclose a record. Review time also includes time spent both obtaining and considering any formal objection to disclosure a confidential commercial information submitter makes under § 2004.4, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts we expend to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, we will charge the following fees unless we granted a waiver or reduction of fees under paragraph (h) of this section, or the total fee to be charged is less than $25. If we do not meet the time limits for responding to your request, and if no unusual circumstance described in § 2004.6(c) applies, we will not assess fees.

(1) *Search.* (i) We will not assess any search fees for processing requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media. For all other requesters, we will charge for time spent searching even if we do not locate any responsive records or if we determine that the records are entirely exempt from disclosure. We will provide two hours of free search time except for requesters seeking records for a commercial use.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, we will charge $76/hour, which is a blended hourly rate for all personnel in the FOIA Office, plus 16 percent of that rate to cover benefits.

(iii) We will charge the direct costs if it is necessary to create a new computer program to locate the requested records. We will notify you of the costs associated with creating such a program, and you must agree to pay the associated costs before we build the program.

(iv) If your request requires the retrieval of records stored at a Federal records center, we will charge additional costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

(2) *Duplication.* We will charge duplication fees to all requesters. We will honor your preference for receiving a record in a particular form or format if we can readily reproduce it in the form or format requested. If we provide photocopies, we will make one copy per request at the cost of $.10 per page. For copies of records produced on tapes,

disks or other media, we will charge the direct costs of producing the copy, including operator time. Where we must scan paper documents in order to comply with your preference to receive the records in an electronic format, we will charge you the direct costs associated with scanning those materials. For other forms of duplication, we will charge the direct costs. We will provide the first 100 pages of duplication (or the cost equivalent for other media) without charge except for requesters seeking records for a commercial use.

(3) *Review*. We will charge review fees to requesters who make commercial use requests. We will assess review fees in connection with the initial review of the record, *i.e.*, the review we conduct to determine if an exemption applies to a particular record or portion of a record. We will not charge for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed no longer to apply, any costs associated with re-review of the records in order to consider the use of other exemptions may be assessed as review fees. We will charge review fees at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Other charges*—(1) *Special services*. We will charge you the direct cost of providing any special services you request, such as sending records by express mail, certifying that records are true copies, or providing multiple copies of the same document.

(2) *Interest*. We may assess interest charges on any unpaid fees starting on the 31st day following the day on which we sent the bill to you at the rate prescribed in Interest and Penalty on Claims, 31 U.S.C. 3717.

(e) *Aggregating requests*. We may aggregate separate FOIA requests for the purpose of assessing fees when we reasonably believe that a requester or a group of requesters acting in concert, is dividing a request into a series of requests for the purpose of avoiding or minimizing fees. For example, we may aggregate multiple requests for similar information filed within a short period of time.

(f) *If we anticipate fees will exceed $25*. Unless you have indicated in advance a willingness to pay fees as high as anticipated, we will notify you if we estimate that charges will exceed $25 including a breakdown of the fees for search, review or duplication and whether applicable entitlements to duplication and search at no charge have been provided. We will advise you if we can readily estimate only a portion of the fee.

(1) We will not process your request until you either commit in writing to pay the actual or estimated total fee, or designate some amount of fees you are willing to pay. If you are a noncommercial use requester and we have not yet provided your statutory entitlements (*i.e.*, two hours of search time and 100 free pages), you can tell us to stop when we exhaust the statutory entitlements. We will start the twenty-day response clock when we receive your written reply.

(2) If you agree to pay some designated amount of fees, but we estimate that the total fee will exceed that amount, we will toll processing when we notify you of the estimated fees in excess of the amount you had indicated a willingness to pay. When we receive your written commitment to pay the actual or estimated total fee, or designate an additional amount of fees you are willing to pay, we will restart the processing clock.

(3) If you decide to reformulate your request to reduce costs, you can contact USTR's FOIA Public Liaison at *FOIA@ustr.eop.gov* for assistance.

(4) We will close your request if you do not respond in writing within thirty calendar days after the date we notify you of the fee estimate.

(g) *Advance payments*. (1) If we determine or estimate that the total fee will exceed $250, we may require you to make an advance payment up to the amount of the entire anticipated fee before we begin to process your request.

(2) If you previously failed to pay a properly charged FOIA fee to any Federal agency within thirty calendar days of the billing date, we may require proof that you paid the full amount due, plus any applicable interest on that prior request, and that you make an advance payment to us of the

full amount of any anticipated fee before we begin to process a new request or continue to process a pending request or any pending appeal. If we have a reasonable basis to believe that you have misrepresented your identity in order to avoid paying outstanding fees, we may require you to provide proof of identity.

(3) If we require advance payment, we will not consider your request received and will not do any additional work until we receive the required payment. We will close your request if you do not pay the advance payment within thirty calendar days after the date of our fee determination.

(4) Before we provide records in response to your request, we may collect payments you owe for work we already have completed.

(h) *Requirements for waiver or reduction of fees.* (1) You can seek a fee waiver or reduction by explaining in writing how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in your commercial interest. In determining whether to waive or reduce a fee we will consider whether disclosure of the requested information would:

(i) Shed light on the operations or activities of the government. The subject of the request must specifically concern identifiable operations or activities of the Federal government with a connection that is direct and clear, not remote or attenuated.

(ii) Likely contribute significantly to public understanding of those operations or activities. Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding. The disclosure must contribute to the understanding of a reasonably broad audience interested in the subject. We will consider your expertise in the subject area as well as your ability and intention to effectively convey information to the public.

(iii) Primarily advance your commercial interests. For example, we ordinarily presume that the public's interest is greater than the requester's commercial interest when we receive a request from a representative of the news media. We will not presume that disclosure to data brokers or others who merely compile and market government information for direct economic return primarily serves the public interest.

(2) We will grant a partial waiver when only some of the records to be released satisfy the requirements in this section.

(3) You should include your fee waiver or reduction request when you first submit your FOIA request to us. You can submit a fee waiver or reduction request at a later time so long as the underlying record request is pending or on administrative appeal. If you already committed to pay fees and subsequently request a waiver of those fees that we deny, you must pay any costs incurred up to the date the fee waiver request was received.

[81 FR 89846, Dec. 13, 2016, as amended at 82 FR 18986, Apr. 25, 2017]

Subpart C—Privacy Act Policies and Procedures

AUTHORITY: 5 U.S.C. 552a; 19 U.S.C. 2171(e)(3).

SOURCE: 82 FR 18986, Apr. 25, 2017, unless otherwise noted.

§ 2004.20 Definitions.

For purposes of this subpart:

Access means making a record available to a subject individual.

Amendment means any correction, addition to or deletion of information in a record.

Individual means a natural person who either is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

Maintain means to keep or hold and preserve in an existing state, and includes the terms collect, use, disseminate and control.

Privacy Act Office means the USTR officials who are authorized to respond to requests and to process requests for amendment of records USTR maintains under the Privacy Act.

Record means any item, collection or grouping of information about an individual that USTR maintains within a system of records and contains the individual's name or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

System of records means a group of records USTR maintains or controls from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual. USTR publishes notices in the FEDERAL REGISTER announcing the creation, deletion or amendment of its systems of records. You can find a description of our systems of records on the USTR Web site: *www.ustr.gov*.

§ 2004.21 Purpose and scope.

(a) This subpart implements the Privacy Act, 5 U.S.C. 552a, a Federal law that requires Federal agencies to protect private information about individuals that the agencies collect or maintain. It establishes USTR's rules for access to records in systems of records we maintain that are retrieved by an individual's name or another personal identifier. It describes the procedures by which individuals may request access to records, request amendment or correction of those records, and request an accounting of disclosures of those records by USTR. Whenever it is appropriate to do so, USTR automatically processes a Privacy Act request for access to records under both the Privacy Act and the FOIA, following the rules contained in this subpart and subpart B of part 2004. USTR processes a request under both the Privacy Act and the FOIA so you will receive the maximum amount of information available to you by law.

(b) This subpart does not entitle you to any service or to the disclosure of any record to which you are not entitled under the Privacy Act. It also does not, and may not be relied upon to create any substantive or procedural right or benefit enforceable against USTR.

§ 2004.22 How do I make a Privacy Act request?

(a) *In general.* You can make a Privacy Act request on your own behalf for records or information about you. You also can make a request on behalf of another individual as the parent or guardian of a minor, or as the guardian of someone determined by a court to be incompetent. You may request access to another individual's record or information if you have that individual's written consent, unless other conditions of disclosure apply.

(b) *How do I make a request?*—(1) *Where do I send my written request?* To make a request for access to a record, you should write directly to our Privacy Act Office. Heightened security delays mail delivery. To avoid mail delivery delays, we strongly suggest that you email your request to *PRIVACY@ustr.eop.gov*. Our mailing address is: Privacy Act Office, Office of the US Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington, DC 20509. To make sure that the Privacy Act Office receives your request without delay, you should include the notation 'Privacy Act Request' in the subject line of your email or on the front of your envelope and also at the beginning of your request.

(2) *Security concerns.* To protect our computer systems, we will not open attachments to emailed requests—you must include your request within the body of the email. We will not process email attachments.

(c) *What should my request include?* You must describe the record that you seek in enough detail to enable the Privacy Act Office to locate the system of records containing the record with a reasonable amount of effort. Include specific information about each record sought, such as the time period in which you believe it was compiled, the name or identifying number of each system of records in which you believe it is kept, and the date, title or name, author, recipient, or subject matter of the record. As a general rule, the more specific you are about the record that you seek, the more likely we will be

able to locate it in response to your request.

(d) *How do I request amendment or correction of a record?* If you are requesting an amendment or correction of a USTR record, you must identify each particular record in question and the system of records in which the record is located, describe the amendment or correction that you seek, and state why you believe that the record is not accurate, relevant, timely or complete. You may submit any documentation that you think would be helpful, including an annotated copy of the record.

(e) *How do I request an accounting of record disclosures?* If you are requesting an accounting of disclosures made by USTR to another person, organization or Federal agency, you must identify each particular record in question. An accounting generally includes the date, nature and purpose of each disclosure, as well as the name and address of the person, organization, or Federal agency to which the disclosure was made.

(f) *Verification of identity.* When making a Privacy Act request, you must verify your identity in accordance with these procedures to protect your privacy or the privacy of the individual on whose behalf you are acting. If you make a Privacy Act request and you do not follow these identity verification procedures, USTR cannot process your request.

(1) *How do I verify my own identity?* You must state your full name, current address, and date and place of birth. In order to help identify and locate the records, you also may, at your option, include your Social Security number. To verify your own identity, you must provide an unsworn declaration under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury. To fulfill this requirement, you must include the following statement just before the signature on your request:

I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].

(2) *How do I verify parentage or guardianship?* If you make a request as the parent or guardian of a minor, or as the guardian of someone determined by a court to be incompetent, for access records or information about that individual, you must establish:

(i) The identity of the individual who is the subject of the record, by stating the individual's name, current address and date and place of birth, and, at your option, the Social Security number of the individual;

(ii) Your own identity, as required in paragraph (f)(1) of this section;

(iii) That you are the parent or guardian of the individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or a court order establishing your guardianship; and

(iv) That you are acting on behalf of the individual in making the request.

§ 2004.23 How will USTR respond to my Privacy Act request?

(a) *When will we respond to your request?* We will search to determine if the requested records exist in a system of records USTR owns or controls. The Privacy Act Office will respond to you in writing within twenty days after we receive your request, if it meets the requirements of this subpart. We may extend the response time in unusual circumstances, such as the need to consult with another agency about a record or to retrieve a record shipped offsite for storage.

(b) *What will our response include?* Our written response will include our determination whether to grant or deny your request in whole or in part, a brief explanation of the reasons for the determination, and the amount of the fee charged, if any, under § 2004.25. If you requested access to records, we will make the records, if any, available to you. If you requested amendment or correction of a record, the response will describe any amendments or corrections made and advise you of your right to obtain a copy of the amended or corrected record.

(c) *Adverse determinations*—(1) *What is an adverse determination?* An adverse determination is a response to a Privacy Act request that:

(i) Withholds any requested record in whole or in part;

(ii) Denies a request to amend or correct a record in whole or in part;

(iii) Declines to provide an accounting of disclosures;

(iv) Advises that a requested record does not exist or cannot be located;

(v) Finds that what you requested is not a record subject to the Privacy Act; or

(vi) Advises on any disputed fee matter.

(2) *Responses that include an adverse determination.* If the Privacy Act Office makes an adverse determination with respect to your request, our written response will identify the person responsible for the adverse determination, that the adverse determination is not a final agency action, and that you may appeal the adverse determination under § 2004.24.

§ 2004.24 What can I do if I am dissatisfied with USTR's response to my Privacy Act request?

(a) *What can I appeal?* You can appeal any adverse determination in writing to our Privacy Act Appeals Committee within thirty calendar days after the date of our response. We provide a list of adverse determinations in § 2004.23(c).

(b) *How do I make an appeal?*—(1) *What should I include?* You may appeal by submitting a written statement giving the reasons why you believe the Committee should overturn the adverse determination. Your written appeal may include as much or as little related information as you wish to provide, as long as it clearly identifies the determination (including the request number, if known) that you are appealing.

(2) *Where do I send my appeal?* You should mark both your letter and the envelope, or the subject of your email, ''Privacy Act Appeal''. To avoid mail delivery delays caused by heightened security, we strongly suggest that you email any appeal to *PRIVACY@ustr.eop.gov*. Our mailing address is: Privacy Office, Office of the US Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington, DC 20509.

(c) *Who will decide your appeal?* (1) The Privacy Act Appeals Committee or designee will act on all appeals under this section.

(2) We ordinarily will not adjudicate an appeal if the request becomes a matter of litigation.

(3) On receipt of any appeal involving classified information, the Privacy Act Appeals Committee must take appropriate action to ensure compliance with applicable classification rules.

(d) *When will we respond to your appeal?* The Privacy Act Appeals Committee will notify you of its appeal decision in writing within thirty days from the date it receives an appeal that meets the requirements of paragraph (b) of this section. We may extend the response time in unusual circumstances, such as the need to consult with another agency about a record or to retrieve a record shipped offsite for storage.

(e) *What will our response include?* The written response will include the Committee's determination whether to grant or deny your appeal in whole or in part, a brief explanation of the reasons for the determination, and information about the Privacy Act provisions for court review of the determination.

(1) *Appeals concerning access to records.* If your appeal concerns a request for access to records and the appeal is granted in whole or in part, we will make the records, if any, available to you.

(2) *Appeals concerning amendments or corrections.* If your appeal concerns amendment or correction of a record, the response will describe any amendment or correction made and advise you of your right to obtain a copy of the amended or corrected record. We will notify all persons, organizations or Federal agencies to which we previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. Whenever the record is subsequently disclosed, the record will be disclosed as amended or corrected. If our response denies your request for an amendment or correction to a record, we will advise you of your right to file a statement of disagreement under paragraph (f) of this section.

(f) *Statements of disagreement*—(1) *What is a statement of disagreement?* A statement of disagreement is a concise written statement in which you clearly

identify each part of any record that you dispute and explain your reason(s) for disagreeing with our denial in whole or in part of your appeal requesting amendment or correction.

(2) *How do I file a statement of disagreement?* We must receive your statement of disagreement within thirty calendar days of our denial in whole or in part of your appeal concerning amendment or correction of a record.

(3) *What will we do with your statement of disagreement?* We will place your statement of disagreement in the system(s) of records in which the disputed record is maintained. We also may append a concise statement of our reason(s) for denying the request to amend or correct the record. Whenever the record is subsequently disclosed, the record will be disclosed along with your statement of disagreement and our explanation, if any.

(g) *When appeal is required.* Before seeking review by a court of an adverse determination or denial of a request, you generally first must submit a timely administrative appeal under this section.

§ 2004.25 What does it cost to get records under the Privacy Act?

(a) *Your request is an agreement to pay fees.* We consider your Privacy Act request as your agreement to pay all applicable fees unless you specify a limit on the amount of fees you agree to pay. We will not exceed the specified limit without your written agreement.

(b) *How do we calculate fees?* We will charge a fee for duplication of a record under the Privacy Act in the same way we charge for duplication of records under the FOIA in § 2004.9. There are no fees to search for or review records requested under the Privacy Act.

§ 2004.26 Are there any exemptions from the Privacy Act?

(a) *What is a Privacy Act exemption?* The Privacy Act authorizes USTR to exempt records or information in a system of records from some of the Privacy Act requirements, if we determine that the exemption is necessary. With the exception of certain law enforcement records, we will not provide you with an accounting of disclosures or make available to you records that are exempt.

(b) *How do I know if the records or information I want are exempt?* Each USTR system of records notice will advise you if we have determined that records or information in records are exempt from Privacy Act requirements. If we have claimed an exemption for a system of records, the system of records notice will identify the exemption and the provisions of the Privacy Act from which the system is exempt.

§ 2004.27 How are records secured?

(a) *Controls.* USTR must establish administrative and physical controls to prevent unauthorized access to its systems of records, unauthorized or inadvertent disclosure of records, and physical damage to or destruction of records. The stringency of these controls corresponds to the sensitivity of the records that the controls protect. At a minimum, the administrative and physical controls must ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) *Limited access.* Access to records is restricted only to individuals who require access in order to perform their official duties.

§ 2004.28 Use and collection of Social Security numbers.

We will collect Social Security numbers only when it is necessary and we are authorized to do so. At least annually, the Privacy Act Office will inform employees who are authorized to collect information that:

(a) Individuals may not be denied any right, benefit or privilege as a result of refusing to provide their Social Security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) They must inform individuals who are asked to provide their Social Security numbers:

(1) If providing a Social Security number is mandatory or voluntary;

(2) If any statutory or regulatory authority authorizes collection of a Social Security number; and

(3) The uses that will be made of the Social Security number.

§ 2004.29 Employee responsibilities under the Privacy Act.

At least annually, the Privacy Act Office will inform employees about the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, a USTR employee must:

(a) Collect from individuals only information that is relevant and necessary to discharge USTR's responsibilities.

(b) Collect information about an individual directly from that individual whenever practicable.

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which USTR intends to use the information;

(3) The routine uses, *i.e.,* disclosures of records and information contained in a system of records without the consent of the subject of the record, USTR may make; and

(4) The effects on the individual, if any, of not providing the information.

(d) Ensure that the employee's office does not maintain a system of records without public notice and notify appropriate officials of the existence or development of any system of records that is not the subject of a current or planned public notice.

(e) Maintain all records that are used in making any determination about an individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to ensure fairness to the individual in the determination.

(f) Except for disclosures made to an agency or under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely and complete.

(g) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by USTR to persons, organizations or agencies.

(h) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone.

(i) Notify the appropriate official of any record that contains information that the Privacy Act does not permit USTR to maintain.

Subpart D—Production or Disclosure of USTR Records, Information and Employee Testimony in Legal Proceedings

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 2171(e)(3).

§ 2004.30 Purpose and scope.

(a) *Why are we issuing this rule?* This subpart establishes the procedures USTR will follow when any federal, state or local government court or other authority seeks production of USTR records or information, or testimony relating to an employee's official duties, in the context of a legal proceeding. Parties seeking records, information or testimony must comply with these requirements when submitting demands or requests to USTR.

(b) *What does this rule cover?* This subpart applies to demands or requests for records, information or testimony in legal proceedings in which USTR is not a named party. It does not apply to: Demands or requests for a USTR employee to testify as to facts or events that are unrelated to his or her official duties or to USTR's functions; FOIA or Privacy Act requests; or Congressional demands or requests for records or testimony.

(c) *Not a waiver.* (1) By providing these policies and procedures, USTR does not waive the sovereign immunity of the United States.

(2) The production of records, information or testimony pursuant to this subpart does not constitute a waiver by USTR of any privilege.

(d) This subpart provides guidance for USTR's internal operations and

does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against USTR or the United States.

§ 2004.31 Definitions.

For purposes of this subpart:

Demand means a request, order, subpoena or other demand of a federal, state or local court or other authority for records, information or employee testimony in a legal proceeding in which USTR is not a named party.

Employee means any current or former employee or officer of USTR, including contractors, detailees, interns, and any individual who has served or is serving in any consulting or advisory capacity to USTR, whether formal or informal.

General Counsel means USTR's General Counsel or a person within USTR's Office of General Counsel to whom the General Counsel has delegated authority to act under this subpart.

Legal proceeding means any matter, including all phases of litigation, before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding.

Records or *information* means all documents and materials that are USTR agency records under the FOIA; any original or copy of a record or other property, no matter what media, contained in USTR files; and any other information or materials acquired by a USTR employee in the performance of his or her official duties or because of his or her official status.

Request means any informal request, by whatever method, in connection with a legal proceeding, seeking production of records, information or testimony that has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations and recorded interviews made by an individual about USTR information in connection with a legal proceeding.

§ 2004.32 Production prohibited unless approved.

(a) *Approval required.* An employee or any other person or entity in possession of records or information may not produce those records or information, or provide any testimony related to the records or information, in response to any demand or request without prior written approval from the General Counsel.

(b) *Penalties.* Any person or entity that fails to comply with this subpart may be subject to the penalties provided in 18 U.S.C. 641 and other applicable laws. A current employee also may be subject to administrative or disciplinary proceedings.

§ 2004.33 Factors the General Counsel may consider.

The General Counsel may grant an employee permission to testify regarding USTR matters and to produce records and information in response to a demand or request. Among the relevant factors the General Counsel may consider in making this determination are whether:

(a) The requested records, information or testimony are reasonable in scope, relevant and material to the pending action, and unavailable from other sources such as a non-USTR employee, or a USTR employee other than the employee named.

(b) Production of the records, information or testimony might result in USTR appearing to favor one litigant over another.

(c) USTR has an interest in the decision that may be rendered in the legal proceeding.

(d) Approving the demand or request would assist or hinder USTR in performing statutory duties or unduly burden USTR resources.

(e) The demand or request is unduly burdensome or otherwise inappropriate under the rules of discovery or procedure governing the case or matter in which the demand or request arose.

(f) Production of the records, information or testimony might violate or be inconsistent with a statute, Executive Order, regulation or other legal authority.

(g) Disclosure, including release in camera, is appropriate or necessary

under the relevant substantive law concerning privilege.

(h) Disclosure, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified or other matters exempt from unrestricted disclosure.

(i) Disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, or disclose trade secrets or similarly confidential commercial or financial information.

(j) Any other appropriate factor.

§ 2004.34 Submitting demands and requests.

(a) *Where do I send a demand or request?* To make a demand or request for records, information or testimony you should write directly to the General Counsel. Heightened security delays mail delivery. To avoid mail delivery delays, we strongly suggest that you email your demand or request to *TOUHY@ustr.eop.gov*. The mailing address is General Counsel, Office of the United States Trade Representative, Anacostia Naval Annex, Building 410/Door 123, 250 Murray Lane SW., Washington, DC 20509. To ensure delivery, you should mark the subject line of your email or your envelope and letter ''Touhy Request.''

(b) *When should I submit it?* You should submit your demand or request at least 45 calendar days in advance of the date on which the records, information or testimony is needed.

(c) *What must be included?* (1) A demand or request must include an affidavit or, if that is not feasible, a clear and concise statement by the party or his or her counsel summarizing the legal and factual issues in the proceeding and explaining how the records, information or testimony will contribute substantially to the resolution of one or more specifically identified issues.

(2) A demand or request for testimony also must include an estimate of the amount of time that the employee will need to devote to the process of testifying (including anticipated travel time and anticipated duration of round trip travel), plus a showing that no document or the testimony of non-USTR persons, including retained experts, could suffice in lieu of the employee's testimony.

(d) *Limits.* The General Counsel will limit any authorization for testimony to the scope of the demand, and the scope of permissible production of records and information to that set forth in the written authorization.

(e) *Failure to meet requirements and exceptions.* USTR may oppose any demand or request that does not meet the requirements set forth in this subpart. The General Counsel may grant exceptions to the requirements in this subpart upon a showing of compelling need, to promote a significant interest of USTR or the United States, or for other good cause.

§ 2004.35 Processing demands and requests.

(a) The General Counsel will review a request or demand to produce or disclose records, information or testimony and determine whether, or under what conditions, to authorize the employee to testify regarding USTR matters or produce records and information. The General Counsel will notify the requester of the final determination, the reasons for the grant or denial of the demand or request, and any conditions on disclosure.

(b) When necessary, the General Counsel will coordinate with the U.S. Department of Justice to file appropriate motions, including motions to remove the matter to Federal court, to quash, or to obtain a protective order.

(c) The General Counsel will process demands and requests in the order in which they are received. Absent unusual circumstances and depending on the scope of the demand or request, the General Counsel will respond within 45 calendar days of the date USTR receives all information necessary to evaluate the demand or request.

§ 2004.36 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of USTR employees including, for example, limiting the scope of testimony or requiring the requester and other parties to the legal proceeding to agree that the testimony transcript

will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel also may require a copy of the testimony transcript at the requester's expense.

(b) USTR may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this subpart, an employee may testify as to relevant facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee must not:

(1) Disclose classified, confidential or privileged information; or

(2) For a current USTR employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or USTR's mission or functions, unless testimony is provided on behalf of the United States. A former employee can provide expert or opinion testimony where the testimony involves only general expertise gained while employed as a USTR employee.

§ 2004.37 Restrictions that apply to released records and information.

(a) The General Counsel may impose conditions or restrictions on the release of records and information, including requiring the parties to the legal proceeding to obtain a protective order or to execute a confidentiality agreement to limit access and further disclosure. The terms of a protective order or confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements already have been executed, USTR may condition the release of records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, USTR may present original records for examination in response to a demand or request, but the records cannot be marked or altered or presented as evidence or otherwise used in a manner by which they could lose their status as original records. In lieu of original records, certified copies will be presented for evidentiary purposes. (*See* 28 U.S.C. 1733).

§ 2004.38 In the event of an adverse ruling.

(a) Notwithstanding USTR's rejection of a demand or request for records, information or testimony, if a court or other competent authority orders a USTR employee to comply with the demand, the employee promptly must notify the General Counsel of the order, and must respectfully decline to comply, citing *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

(b) To seek reconsideration of USTR's rejection of a demand or request, or of any restrictions on receiving records, information or testimony, a requester must send a petition for reconsideration in accordance with § 2004.34(a) within 10 days of the date of the determination. The petition must contain a clear and concise statement of the basis for the reconsideration with supporting authorities. Determinations about petitions for reconsideration are within the discretion of the United States Trade Representative or his/her designee, and are final.

(c) Pursuant to section 704 of the Administrative Procedure Act, 5 U.S.C. 704, a petition for reconsideration of a final determination under this section is a prerequisite to judicial review.

§ 2004.39 Fees.

(a) USTR may condition the production of records, information or an employee's appearance on advance payment of reasonable costs, which may include but are not limited to those associated with employee search time, copying, computer usage, and certifications.

(b) Witness fees will include fees, expenses and allowances prescribed by the rules applicable to the particular legal proceeding. If no fees are prescribed, USTR will base fees on the rule of the federal district court closest to the location where the witness will appear. Such fees may include but are not limited to time for preparation, travel and attendance at the legal proceeding.

PART 2006—PROCEDURES FOR FILING PETITIONS FOR ACTION UNDER SECTION 301 OF THE TRADE ACT OF 1974, AS AMENDED

Sec.

2006.0 Submission of petitions requesting action under section 301.
2006.1 Information to be included in petition.
2006.2 Adequacy of the petition.
2006.3 Determinations regarding petitions.
2006.4 Requests for information made to Foreign Governments or Instrumentalities.
2006.5 Consultations with the Foreign Government.
2006.6 Formal dispute settlement.
2006.7 Public hearings.
2006.8 Submission of written briefs.
2006.9 Presentation of oral testimony at public hearings.
2006.10 Waiver of requirements.
2006.11 Consultations before making determinations.
2006.12 Determinations; time limits.
2006.13 Information open to public inspection.
2006.14 Information not available.
2006.15 Information exempt from public inspection.

AUTHORITY: Sec. 309(a)(1), Trade Act of 1974, as amended by sec. 1301 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1176 (19 U.S.C. 2419).

SOURCE: 55 FR 20595, May 18, 1990, unless otherwise noted.

§ 2006.0 Submission of petitions requesting action under section 301.

(a) Section 301 of the Trade Act of 1974, as amended (the ''Trade Act'') requires the United States Trade Representative, subject to the specific direction, if any, of the President regarding such action, to take appropriate and feasible action in response to a foreign government's violation of a trade agreement, or any other international agreement the breach of which burdens or restricts United States commerce; and authorizes the Trade Representative, subject to the specific direction of the President, if any, to take action to obtain the elimination of acts, policies, and practices of foreign countries that are unjustifiable, unreasonable, or discriminatory and burden or restrict United States commerce. Section 302 of the Trade Act provides for petitions to be filed with the Trade Representative requesting that action be taken under section 301. Petitions filed under section 302 will be treated as specified in these regulations.

(b) Petitions may be submitted by an interested person. An interested person is deemed to be any party who has a significant interest affected by the act, policy, or practice complained of, for example: A producer, a commercial importer, or an exporter of an affected product or service; a United States person seeking to invest directly abroad, with implications for trade in goods or services; a person who relies on protection of intellectual property rights; a trade association, a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production or wholesale distribution in the United States of a product or service so affected; or any other private party representing a significant economic interest affected directly by the act, policy or practice complained of in the petition.

(c) The petitioner shall submit 20 copies of the petition in English, clearly typed, photocopied, or printed to: Chairman, Section 301 Committee, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

To ensure proper docketing, petitions may be filed only during the following hours on days when the Federal Government is open for business: between 9 a.m. and 12 noon and 1 p.m. to 5 p.m.

(d) Recorded information on section 302 petitions and investigations may be obtained by calling (202) 395–3871.

§ 2006.1 Information to be included in petition.

(a) *General information.* Petitions submitted pursuant to section 302 of the Trade Act shall clearly state on the first page that the petition requests that action be taken under section 301 of the Trade Act and shall contain allegations and information reasonably available to petitioner in support of the request, in the form specified below. Petitioners for whom such information is difficult or impossible to obtain shall provide as much information as possible, and assistance in filing

their petition may be obtained through the Chairman of the Section 301 Committee. All petitions shall:

(1) Identify the petitioner and the person, firm or association, if any, which petitioner represents and describe briefly the economic interest of the petitioner which is directly affected by the failure of a foreign government or instrumentality to grant rights of the United States under a trade agreement, or which is otherwise directly affected economically by an act, policy, or practice which is actionable under section 301.

(2) Describe the rights of the United States being violated or denied under the trade agreement which petitioner seeks to enforce or the other act, policy or practice which is the subject of the petition, and provide a reference to the particular part of section 301 related to the assertion in the petition.

(3) Include, wherever possible, copies of laws or regulations which are the subject of the petition. If this is not possible, the laws and regulations shall be identified with the greatest possible particularity, such as by citation.

(4) Identify the foreign country or instrumentality with whom the United States has an agreement under which petitioner is asserting rights claimed to be denied or whose acts, policies or practices are the subject of the petition.

(5) Identify the product, service, intellectual property right, or foreign direct investment matter for which the rights of the United States under the agreement claimed to be violated or denied are sought, or which is subject to the act, policy or practice of the foreign government or instrumentality named in paragraph (a)(4) of this section.

(6) Demonstrate that rights of the United States under a trade agreement are not being provided; or show the manner in which the act, policy or practice violates or is inconsistent with the provisions of a trade agreement or otherwise denies benefits accruing to the United States under a trade agreement, or is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce.

(7) Provide information concerning

(i) The degree to which U.S. commerce is burdened or restricted by the denial of rights under a trade agreement or by any other act, policy, or practice which is actionable under section 301,

(ii) The volume of trade in the goods or services involved, and

(iii) A description of the methodology used to calculate the burden or restriction on U.S. commerce.

(8) State whether petitioner has filed or is filing for other forms of relief under the Trade Act or any other provision of law. If the foreign government practice at issue is the subject of investigation under any other provision of law, the USTR may determine not to initiate an investigation; or if the same matter is subsequently subject to investigation under some other provision of law, USTR may terminate the section 302 investigation.

(b) *Additional specific information*—(1) *Subsidies.* If the petition includes an assertion that subsidy payments are having an adverse effect upon products or services of the United States in United States' markets or in other foreign markets, it shall include an analysis supporting any claim that the subsidy complained of is inconsistent with any trade agreement and describe the manner in which it burdens or restricts United States commerce.

(2) *Certain unreasonable practices.* If the petition asserts that an unreasonable practice defined in section 301(d)(3) denies fair and equitable opportunities for the establishment of an enterprise, or denies adequate and effective protection of intellectual property rights, or denies fair and equitable market opportunities, and burdens or restricts U.S. commerce, the petition should include, to the extent possible, identification of reciprocal opportunities in the United States that may exist for foreign nationals and firms; and

(i) If the petition asserts that fair and equitable opportunities for the establishment of an enterprise in a foreign country are denied, the petition shall

(A) Describe in detail the nature of any foreign direct investment proposed by the United States person, including

estimates of trade in goods and services that could reasonably be expected to result from that investment,

(B) Indicate the manner in which the foreign government is denying the United States person a fair and equitable opportunity for the establishment of an enterprise,

(C) State whether action by the foreign government is in violation of or inconsistent with the international legal rights of the United States, citing the relevant provisions of any international agreements to which the United States and the foreign government are party, and

(D) To the extent possible, provide copies of all relevant foreign government statutes, regulations, directives, public policy statements and correspondence with the United States person with respect to the proposed investment.

(ii) If the petition asserts that fair and equitable provision of adequate and effective protection of intellectual property rights in a foreign country is denied, the petition shall

(A) Identify the intellectual property right for which protection has been sought,

(B) Indicate how persons who are not citizens or nationals of such foreign country are denied the opportunity to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights, or mask works, and

(C) Provide information on the relevant laws of the foreign country and an analysis of how the foreign country's law or policies conform to provisions of international law or international agreements to which both the United States and the foreign country are parties;

(iii) If the petition asserts that fair and equitable market opportunities are denied through the toleration by a foreign government of systematic private anticompetitive activities, the petition shall specifically

(A) Identify the private firms in the foreign country whose systematic anticompetitive activities have the effect of restricting access of United States goods to purchasing by those firms, inconsistent with commercial considerations,

(B) Describe in detail the private activities in question,

(C) State whether evidence of such activities has been provided (by petitioner or others) to the appropriate foreign government authorities, and describe the evidence indicating that the foreign government is aware of and supports, encourages, or tolerates such activities,

(D) Describe the duration and pervasiveness of such activities,

(E) Indicate whether such activities are inconsistent with the laws of the foreign country involved, making specific reference to any laws in question, and

(F) Indicate whether the foreign government's enforcement of (or failure to enforce) its relevant laws with respect to the private activities at issue is inconsistent with its enforcement practices in other situations;

(iv) If the petition asserts that an act, policy or practice, or combination thereof constitutes export targeting, the petition shall

(A) Identify the specific enterprise, industry, or group thereof which has been assisted in becoming more competitive in the export of the affected product or products,

(B) Describe the elements of the foreign government's plan or scheme consisting of coordinated actions to assist that enterprise, industry, or group, and

(C) Provide information on how and to what degree exports of the affected products by that enterprise, industry, or group have become more competitive as a result of the foreign government's plan or scheme; and

(v) If the petition asserts that an act, policy or practice, or combination thereof constitutes a persistent pattern of conduct that denies workers the right of association or the right to organize and bargain collectively, or permits forced or compulsory labor, or fails to provide a minimum age for employment of children or standards for minimum wages, hours, and occupational safety and health of workers, the petition shall

(A) Describe the rights or standards denied and provide information on the laws, policies and practices of the foreign country involved, if any, that relate to such rights or standards, and

(B) Indicate, to the extent such information is available to petitioner, whether the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing these rights or standards.

§ 2006.2 Adequacy of the petition.

If the petition filed pursuant to section 302 does not conform substantially to the requirements of §§ 2006.0 and 2006.1, the Chairman of the Section 301 Committee may decline to docket the petition as filed and, if requested by petitioner, return it to petitioner with guidance on making the petition conform to the requirements, or may nevertheless determine that there is sufficient information on which to proceed to a determination whether to initiate an investigation.

§ 2006.3 Determinations regarding petitions.

Within 45 days after the day on which the petition is received, the Trade Representative shall determine, after receiving the advice of the Section 301 Committee, whether to initiate an investigation.

(a) If the Trade Representative determines not to initiate an investigation, the Section 301 Chairman shall notify the petitioner of the reasons and shall publish notice of the negative determination and a summary of the reasons therefor in the FEDERAL REGISTER.

(b) If the Trade Representative determines to initiate an investigation regarding the petition, the Section 301 Chairman shall publish a summary of the petition in the FEDERAL REGISTER, and provide an opportunity for the presentation of views concerning the issues, including a public hearing if requested. A hearing may be requested by the petitioner or any interested person, including but not limited to a domestic firm or worker, a representative of consumer interests, a United States product exporter, or any industrial user of any goods or services that may be affected by actions taken under section 301 with respect to the act, policy or practice that is the subject of the petition.

§ 2006.4 Requests for information made to Foreign Governments or Instrumentalities.

If the U.S. Trade Representative receives a petition alleging violations of any international agreement, he will notify the foreign government or instrumentality of the allegations and may request information, in English, necessary to a determination under section 304(a)(1)(A) of the Trade Act. The Trade Representative may proceed on the basis of best information available if, within a reasonable time, no information is received in response to the request.

§ 2006.5 Consultations with the Foreign Government.

(a) If the Trade Representative determines to initiate an investigation on the basis of a petition he shall, on behalf of the United States, request consultations with the foreign country concerned regarding the issues involved in such an investigation. In preparing United States presentations for consultations and dispute settlement proceedings, the Trade Representative shall seek information and advice from the petitioner and any appropriate private sector representatives, including committees established pursuant to section 135 of the Trade Act.

(b) To ensure an adequate basis for consultation, the Trade Representative may, after consulting with the petitioner, delay requests for consultations for up to 90 days in order to verify or improve the petition. If consultations are delayed, the time limits referred to in § 2006.12 below shall be extended for the period of such delay.

§ 2006.6 Formal dispute settlement.

If the issues in a petition are covered by a trade agreement between the United States and the foreign government involved and a mutually acceptable resolution cannot be reached within the consultation period provided for in the agreement, or by 150 days after consultations begin, whichever is earlier, the Trade Representative shall institute the formal dispute settlement proceedings, if any, provided for in the trade agreement.

§ 2006.7 Public hearings.

(a) A public hearing for the purpose of receiving views on the issues raised in a petition shall be held by the Section 301 Committee:

(1) Within 30 days after the date that an investigation is initiated under section 302(a)(2) if a hearing is requested in the petition (or later, if agreed to by the petitioner); or

(2) Within a reasonable period if, after the investigation is initiated, a timely request is made by the petitioner, or any other interested person as defined in § 2006.3(b).

(b) Prior to making a recommendation on what action, if any, should be taken in response to issues raised in the petition, the Section 301 Committee shall hold a public hearing upon the written request of any interested person. An interested person should submit an application to the Section 301 Chairman stating briefly the interest of the person requesting the hearing, the firm, person, or association he represents, and the position to be taken. A hearing so requested shall be held:

(1) Prior to determining what action should be taken under section 301, and after at least 30 days' notice; or

(2) Within 30 days after the determination of action is made, if the Trade Representative determines that expeditious action is required.

(c) After receipt of a request for a public hearing under sections 302(a)(4)(B) or 304(b)(1)(A) of the Trade Act, the Chairman of the Section 301 Committee will notify the applicant whether the request meets the requirements of this part, and if not, the reasons therefor. If the applicant has met the requirements of this part, he will receive at least 30 days' notice of the time and place of the hearing.

(d) Notice of public hearings to be held under sections 302(a)(4)(B) and 304(b)(1)(A) shall be published in the FEDERAL REGISTER by the Chairman of the Section 301 Committee.

§ 2006.8 Submission of written briefs.

(a) In order to participate in the presentation of views either at a public hearing or otherwise, an interested person must submit a written brief before the close of the period of submission announced in the public notice. The brief may be, but need not be, supplemented by the presentation of oral testimony in any public hearing scheduled in accordance with § 2006.7.

(b) The brief shall state clearly the position taken and shall describe with particularity the supporting rationale. It shall be submitted in 20 copies, which must be legibly typed, printed, or duplicated.

(c) In order to assure each interested person an opportunity to contest the information provided by other parties, the Section 301 Committee will entertain rebuttal briefs filed by any interested person within a time limit specified in the public notice. Rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearing and should be as concise as possible.

§ 2006.9 Presentation of oral testimony at public hearings.

(a) A request by an interested person to present oral testimony at a public hearing shall be submitted in writing before the close of the period of submission announced in the public notice and shall state briefly the interest of the applicant. Such request will be granted if a brief has been submitted in accordance with § 2006.8.

(b) After consideration of a request to present oral testimony at a public hearing, the Chairman of the Section 301 Committee will notify the applicant whether the request conforms to the requirements of § 2006.8(a) and, if it does not, will give the reasons. If the applicant has submitted a conforming request he shall be notified of the time and place for the hearing and for his oral testimony.

§ 2006.10 Waiver of requirements.

To the extent consistent with the requirements of the Trade Act, the requirements of §§ 2006.0 through 2006.3 and 2006.8 may be waived by the Trade Representative or the Chairman of the Section 301 Committee upon a showing of good cause and for reasons of equity and the public interest.

§ 2006.11 Consultations before making determinations.

Prior to making a determination on what action, if any, should be taken in regard to issues raised in the petition, the Trade Representative shall obtain advice from any appropriate private sector advisory representatives, including committees established pursuant to section 135 of the Trade Act, unless expeditious action is required, in which case he shall seek such advice after making the determination. The Trade Representative may also request the views of the International Trade Commission regarding the probable economic impact of the proposed action.

§ 2006.12 Determinations; time limits.

On the basis of the petition, investigation and consultations, and after receiving the advice of the Section 301 Committee, the Trade Representative shall determine whether U.S. rights under any trade agreement are being denied, or whether any other act, policy, or practice actionable under section 301 exists and, if so, what action (if any) should be taken under section 301. These determinations shall be made:

(a) In the case of an investigation involving a trade agreement (other than the agreement on subsidies and countervailing measures described in section 2(c)(5) of the Trade Agreements Act of 1979), within 30 days after the dispute settlement procedure concludes, or 18 months after the initiation of the investigation, whichever is earlier.

(b) In all other cases, within 12 months after initiating an investigation.

§ 2006.13 Information open to public inspection.

(a) With the exception of information subject to § 2006.15, an interested person may, upon advance request, inspect at a public reading room in the Office of the United States Trade Representative:

(1) Any written petition, brief, or similar submission of information (other than that to which confidentiality applies) made in the course of a section 302 proceeding;

(2) Any stenographic record of a public hearing held pursuant to section 302 or 304.

(b) In addition, upon written request submitted in accordance with section 308 of the Trade Act, any person may obtain from the Section 301 Chairman the following, to the extent that such information is available to the Office of the U.S. Trade Representative or other Federal agencies:

(1) Information on the nature and extent of a specific trade policy or practice of a foreign government or instrumentality with respect to particular goods, services, investment, or intellectual property rights;

(2) Information on United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) Information on past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(c) An appropriate fee will be charged for duplication of documents requested under § 2006.13.

§ 2006.14 Information not available.

If the Office of the U.S. Trade Representative does not have, and cannot obtain from other Federal agencies, information requested in writing by any person, the Section 301 Chairman shall, within 30 days after the receipt of the request:

(a) Request the information from the foreign government involved; or

(b) Decline to request the information and inform the person in writing of the reasons for the refusal.

§ 2006.15 Information exempt from public inspection.

(a) The Chairman of the Section 301 Committee shall exempt from public inspection business information submitted in confidence if he determines that such information involves trade secrets or commercial and financial information the disclosure of which is not authorized by the person furnishing such information nor required by law.

(b) An interested person requesting that the Chairman exempt from public

inspection confidential business information submitted in writing must certify in writing that such information is business confidential, the disclosure of such information would endanger trade secrets or profitability, and such information is not generally available. The information submitted must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each copy, and shall be accompanied by a nonconfidential summary of the confidential information.

(c) The Section 301 Chairman may use such information, or make such information available (in his own discretion) to any employee of the Federal Government for use in any investigation under section 302, or make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

(d) The Section 301 Chairman may deny a request that he exempt from public inspection any particular business information if he determines that such information is not entitled to exemption under law. In the event of a denial, the interested person submitting the particular business information will be notified of the reasons for the denial and will be permitted to withdraw the submission.

PART 2007—REGULATIONS OF THE U.S. TRADE REPRESENTATIVE PERTAINING TO ELIGIBILITY OF ARTICLES AND COUNTRIES FOR THE GENERALIZED SYSTEM OF PREFERENCE PROGRAM (GSP (15 CFR PART 2007))

Sec.

2007.0 Requests for reviews.
2007.1 Information required of interested parties in submitting requests for modifications in the list of eligible articles.
2007.2 Action following receipt of requests for modifications in the list of eligible articles and for reviews of the GSP status of eligible beneficiary countries with respect to designation criteria.
2007.3 Timetable for reviews.
2007.4 Publication regarding requests.
2007.5 Written briefs and oral testimony.
2007.6 Information open to public inspection.
2007.7 Information exempt from public inspection.
2007.8 Other reviews of article eligibilities.

AUTHORITY: 19 U.S.C. 2461–65, 88 Stat. 2066–2071, as amended by Title V of the Trade and Tariff Act of 1984, Pub. L. No. 98–573, 98 Stat. 3018–3024; E.O. 11846 of March 27, 1975 (40 FR 14291), E.O. 12188 of January 2, 1980 (45 FR 989).

SOURCE: 51 FR 5037, Feb. 11, 1986, unless otherwise noted.

§ 2007.0 Requests for reviews.

(a) An interested party may submit a request (1) that additional articles be designated as eligible for GSP duty-free treatment, provided that the article has not been accepted for review within the three preceding calendar years; or (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) for a determination of whether a like or directly competitive product was produced in the United States on January 3, 1985 for the purposes of section 504(d)(1) (19 U.S. 2464(d)(1)); or (4) that the President exercise his waiver authority with respect to a specific article or articles pursuant to section 504(c)(3) (19 U.S.C. 2464(c)(3)); or (5) that product coverage be otherwise modified.

(b) During the annual reviews and general reviews conducted pursuant to the schedule set out in § 2007.3 any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in section 502(b) or 502(c) (19 U.S.C. 2642 (b) and (c)). Such requests must (1) specify the name of the person or the group requesting the review; (2) identify the beneficiary country that would be subject to the review; (3) indicate the specific section 502(b) or 502(c) criteria which the requestor believes warrants review; (4) provide a statement of reasons why the beneficiary country's status should be reviewed along with all available supporting information; (5) supply any other relevant information as requested by the GSP Subcommittee. If the subject matter of the request has been reviewed pursuant to a previous request, the request must include substantial new information warranting further consideration of the issue.

(c) An interested party or any other person may make submissions supporting, opposing or otherwise commenting on a request submitted pursuant to either paragraph (a) or (b) of this section.

(d) For the purposes of the regulations set out under § 2007.0 *et seq.*, an interested party is defined as a party who has significant economic interest in the subject matter of the request, or any other party representing a significant economic interest that would be materially affected by the action requested, such as a domestic producer of a like or directly competitive article, a commercial importer or retailer of an article which is eligible for the GSP or for which such eligibility is requested, or a foreign government.

(e) All requests and other submissions should be submitted in 20 copies, and should be addressed to the Chairman, GSP Subcommittee, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. Requests by foreign governments may be made in the form of diplomatic correspondence provided that such requests comply with the requirements of § 2007.1.

(f) The Trade Policy Staff Committee (TPSC) may at any time, on its own motion, initiate any of the actions described in paragraph (a) or (b) of this section.

§ 2007.1 Information required of interested parties in submitting requests for modifications in the last of eligible articles.

(a) *General Information Required.* A request submitted pursuant to this part, hereinafter also referred to as a petition, except requests submitted pursuant to § 2007.0(b), shall state clearly on the first page that it is a request for action with respect to the provision of duty-free treatment for an article or articles under the GSP, and must contain all information listed in this paragraph and in paragraphs (b) and (c). Petitions which do not contain the information required by this paragraph shall not be accepted for review except upon a showing that the petitioner made a good faith effort to obtain the information required. Petitions shall contain, in addition to any other information specifically requested, the following information:

(1) The name of the petitioner, the person, firm or association represented by the petitioner, and a brief description of the interest of the petitioner claiming to be affected by the operation of the GSP;

(2) An identification of the product or products of interest to the petitioner, including a detailed description of products and their uses and the identification of the pertinent item number of the Tariff Schedules of the United States (TSUS). Where the product or products of interest are included with other products in a basket category of the TSUS, provide a detailed description of the product or products of interest;

(3) A description of the action requested, together with a statement of the reasons therefor and any supporting information;

(4) A statement of whether to the best of the Petitioner's knowledge, the reasoning and information has been presented to the TPSC previously either by the petitioner or another party. If the Petitioner has knowledge the request has been made previously, it must include either new information which indicates changed circumstances or a rebuttal of the factors supporting the denial of the previous request. If it is a request for a product addition, the previous request must not have been formally accepted for review within the preceding three calendar year period; and

(5) A statement of the benefits anticipated by the petitioner if the request is granted, along with supporting facts or arguments.

(b) *Requests to withdraw, limit or suspend eligibility with respect to designated articles.* Petitions requesting withdrawal or limitation of duty-free treatment accorded under GSP to an eligible article or articles must include the following information with respect to the relevant United States industry for the most recent three year period:

(1) The names, number and locations of the firms producing a like or directly competitive product;

(2) Actual production figures;

(3) Production capacity and capacity utilization;
(4) Employment figures, including number, type, wage rate, location, and changes in any of these elements;
(5) Sales figures in terms of quantity, value and price;
(6) Quantity and value of exports, as well as principal export markets;
(7) Profitability of firm on firms producing the like product, if possible show profit data by product line;
(8) Analysis of cost including materials, labor and overhead;
(9) A discussion of the competitive situation of the domestic industry;
(10) Identification of competitors; analysis of the effect imports receiving duty-free treatment under the GSP have on competition and the business of the interest on whose behalf the request is made;
(11) Any relevant information relating to the factors listed in section 501 and 502(c) of Title V of the Trade Act of 1974, as amended (19 U.S.C. 2501, 502(c)) such as identification of tariff and nontariff barriers to sales in foreign markets;
(12) Any other relevant information including any additional information that may be requested by the GSP Subcommittee.

This information should be submitted with the request for each article that is the subject of the request, both for the party making the request, and to the extent possible, for the industry to which the request pertains.

(c) *Requests to designate new articles.* Information to be provided in petitions requesting the designation of new articles submitted by interested parties must include for the most recent three year period the following information for the beneficiary country on whose behalf the request is being made and, to the extent possible, other principal beneficiary country suppliers:

(1) Identification of the principal beneficiary country suppliers expected to benefit from proposed modification;
(2) Name and location of firms;
(3) Actual production figures (and estimated increase in GSP status is granted);
(4) Actual production and capacity utilization (and estimated increase if GSP status is granted);
(5) Employment figures, including numbers, type, wage rate, location and changes in any of these elements if GSP treatment is granted;
(6) Sales figures in terms of quantity, value and prices;
(7) Information on total exports including principal markets, the distribution of products, existing tariff preferences in such markets, total quantity, value and trends in exports;
(8) Information on exports to the United States in terms of quantity, value and price, as well as considerations which affect the competitiveness of these exports relative to exports to the United States by other beneficiary countries of a like or directly competitive product. Where possible, petitioners should provide information on the development of the industry in beneficiary countries and trends in their production and promotional activities;
(9) Analysis of cost including materials, labor and overhead;
(10) Profitability of firms producing the product;
(11) Information on unit prices and a statement of other considerations such as variations in quality or use that affect price competition;
(12) If the petition is submitted by a foreign government or a government controlled entity, it should include a statement of the manner in which the requested action would further the economic development of the country submitting the petition;
(13) If appropriate, an assessment of how the article would qualify under the GSP's 35 percent value-added requirements; and
(14) Any other relevant information, including any information that may be requested by the GSP Subcommittee.

Submissions made by persons in support of or opposition to a request made under this part should conform to the requirements for requests contained in § 2007.1(a) (3) and (4), and should supply such other relevant information as is available.

§ 2007.2 Action following receipt of requests for modifications in the list of eligible articles and for reviews of the GSP status of eligible beneficiary countries with respect to designation criteria.

(a)(1) If a request submitted pursuant to §2007.0(a) does not conform to the requirements set forth above, or if it is clear from available information that the request does not warrant further consideration, the request shall not be accepted for review. Upon written request, requests which are not accepted for review will be returned together with a written statement of the reasons why the request was not accepted.

(2) If a request submitted pursuant to §2007.0(b) does not conform to the requirements set forth above, or if the request does not provide sufficient information relevant to subsection 502(b) or 502(c) (19 U.S.C. 2642 (b) and (c)) to warrant review, or if it is clear from available information that the request does not fall within the criteria of subsection 502(b) or 502(c), the request shall not be accepted for review. Upon written request, requests which are not accepted for review will be returned together with a written statement of the reasons why the request was not accepted.

(b) Requests which conform to the requirements set forth above or for which petitioners have demonstrated a good faith effort to obtain information in order to meet the requirements set forth above, and for which further consideration is deemed warranted, shall be accepted for review.

(c) The TPSC shall announce in the FEDERAL REGISTER those requests which will be considered for full examination in the annual review and the deadlines for submissions made pursuant to the review, including the deadlines for submission of comments on the U.S. International Trade Commission (USITC) report in instances in which USITC advice is requested.

(d) In conducting annual reviews, the TPSC shall hold public hearings in order to provide the opportunity for public testimony on petitions and requests filed pursuant to paragraphs (a) and (b) of §2007.0.

(e) As appropriate, the USTR on behalf of the President will request advice from the USITC.

(f) The GSP Subcommittee of the TPSC shall conduct the first level of interagency consideration under this part, and shall submit the results of its review to the TPSC.

(g) The TPSC shall review the work of the GSP Subcommittee and shall conduct, as necessary, further reviews of requests submitted and accepted under this part. Unless subject to additional review, the TPSC shall prepare recommendations for the President on any modifications to the GSP under this part. The Chairman of the TPSC shall report the results of the TPSC's review to the U.S. Trade Representative who may convene the Trade Policy Review Group (TPRG) or the Trade Policy Committee (TPC) for further review of recommendations and other decisions as necessary. The U.S. Trade Representative, after receiving the advice of the TPSC, TPRG or TPC, shall make recommendations to the President on any modifications to the GSP under this part, including recommendations that no modifications be made.

(h) In considering whether to recommend: (1) That additional articles be designated as eligible for the GSP; (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; (3) that product coverage be otherwise modified; or (4) that changes be made with respect to the GSP status of eligible beneficiary countries, the GSP Subcommittee on behalf of the TPSC, TPRG, or TPC shall review the relevant information submitted in connection with or concerning a request under this part together with any other information which may be available relevant to the statutory prerequisites for Presidential action contained in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2465).

§ 2007.3 Timetable for reviews.

(a) *Annual review.* Beginning in calendar year 1986, reviews of pending requests shall be conducted at least once each year, according to the following schedule, unless otherwise specified by FEDERAL REGISTER notice:

(1) June 1, deadline for acceptance of petitions for review;

(2) July 15, FEDERAL REGISTER announcement of petitions accepted for review;

(3) September/October—public hearings and submission of written briefs and rebuttal materials;

(4) December/January—opportunity for public comment on USITC public reports;

(5) Results announced on April 1 will be implemented on July 1, the statutory effective date of modifications to the program. If the date specified is on or immediately follows a weekend or holiday, the effective date will be on the second working day following such weekend or holiday.

(b) Requests filed pursuant to paragraph (a) or (b) of §2007.0 which indicate the existence of unusual circumstances warranting an immediate review may be considered separately. Requests for such urgent consideration should contain a statement of reasons indicating why an expedited review is warranted.

(c) *General Review.* Section 504(c)(2) of Title V of the Trade Act of 1974 (19 U.S.C. 2464(c)(2)) requires that, not later than January 4, 1987 and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in sections 501 and 502(c) of Title V. The initiation and scheduling of such reviews as well as the timetable for submission of comments and statements will be announced in the FEDERAL REGISTER. The first general review was initiated on February 14, 1985 and will be completed by January 3, 1987.

The initiation of the review and deadlines for submission of comments and statements were announced in the FEDERAL REGISTER on February 14, 1985 (50 FR 6294).

§2007.4 Publication regarding requests.

(a) Whenever a request is received which conforms to these regulations or which is accepted pursuant to §2007.2 a statement of the fact that the request has been received, the subject matter of the request (including if appropriate, the TSUS item number or numbers and description of the article or articles covered by the request), and a request for public comment on the petitions received shall be published in the FEDERAL REGISTER.

(b) Upon the completion of a review and publication of any Presidential action modifying the GSP, a summary of the decisions made will be published in the FEDERAL REGISTER including:

(1) A list of actions taken in response to requests; and

(2) A list of requests which are pending.

(c) Whenever, following a review, there is to be no change in the status of an article with respect to the GSP in response to a request filed under §2007.0(a), the party submitting a request with respect to such articles may request an explanation of factors considered.

(d) Whenever, following a review, there is to be no change in the status of a beneficiary country with respect to the GSP in response to a request filed under §2007.0(b), the GSP Subcommittee will notify the party submitting the request in writing of the reasons why the requested action was not taken.

§2007.5 Written briefs and oral testimony.

Sections 2003.2 and 2003.4 of this chapter shall be applicable to the submission of any written briefs or requests to present oral testimony in connection with a review under this part. For the purposes of this section, the term ''interested party'' as used in §§2003.2 and 2003.4 shall be interpreted as including parties submitting petitions and requests pursuant to §2007.0(a) or (b) as well as any other person wishing to file written briefs or present oral testimony.

§2007.6 Information open to public inspection.

With exception of information subject to §2007.7 any person may, upon request inspect at the Office of the United States Trade Representative:

(a) Any written request, brief, or similar submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings which may be held pursuant to this part.

§ 2007.7 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if it is determined that the disclosure of such information is not required by law.

(b) A party requesting an exemption from public inspection for information submitted in writing shall clearly mark each page ''Submitted in Confidence'' at the top, and shall submit a nonconfidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if it is determined that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

§ 2007.8 Other reviews of article eligibilities.

(a) As soon after the beginning of each calendar year as relevant trade data for the preceding year are available, modifications of the GSP in accordance with section 504(c) of the Trade Act of 1974 as amended (19 U.S.C. 2464) will be considered.

(b) *General review.* Section 504(c)(2) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)(2)) requires that not later than January 4, 1987 and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in sections 501 and 502 of Title V. The purpose of these reviews is to determine which articles from which beneficiary countries are ''sufficiently competitive'' to warrant a reduced competitive need limit. Those articles determined to be ''sufficiently competitive'' will be subject to a new lower competitive need limit set at 25 percent of the value of total U.S imports of the article, or $25 million (this figure will be adjusted annually in accordance with nominal changes in U.S. gross national product (GNP), using 1984 as the base year). All other articles will continue to be subject to the original competitive need limits of 50 percent or $25 million (this figure is adjusted annually using 1974 as the base year).

(1) *Scope of general reviews.* In addition to an examination the competitiveness of specific articles from particular beneficiary countries, the general review will also include consideration of requests for competitive need limit waivers pursuant to section 504(c)(3)(A) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)) and requests for a determination of no domestic production under section 504(d)(1) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(d)(1)).

(2) *Factors to be considered.* In determining whether a beneficiary country should be subjected to the lower competitive need limits with respect to a particular article, the President shall consider the following factors contained in sections 501 and 502(c) of Title V:

(i) The effect such action will have on furthering the economic development of developing countries through expansion of their exports;

(ii) The extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(iii) The anticipated impact of such action on the United States producers of like or directly competitive products;

(iv) The extent of the beneficiary developing country's competitiveness with respect to eligible articles;

(v) The level of economic development of such country, including its per capita GNP, the living standard of its inhabitants and any other economic factors the President deems appropriate;

(vi) Whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

(vii) The extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(viii) The extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents, trademarks and copyrights;

(ix) The extent to which such country has taken action to—

(A) Reduce trade distorting investment practices and policies (including export performance requirements); and

(B) Reduce or eliminate barriers to trade in services; and

(x) Whether or not such country has taken or is taking steps to afford workers in that country (including any designated zone in that country) internationally recognized worker rights.

PART 2008 [RESERVED]

PART 2009—PROCEDURES FOR REPRESENTATIONS UNDER SECTION 422 OF THE TRADE AGREEMENTS ACT OF 1979

Sec.

2009.0 Submission of representation.
2009.1 Information required in representation.

§ 2009.0 Submission of representation.

(a) Any—(1) Part to the Agreement; or

(2) Foreign country that is not a Party to the Agreement but is found by the United States Trade Representative, (''Trade Representative'') to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement, may make a representation to the Trade Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement on Technical Barriers to Trade.

(b) All representations under section 422 of the Trade Agreements Act of 1979 (''section 422'') shall be addressed to the United States Trade Representative, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. Alternatively, such a representation may be made by diplomatic correspondence and may be accepted by the Trade Representative.

(c) ''The Agreement'', a ''Party to the Agreement'' and ''standards-related activity'' are defined as in section 451 of the Act (19 U.S.C. 2561).

(5 U.S.C. 301; 19 U.S.C. 2504(b), 2551–2554; E.O. 11846, 40 FR 14291; Reorganization Plan No. 3 of 1979, 44 FR 69173; E.O. 12188, 45 FR 989)

[47 FR 50207, Nov. 5, 1982]

§ 2009.1 Information required in representation.

(a) Each representation submitted under section 422 should state clearly on the first page that the representation is a request for action with respect to the obligations of the United States under the Agreement, and should contain the following information:

(1) The foreign country making the representation, the division of the foreign country's government representing that country's interest, the person(s) within the division who is (are) coordinating the foreign country's representation.

(2) A description of the standards-related activity at issues, including, whenever possible, copies of the standards-related activity's provisions.

(3) Identification of the foreign goods or services affected by the standards-related activity at issue.

(4) A statement of how the standards-related activity concerned is alleged to violate the obligations of the United States under the Agreement. This statement shoud indicate with particularity which such obligations are alleged to be violated.

(5) Indication as to whether the foreign country has officially petitioned, filed or complained for relief concerning the same subject matter as this representation to any international forum.

(b) Each representation submitted under section 422 of the Act must contain information sufficient to provide a reasonable indication that the standards-related activity concerned is having a significant trade effect, including (but not limited to) the volume of trade in the goods concerned.

(c) Representations should be submitted in 10 copies.

(5 U.S.C. 301; 19 U.S.C. 2504(b), 2551–2554; E.O. 11846, 40 FR 14291; Reorganization Plan No. 3 of 1979, 44 FR 69173; E.O. 12188, 45 FR 989)

[47 FR 50207, Nov. 5, 1982]

PART 2011—ALLOCATION OF TARIFF-RATE QUOTA ON IMPORTED SUGARS, SYRUPS AND MOLASSES

Subpart A—Certificates of Quota Eligibility

Sec.
2011.101 General.
2011.102 Definitions.
2011.103 Entry into the United States.
2011.104 Waiver.
2011.105 Form and applicability of certificate.
2011.106 Agreements with foreign countries.
2011.107 Issuance of certificates to foreign countries.
2011.108 Execution and issuance of certificates by the certifying authority.
2011.109 Suspension or revocation of individual certificates.
2011.110 Suspension of certificate system.

Subpart B—Specialty Sugar

2011.201 General.
2011.202 Definitions.
2011.203 Issuance of specialty sugar certificates.
2011.204 Entry of specialty sugars.
2011.205 Application for a specialty sugar certificate.
2011.206 Suspension or revocation of individual certificates.
2011.207 Suspension of the certificate system.
2011.208 Paperwork Reduction Act assigned number.

AUTHORITY: 19 U.S.C. 3601, Presidential Proclamation No. 6763, Additional U.S. note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

SOURCE: 55 FR 40648, Oct. 4, 1990, unless otherwise noted.

Subpart A—Certificate of Quota Eligibility

§ 2011.101 General.

This subpart sets forth the terms and conditions under which certificates of quota eligibility will be issued to foreign countries that have been allocated a share of the U.S. sugar tariff-rate quota. Except as otherwise provided in this subpart, sugar imported from a foreign country may not be entered unless such sugar is accompanied by a certificate of quota eligibility. This subpart applies only to the ability to enter sugar at the in-quota tariff rates of the quota (subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS). Nothing in this subpart shall affect the ability to enter articles at the over-quota tariff rate (subheadings 1701.11.50, 1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20, 2106.90.46).

[61 FR 26784, May 29, 1996]

§ 2011.102 Definitions.

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Additional U.S. Note 5* means additional U.S. Note 5 to chapter 17 of the HTS, including any amendments thereto.

(b) *Appropriate customs official* means the district or area Director of the U.S. Customs Service, his or her designee, or any other customs officer of similar authority and responsibility for the customs district in which the port of entry is located.

(c) *Certificate of quota eligibility* or *certificate* means a certificate issued by the Secretary to a foreign country that, when duly executed and issued by the certifying authority of such foreign country, authorizes the entry into the United States of sugar produced in such country.

(d) *Certifying authority* means a person designated by the government of a foreign country who is authorized to execute and issue certificates of quota eligibility on behalf of such foreign country.

(e) *Enter* or *Entry* means to enter or withdraw from warehouse, or the entry or withdrawal from warehouse, for consumption in the customs territory of the United States.

(f) *Foreign country* means, for any quota period, any foreign country or area with which an agreement or arrangement described in section 2011.106 is in effect for that quota period and to which the United States Trade Representative has allocated a particular quantity of the quota.

(g) *HTS* means the Harmonized Tariff Schedule of the United States.

(h) *Licensing Authority* means the Team Leader, Import Quota Programs, Import Policies and Trade Analysis Division, Foreign Agricultural Service, U.S. Department of Agriculture, or his or her designee.

(i) *Person* means an individual, partnership, corporation, association, estate, trust, or other legal entity, and, wherever applicable, any unit, instrumentality, or agency of a government, domestic or foreign.

(j) *Quota* means the tariff-rate quota on imports of sugar provided in additional U.S. Note 5.

(k) *Quota period* means the period October 1 of a calendar year through September 30 of the following calendar year.

(l) *Raw value* has the meaning provided in additional U.S. Note 5.

(m) *Secretary* means the Secretary of Agriculture or any officer or employee of the Department of Agriculture to whom the Secretary has delegated the authority or to whom the authority hereafter may be delegated to act in the Secretary's place.

(n) *Sugar* means sugars, syrups, and molasses described in subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS, but does not include for any foreign country for any quota period specialty sugars as defined in subpart B of this part if a quantity of the quota for that quota period has been reserved for specialty sugars and an amount of that quota quantity has been allocated to that country.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26784, May 29, 1996]

§ 2011.103 Entry into the United States.

(a) *General.* Except as otherwise provided in §§ 2011.104, 2011.109, and 2011.110, no sugar that is the product of a foreign country may be permitted entry unless at the time of entry the person entering such sugar presents to the appropriate customs official a valid and properly executed certificate of quota eligibility for such sugar.

(b) *Determinations of weight.* (1) For purposes of determining the amount of sugar which may be entered into the United States under a certificate of quota eligibility, sugar shall be entered on the basis of the actual weight of the sugar, as determined by the appropriate customs official. No adjustments in weight shall be made for the differences in polarization.

(2) The actual weight of the sugar entered into the United States may not exceed the weight specified on the certificate of quota eligibility by more than five percent. Such tolerance may be modified by the Secretary if the Secretary finds that such modification is appropriate to carry out the provisions of this subpart. Notice of any such modification shall be published by the Secretary in the FEDERAL REGISTER.

(3) This paragraph (b) shall not affect the manner in which the amount of sugar (raw value) entered is determined fo purposes of administering the quota.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26784, May 29, 1996]

§ 2011.104 Waiver.

(a) *General.* The Secretary may waive, with respect to individual shipments, any or all of the requirements of this subpart if he or she determines that a waiver will not impair the proper operation of the sugar quota system, that it will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5, and that such waiver is justified by unusual, unavoidable, or otherwise appropriate circumstances. Such circumstances include, but are not limited to, loss or destruction of the certificate, unavoidable delays in transmittal of the certificate to the port of entry, and clerical errors in the execution or issuance of the certificate.

(b) *Request for waiver.* The request for a waiver must be made to the Secretary in writing. The request need not follow any specific format. However, the request should set forth in detail all pertinent information relating to the shipment in question and the basis upon which the waiver should be granted.

(c) *Issuance of waiver.* The Secretary shall notify, in writing, the applicant for the waiver and the Secretary of the Treasury of any waiver granted under

the authority of this section. The Secretary may attach any terms, conditions or limitations to the waiver which he or she determines are appropriate.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26784, May 29, 1996]

§ 2011.105 Form and applicability of certificate.

(a) *Contents.* Each certificate shall be numbered and identified by the foreign country. The certificate shall state that the quantity specified on the certificate is eligible to be entered into the United States during the applicable quota period. The certificate shall provide spaces into which the following information must be inserted by the certifying authority of the foreign country: Quantity eligible to be entered; name of shipper; name of vessel; and port of loading. The following information, if known, may also be specified on the certificate by the certifying authority: name and address of consignee; expected date of departure; expected date of arrival in U.S.; and expected port(s) of arrival in the United States. The certificate shall also provide an area where the certifying authority of the foreign country shall affix a seal or other form of authentication and sign and date the certificate.

(b) *Other limitations.* The Secretary may attach such other terms, limitations, or conditions to individual certificates of quota eligibility as he or she determines are appropriate to carry out the purposes of this subpart, provided that such other terms, limitations, or conditions will not have the effect of modifying the allocation of sugar made pursaunt to the provisions of subdivision (b) of additional U.S. Note 5. Such terms, limitations, or conditions may include, but are not limited to, maximum quantities per certificate and a specified period of time during which the certificate shall be valid. In no event shall the maximum quantity per certificate exceed 10,000 short tons.

(c) *Applicability of the certificate.* The certificate of quota eligibility shall only be applicable to the shipment of sugar for which it was executed and issued by the certifying authority.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26784, May 29, 1996]

§ 2011.106 Agreements with foreign countries.

Agreements or arrangements providing for the certificate system may be entered into by the United States Government with the governments of foreign countries. Such agreements or arrangements may provide for the designation of certifying authorities, the designation of seals or other forms of authentication, the transmittal and exchange of pertinent information, and other appropriate means or forms of cooperation.

§ 2011.107 Issuance of certificates to foreign countries.

(a) *Amount and timing.* The Secretary may issue certificates of quota eligibility to foreign countries for any quota period in such amounts and at such times as he or she determines are appropriate to enable the foreign country to fill its quota allocation for such quota period in a reasonable manner, taking into account traditional shipping patterns, harvesting period, U.S. import requirements, and other relevant factors.

(b) *Adjustments.* The Secretary may adjust the amount of certificates issued to a certifying authority for any quota period, provided that such adjustment will not have the effect of modifying the allocation of sugar made pursaunt to the provisions of subdivision (b) of additional U.S. Note 5 to reflect:

(1) The amount of sugar entered into warehouse during previous quota periods;

(2) Anticipated differences in actual weight and weight determined on a raw value basis; and

(3) Other relevant factors.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26784, May 29, 1996]

§ 2011.108 Execution and issuance of certificates by the certifying authority.

(a) *Execution.* The certificate of quota eligibility shall be executed by the certifying authority by:

(1) Entering on the certificate the information required under § 2011.105 of this subpart; and

(2) Affixing a seal or other form of authentication to the certificate.

(b) *Issuance.* The executed certificate shall be issued by the certifying authority to the shipper or consignee specified on the certificate.

(c) *Modifications by the certifying authority.* The terms and conditions set forth in the certificate may not be modified, added to, or deleted by the certifying authority without the prior written approval of the Secretary.

(d) A certificate shall not be considered valid unless it is executed and issued in accordance with this section.

§ 2011.109 Suspension or revocation of individual certificates.

(a) *Suspension or revocation.* The Secretary may suspend, revoke, modify or add further limitations to any certificate if the Secretary determines that such action or actions is necessary to ensure the effective operation of the import quota system for sugar and that such suspension, revocation, modification or addition of further limitations will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5.

(b) *Reinstatement.* The Secretary may reinstate or reissue any certificate which was previously suspended, revoked, modified, or otherwise limited under the authority of this section.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26784, May 29, 1996]

§ 2011.110 Suspension of certificate system.

(a) *Suspension.* The U.S. Trade Representative may suspend the provisions of this subpart whenever he or she determines that such action gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. Notice of such suspension and the effective date thereof shall be published in the FEDERAL REGISTER.

(b) *Reinstatement.* The U.S. Trade Representative may at any time reinstate the operation of this subpart if he or she finds that the conditions set forth in paragraph (a) of this section no longer apply. Notice of such reinstatement and the effective date thereof shall be published in the FEDERAL REGISTER.

(c) *Transitional provisions.* In the case of any suspension or reinstatement of the certificate system established by this subpart, the Secretary, in consultation with the United States Trade Representative, may prescribe such additional guidelines, instructions, and limitations which shall be applied or implemented by appropriate customs officials in order to ensure an orderly transition.

Subpart B—Specialty Sugar

§ 2011.201 General.

This subpart sets forth the terms and conditions under which certificates will be issued to U.S. importers for importing specialty sugars from specialty sugar source countries. Specialty sugars imported from specialty sugar source countries may not be entered unless accompanied by a specialty sugar certificate. This subpart applies only to the ability to enter specialty sugar at the in-quota tariff rates of the quota (subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS). Nothing in this subpart shall affect the ability to enter articles at the over-quota tariff rate (subheadings 1701.11.50, 1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20, 2106.90.46).

[61 FR 26785, May 29, 1996]

§ 2011.202 Definitions.

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Appropriate Customs official* means the District or Area Director of Customs, his or her designee, or any other Customs officer of similar authority and responsibility for the Customs district in which the port of entry is located.

(b) *Certificate* means a specialty sugar certificate issued by the Certifying Authority permitting the entry of specialty sugar.

(c) *Certifying Authority* means the Team Leader, Import Quota Programs, Foreign Agricultural Service, U.S. Department of Agriculture, or his or her designee.

(d) *Date of entry* means the date on which the appropriate Customs entry form is properly executed and deposited, together with any estimated duties and special import fees and any related documents required by law or regulation to be filed with such form at the time of entry with the appropriate Customs Officer.

(e) *Importer* means any person in the United States importing specialty sugar into the United States.

(f) *Person* means any individual, partnership, corporation, association, estate, trust, or other legal entity, and, wherever applicable, any unit, instrumentality, or agency, of a government, domestic or foreign.

(g) *Quota* means the tariff-rate quota on imports of sugar provided in additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

(h) *Secretary* means the Secretary of Agriculture or any officer of employee of the Department of Agriculture to whom the Secretary has delegated the authority or to whom the authority hereafter may be delegated to act in his place.

(i) *Specialty sugar* means brown slab sugar (also known as slab sugar candy), pearl sugar (also known as perl sugar, perle sugar, and nibs sugar), vanilla sugar, rock candy, demerara sugar, dragees for cooking and baking, fondant (a creamy blend of sugar and glucose), ti light sugar (99.2% sugar with the residual comprised of the artificial sweeteners aspartame and acesulfame K), caster sugar, golden syrup, ferdiana granella grossa, golden granulated sugar, muscovado, molasses sugar, sugar decorations, sugar cubes, and other sugars, as determined by the United States Trade Representative, that would be considered specialty sugar products within the normal commerce of the United States, all of which in addition:

(1) Are sugars, syrups, or molasses described in subheading 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, or 2106.90.44 of the Harmonized Tariff Schedule of the United States,

(2) Are the product of a specialty sugar source country, and

(j) *Specialty sugar source country* means any country or area to which the United States Trade Representative has allocated an amount of the quantity reserved for the importation of specialty sugars under additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26785, May 29, 1996]

§ 2011.203 Issuance of specialty sugar certificates.

(a) Specialty sugars imported into the United States from specialty sugar source countries may be entered only if such specialty sugars are accompanied by a certificate issued by the Certifying Authority.

(b) A certificate may be issued to an importer who complies with the provisions of this part. The certificate may contain such conditions, limitations or restrictions as the Certifying Authority, in his discretion, deems necessary. The Certifying Authority will issue a certificate if sufficient evidence has been provided to permit the Certifying Authority to make a reasonable determination that the sugar proposed to be imported under the certificate fits the definition of specialty sugars in this subpart.

(c) Subject to quota availability, an unlimited number of complying shipments may enter under a given certificate and a given certificate may cover more than one type of specialty sugar. Issuance of a certificate does not guarantee the entry of any specific shipment of specialty sugar, but only permits entry of such sugar if the amount allocated to the specialty sugar source country is not already filled.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26785, May 29, 1996]

§ 2011.204 Entry of specialty sugars.

An importer or the importer's agent must present a certificate to the appropriate customs official at the date of entry of specialty sugars. Entry of specialty sugars shall be allowed only in

conformity with the description of sugars and other conditions, if any, stated in the certificate.

[61 FR 26785, May 29, 1996]

§ 2011.205 Application for a specialty sugar certificate.

Applicants for certificates for the import of specialty sugars must apply in writing to the Certifying Authority. Such letter of application shall contain the following information:

(a) The name and address of the applicant;

(b) A statement of the anticipated quantity of specialty sugars to be imported, if known;

(c) The appropriate six digit HTS subheading number;

(d) A description of the specialty sugar the importer expects to import during the period of the certificate, including the manufacturer's or exporter's usual trade name or designation and use of such specialty sugar, and the importer's use of such specialty sugar;

(e) Sufficient evidence to permit the Certifying Authority to make a reasonable determination that such sugars are specialty sugars within the definition of specialty sugars in this subpart;

(f) The name of the anticipated consumer of the specialty sugars, if known at time of application; and

(g) The anticipated date of entry, if known at time of application.

The Certifying Authority may waive any provision of this section for good cause if her or she determines that such a waiver will not adversely affect the implementation of this subpart.

§ 2011.206 Suspension or revocation of individual certificates.

(a) *Suspension or revocation.* The Certifying Authority may suspend, revoke, modify or add limitations to any certificate which has been issued if he or she determines that such action or actions is necessary to ensure the effective operation of the quota for specialty sugars or determines that the importer has failed to comply with the requirements of this subpart.

(b) *Reinstatement.* The Certifying Authority may reinstate or restore any certificate which was previously suspended, revoked, modified or otherwise limited under the authority of this section.

(c) The determination of the Certifying Authority under paragraph (a) that the importer has failed to comply with the requirements of this subpart may be appealed to the Director, Import Policy and Trade Analysis Division, Foreign Agricultural Service (FAS), U.S. Department of Agriculture, Washington, DC 20250, within 30 days from the date of suspension or revocation. The request for reconsideration shall be presented in writing and shall specifically state the reason or reasons why such determination should not stand. The Director shall provide such person with an opportunity for an informal hearing on such matter. A further appeal may be made to the Administrator, FAS, U.S. Department of Agriculture, Washington, DC 20250, within five working days of receipt of the notification of the Director's decision. The Certifying Authority may take action under paragraph (b) during the pendency of any appeal.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26785, May 29, 1996]

§ 2011.207 Suspension of the certificate system.

(a) *Suspension.* The U.S. Trade Representative may suspend the provisions of this subpart whenever he or she determines that the quota is no longer in force or that this subpart is no longer necessary to implement the quota. Notice of such suspension and the effective date thereof shall be published in the FEDERAL REGISTER.

(b) *Reinstatement.* The U.S. Trade Representative may at any time reinstate the operation of this subpart if he or she finds that the conditions set forth in paragraph (a) of this section no longer apply. Notice of such reinstatement and the effective date thereof shall be published in the FEDERAL REGISTER.

(c) *Transitional provisions.* In the case of any suspension or reinstatement of the certificate system established by this subpart, the Certifying Authority may prescribe such additional guidelines, instructions, and limitations which shall be applied or implemented

by appropriate Customs officials in order to ensure an orderly transition.

[55 FR 40648, Oct. 4, 1990, as amended at 61 FR 26785, May 29, 1996]

§ 2011.208 Paperwork Reduction Act assigned number.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the regulations in this subpart in accordance with 44 U.S.C. Chapter 25 and OMB control number 0551–0014 has been assigned with corresponding clearance effective through April 30, 1997.

[61 FR 26785, May 29, 1996]

PART 2012—IMPLEMENTATION OF TARIFF-RATE QUOTAS FOR BEEF

Sec.
2012.1 Purpose.
2012.2 Definitions.
2012.3 Export certificates.

AUTHORITY: Proclamation No. 6763; sec. 404, Pub. L. 103–465, 108 Stat. 4809.

SOURCE: 60 FR 15230, Mar. 23, 1995, unless otherwise noted.

§ 2012.1 Purpose.

The purpose of this part is to provide for the implementation of the tariff-rate quota for beef established as a result of the Uruguay Round Agreements, approved by the Congress in section 101 of the Uruguay Round Agreements Act (Pub. L. 103–465). In particular, this part provides for the administration of export certificates where a country that has an allocation of the in-quota quantity under the tariff-rate quota has chosen to use export certificates.

§ 2012.2 Definitions.

Unless the context otherwise requires, for the purpose of this subpart, the following terms shall have the meanings assigned below.

(a) *Beef* means any article classified under any of the subheadings of the HTS specified in additional U.S. note 3 to chapter 2 of the HTS.

(b) *Allocated country* means a country to which an allocation of a particular quantity of beef has been assigned under additional U.S. note 3 to chapter 2 of the HTS.

(c) *Enter* means to enter, or withdraw from warehouse, for consumption.

(d) *HTS* means the Harmonized Tariff Schedule of the United States.

(e) *Participating country* means any allocated country that USTR has determined is, and notified the U.S. Customs Service as being eligible to use export certificates.

(f) *USTR* means the United States Trade Representative or the designee of the United States Trade Representative.

§ 2012.3 Export certificates.

(a) Beef may only be entered as a product of a participating country if the importer makes a declaration to the Customs Service, in the form and manner determined by the Customs Service, that a valid export certificate is in effect with respect to the beef.

(b) To be valid, an export certificate shall:

(1) Be issued by or under the supervision of the government of the participating country;

(2) Specify the name of the exporter, the product description and quantity, and the calendar year for which the export certificate is in effect;

(3) Be distinct and uniquely identifiable; and

(4) Be used in the calendar year for which it is in effect.

PART 2014—IMPLEMENTATION OF TARIFF-RATE QUOTA FOR IMPORTS OF LAMB MEAT

Sec.
2014.1 Purpose.
2014.2 Definitions.
2014.3 Export certificates.

AUTHORITY: 19 U.S.C. 2253(g); Proclamation 7208, 64 FR 37387, July 9, 1999; Proclamation 7214, 64 FR 42265, Aug. 4, 1999.

SOURCE: 65 FR 40049, June 29, 2000, unless otherwise noted.

§ 2014.1 Purpose.

The purpose of this part is to provide for the implementation of the tariff-rate quota for imports of lamb meat established in Proclamation 7208 (64 FR 37387) (July 9, 1999) and modified in Proclamation 7214 (64 FR 42265) (Aug. 4, 1999). In particular, this part provides

for the administration of export certificates where a country that has an allocation of the in-quota quantity under the tariff-rate quota has chosen to use export certificates.

§ 2014.2 Definitions.

Unless the context otherwise requires, for the purpose of this part, the following terms shall have the meanings assigned as follows:

(a) *Lamb meat* means fresh, chilled, or frozen lamb meat, provided for in subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20 of the HTS.

(b) *In-quota lamb meat* means lamb meat that is entered under the in-quota rate of duty.

(c) *Participating country* means any country to which an allocation of a particular quantity of lamb meat has been assigned under Proclamation 7208 that USTR has determined is, and has notified to the United States Customs Service as being, eligible to use export certificates.

(d) *Enter or Entered* means to enter or withdraw from warehouse for consumption.

(e) *HTS* means the Harmonized Tariff schedule of the United States.

(f) *USTR* means the United States Trade Representative or the designee of the United States Trade Representative.

(g) *Quota Year* means the period between July 22, 1999 and July 21, 2000, inclusive, and such subsequent periods as set forth in Presidential Proclamations 7208 and 7214 during which lamb meat is exported.

§ 2014.3 Export certificates.

(a) In-quota lamb meat may only be entered as a product of a participating country if the United States importer makes a declaration to the United States Customs Service, in the form and manner determined by the United States Customs Service, that a valid export certificate is in effect with respect to that lamb meat product.

(b) To be valid, an export certificate shall:

(1) Be issued by or under the supervision of the government of the participating country;

(2) Specify the name of the exporter, the product description and quantity, and the quota year for which the export certificate is in effect;

(3) Be distinct and uniquely identifiable; and

(4) Be used for the quota year for which it is in effect.

PART 2015—IMPLEMENTATION OF TARIFF-RATE QUOTAS FOR SUGAR-CONTAINING PRODUCTS

Sec.

2015.1 Purpose.
2015.2 Definitions.
2015.3 Export certificates.

AUTHORITY: Sec. 404, Pub. L. 103–465, 108 Stat. 4809; Proclamation 6763, 3 CFR, 1994 Comp., p. 147; Proclamation 7235, 64 FR 55611, October 13, 1999.

SOURCE: 64 FR 67153, Dec. 1, 1999, unless otherwise noted.

§ 2015.1 Purpose.

The purpose of this part is to provide for the implementation of the tariff-rate quota for sugar-containing products established as a result of the Uruguay Round Agreements, approved by the Congress in section 101 of the Uruguay Round Agreements Act (Pub. L. 103–465). In particular, this party provides for the administration of export certificates where a country that has an allocation of the in-quota quantity under a tariff-rate quota has chosen to use export certificates.

§ 2015.2 Definitions.

For the purpose of this subpart, the following terms shall have the following meanings:

(a) *In-quota sugar-containing products* means any article classified under any of the subheadings of the HTS specified in additional U.S. note 8 to chapter 17 of the HTS that is entered under the in-quota rate of duty.

(b) *Allocated country* means a country to which an allocation of a particular quantity of sugar-containing products has been assigned.

(c) *Enter* or *Entered* means to enter, or withdraw from warehouse, for consumption.

(d) *HTS* means the Harmonized Tariff Schedule of the United States.

(e) *Participating Country* means any allocated country that USTR has determined is, and has notified the U.S. Customs Service as being, eligible to use export certificates.

(f) *USTR* means the United States Trade Representative or the designee of the United States Trade Representative.

§ 2015.3 Export certificates.

(a) To claim the in-quota rate of duty on sugar-containing products of a participating country, the United States importer must make a declaration to the United States Customs Service, in the form and manner determined by the United States Customs Service, that a valid export certificate is in effect with respect to those sugar-containing products.

(b) To be valid, an export certificate shall:

(1) Be issued by or under the supervision of the government of the participating country;

(2) Specify the name of the party to whom the certificate is issued, the product description and quantity, shipment date, and the quota year for which the export certificate is in effect;

(3) Have a distinct and uniquely identifiable number; and

(4) Be used in the quota year for which it is in effect.

PART 2016—PROCEDURES TO PETITION FOR WITHDRAWAL OR SUSPENSION OF COUNTRY ELIGIBILITY OR DUTY-FREE TREATMENT UNDER THE ANDEAN TRADE PREFERENCE ACT (ATPA), AS AMENDED

Sec.

2016.0 Requests for reviews.
2016.1 Action following receipt of petitions.
2016.2 Timetable for reviews.
2016.3 Publication regarding requests.
2016.4 Information open to public inspection.
2016.5 Information exempt from public inspection.

AUTHORITY: 19 U.S.C. 3201, *et seq.;* sec. 3103(d), Pub. L. 107–210; 116 Stat. 933; E.O. 13277, 67 FR 70303.

SOURCE: 68 FR 43924, July 25, 2003, unless otherwise noted.

§ 2016.0 Requests for reviews.

(a) Any person may submit a request (hereinafter ''petition'') that the designation of a country as an Andean Trade Preference Act (ATPA) beneficiary country be withdrawn or suspended, or the application of preferential treatment under the ATPA to any article of any ATPA beneficiary country be withdrawn, suspended, or limited. Such petitions should: include the name of the person or the group requesting the review; identify the ATPA beneficiary country that would be subject to the review; if the petition is requesting that the preferential treatment of an article or articles be withdrawn, suspended, or limited, identify such article or articles with particularity and explain why such article or articles were selected; indicate the specific section 203(c) or (d) (19 U.S.C. 3202(c), (d)) eligibility criterion that the petitioner believes warrant(s) review; and include all available supporting information. The Andean Subcommittee of the Trade Policy Staff Committee (TPSC) may request other information. If the subject matter of the petition was reviewed pursuant to a previous petition, the petitioner should consider providing the Andean Subcommittee with any new information related to the issue.

(b) Any person may submit a petition that the designation of a country as an Andean Trade Promotion and Drug Eradication At (ATPDEA) beneficiary country be withdrawn or suspended, or the application of preferential treatment to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), (4)) be withdrawn, suspended, or limited. Such petitions should: Include the name of the person or the group requesting the review; identify the ATPDEA beneficiary country that would be subject to the review; if the petition is requesting that the preferential treatment of an article or articles be withdrawn, suspended, or limited, identify such article or articles with particularity and explain why such article or articles were selected; indicate the specific section 204(b)(6)(B) (19 U.S.C. 3203(b)(6)(B)) eligibility criterion or criteria that the petition believes warrant(s) review; and include

all available supporting information. The Andean Subcommittee may request other information. If the subject matter of the petition was reviewed pursuant to a previous petition, the petitioner should consider providing the Andean Subcommittee with any new information related to the issue.

(c) All petitions and other submissions should be submitted in accordance with the schedule (*see* § 2016.2) and requirements for submission that The Office of the United States Trade Representative (USTR) will publish annually in the FEDERAL REGISTER in advance of each review. Foreign governments may make submission in the form of diplomatic correspondence and should observe the deadlines for each annual review published in the FEDERAL REGISTER.

(d) The TPSC may at any time, on its own motion, initiate a review to determine whether: the designation of a country as an ATPA beneficiary country should be withdrawn or suspended; the application of preferential treatment under the ATPA to any article of any ATPA beneficiary country should be withdrawn, suspended, or limited; the designation of a country as an ATPDEA beneficiary country should be withdrawn or suspended; or the application of preferential treatment to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), or (4) should be withdrawn, suspended, or limited.

(e) Petitions requesting the action described in paragraph (a) or (b) of this section that indicate the existence of exceptional circumstances warranting an immediate review may be considerd outside of the schedule for the annual review announced in the FEDERAL REGISTER. Requests for such urgent consideration should contain a statement of reasons indicating why an expedited review is warranted.

§ 2016.1 Action following receipt of petitions.

(a) USTR shall publish in the FEDERAL REGISTER a list of petitions filed in response to the announcement of the annual review, including the subject matter of the request and, where appropriate, the description of the article or articles covered by the request.

(b) Thereafter, the Andean Subcommittee shall conduct a preliminary review of the petitions, and shall submit the results of its preliminary review to the TPSC. The TPSC shall review the work of the Andean Subcommittee and shall conduct further review as necessary. The TPSC shall prepare recommendations for the President on any proposed action to modify the ATPA. The Chairman of the TPSC may, as appropriate, convene the Trade Policy Review Group (TPRG) to review the matter, and thereafter refer the matter to the USTR for Cabinet-level review as necessary.

(c) The USTR, after receiving the advice of the TPSC, TPRG, or Cabinet-level officials, shall make recommendations to the President on any proposed action to modify the application of the ATPA's benefits to countries or articles. The President (or if that function is delegated to the USTR, the USTR) shall announce in the FEDERAL REGISTER any such action he proposes to take. The USTR shall announce in the FEDERAL REGISTER notice of the results of the preliminary review, together with a schedule for receiving public input regarding such proposed action consistent with section 203(e) of the ATPA, as amended (19 U.S.C. 3202(e)).

(1) The schedule shall include the deadline and guidelines for any person to submit written comments supporting, opposing or otherwise commenting on any proposed action.

(2) The schedule shall also include the time and place of the public hearing, as well as the deadline and guidelines for submitting requests to present oral testimony.

(d) After receiving and considering public input, the Andean Subcommittee shall submit the results of the final review to the TPSC. The TPSC shall review the work of the Andean Subcommittee and shall conduct further review as necessary. The TPSC shall prepare recommendations for the President on any proposed action to modify the application of benefits under the ATPA to countries or articles. The Chairman of the TPSC may, as appropriate, convene the TPRG to review the matter, and thereafter refer the matter to the USTR for Cabinet-

level review as necessary. The USTR, after receiving the advice of the TPSC, TPRG, or Cabinet-level officials, shall make recommendations to the President on any proposed action to modify the application of the ATPA's benefits to countries or articles, including recommendations that no action be taken. The USTR shall also forward to the President any documentation necessary to implement the recommended proposed action or actions to modify the application of the ATPA's benefits to countries or articles.

(e) In considering whether to recommend any proposed action to modify the ATPA, the Andean Subcommittee, on behalf of the TPSC, TPRG, or Cabinet-level officials, shall review all relevant information submitted in connection with a petition or otherwise available.

§ 2016.2 Timetable for reviews.

Beginning in calendar year 2003, reviews of pending petitions shall be conducted at least once each year, according to the following schedule, unless otherwise specified by FEDERAL REGISTER notice:

(a) September 15: Deadline for submission of petitions for review;

(b) On or about December 1: Announcement published in the FEDERAL REGISTER of the results of preliminary review;

(c) Decemeber/January: Written comments submitted and a public hearing held on any proposed actions;

(d) February/March: Preparation of recommendations to the President, Presidential decision, and implementation of Presidential decision.

§ 2016.3 Publication regarding requests.

Following the Presidential decision and where required, the publication of a Presidential proclamation modifying the application of benefits under the ATPA to countries or articles in the FEDERAL REGISTER, USTR will publish a summary of the decisions made in the FEDERAL REGISTER, including:

(a) For petitions on which decisions were made, a description of the outcome of the review; and

(b) A list of petitions on which no decision was made, and thus which are pending further review.

§ 2016.4 Information open to public inspection.

With the exception of information subject to § 2016.5, any person may, on request, inspect in the USTR Reading Room:

(a) Any written petition, comments, or other submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings held pursuant to this part.

§ 2016.5 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if USTR determines that the disclosure of such information is not required by law.

(b) A person requesting an exemption from public inspection for information submitted in writing shall clearly mark each page ''BUSINESS CONFIDENTIAL'' at the top, and shall submit a non-confidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if USTR determines that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

PART 2017—PETITION PROCESS TO REVIEW ELIGIBILITY OF COUNTRIES UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT (AGOA)

Sec.

2017.0 Definitions.
2017.1 Petition for review.
2017.2 Action following receipt of a petition.
2017.3 Publication regarding petitions.
2017.4 Public inspection.
2017.5 Expiration.

AUTHORITY: 19 U.S.C. 2466a *et seq.;* Pub. L. 114–27, sec. 105(d)(3), 129 Stat. 366–367, June

29, 2015; E.O. 13720 of Feb. 26, 2016, 81 FR 11087, Mar. 2, 2016

SOURCE: 81 FR 14717, Mar. 18, 2016, unless otherwise noted.

§ 2017.0 Definitions.

For purposes of this part:

AGOA means the African Growth and Opportunity Act, as amended (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) (19 U.S.C. 2466a *et seq.*).

TPC means the Trade Policy Committee.

TPRG means the Trade Policy Review Group.

TPSC means the Trade Policy Staff Committee.

USTR means the Office of the United States Trade Representative.

§ 2017.1 Petition for review.

(a) Any person may submit a petition to USTR in accordance with this section with respect to the compliance of any country listed in section 107 of the AGOA (19 U.S.C. 3706), with the eligibility requirements set forth in section 104 of the AGOA (19 U.S.C. 3703) and the eligibility criteria set forth in section 502 of the Trade Act of 1974 (19 U.S.C. 2462).

(b) A petition must:

(1) Identify the sub-Saharan African country that would be subject to the review;

(2) Indicate the specific eligibility requirement or criterion that the petitioner believes warrants review; and

(3) Include all available supporting arguments and information to explain why review is warranted.

(c) A petition requesting an out-of-cycle review under section 111(d)(4) of the AGOA (19 U.S.C. 2466a(d)(4)) must contain a statement indicating the existence of exceptional circumstances warranting the out-of-cycle review.

(d) The TPSC may request additional information.

§ 2017.2 Action following receipt of a petition.

(a) USTR will consider a petition received in accordance with the schedule published in the FEDERAL REGISTER for the annual (normal cycle) AGOA review process under section 111 of the AGOA (19 U.S.C. 2466a) in conjunction with that annual review.

(b) Except as provided in paragraph (c) of this section, USTR will consider a petition received at any time other than the time described in paragraph (a) of this section, in accordance with the schedule published in the FEDERAL REGISTER for the next annual (normal cycle) AGOA review process.

(c)(1) If a petition received at any time other than the time described in paragraph (a), requests an out-of-cycle review under section 111(d)(4) of the AGOA (19 U.S.C. 2466a(d)(4)), within 60 days:

(i) The AGOA Implementation Subcommittee will review the petition and report to the TPSC whether there are exceptional circumstances warranting an out-of-cycle review;

(ii) The TPSC will conduct further review as necessary;

(iii) The TPSC Chair will report the results of the TPSC review to the U.S. Trade Representative; and

(iv) The U.S. Trade Representative may convene the TPRG or the TPC for further review of the TPSC recommendations and other decisions.

(2) If the U.S. Trade Representative finds that there are exceptional circumstances warranting an out-of-cycle review, within 30 days of that determination USTR will announce a schedule for the review in the FEDERAL REGISTER. The schedule will include the deadline and guidelines for any party to submit written comments supporting, opposing or otherwise commenting on any proposed action.

(3) For any out-of-cycle review initiated under this paragraph (c), the AGOA Implementation Subcommittee will consider public input received by the applicable deadline and any other relevant information and report to the TPSC. The TPSC will conduct further review as necessary and prepare recommendations for the U.S. Trade Representative. The U.S. Trade Representative may convene the TPRG or the TPC for further review of recommendations and other decisions. The U.S. Trade Representative will make recommendations to the President, which may include a recommendation that no action be taken.

§ 2017.3 Publication regarding petitions.

USTR will publish in the FEDERAL REGISTER:

(a) A list of actions taken in response to a petition, such as the publication of a Presidential proclamation modifying the designation of a country or the application of duty-free treatment with respect to articles from a country pursuant to the AGOA; and

(b) A list of petitions upon which no decision was made, and thus which are pending further review.

§ 2017.4 Public inspection.

USTR will make publicly available at *www.regulations.gov:*

(a) Any written request, brief or similar submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearing that may be held pursuant to this part.

(c)(1) USTR will grant business confidential status and withhold from public disclosure the information submitted if the petitioner certifies that the information customarily would not be released to the public and clearly designates the information as confidential business information.

(2) To request business confidential status the petitioner must mark the submission ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and on each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential.

(3) If the submission contains business confidential information, the petitioner also must submit a non-confidential version or summary, indicating where confidential information has been redacted, and a written explanation of why the material should be protected.

(4) The non-confidential version or summary will be made publicly available at *www.regulations.gov*.

(5) A request for exemption of any particular information may be denied if it is determined that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

§ 2017.5 Expiration.

The Trade Preferences Extension Act of 2015 extended the AGOA until September 30, 2025 (Pub. L. 114–27, sec. 103, 129 Stat. 364). Accordingly, this part will expire on that date unless extended by statute.

PARTS 2018–2099 [RESERVED]

APPENDIX A TO CHAPTER XX—ADMINISTRATION OF THE TRADE AGREEMENTS PROGRAM

Text of Executive Order No. 11846 of Mar. 27, 1975 (40 FR 14291).

By virtue of the authority vested in me by the Trade Act of 1974, hereinafter referred to as the Act (Pub. L. 93–618, 88 Stat. 1978), the Trade Expansion Act of 1962, as amended (19 U.S.C. 1801), section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351), and section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. *The Trade Agreements Program.* The ''trade agreements program'' includes all activities consisting of, or related to, the negotiation or administration of international agreements which primarily concern trade and which are concluded pursuant to the authority vested in the President by the Constitution, section 350 of the Tariff Act of 1930, as amended, the Trade Expansion Act of 1962, as amended, or the Act.

SEC. 2. *The Special Representative for Trade Negotiations.* (a) The Special Representative for Trade Negotiations, hereinafter referred to as the Special Representative, in addition to the functions conferred upon him by the Act, including section 141 thereof, and in addition to the functions and responsibilities set forth in this Order, shall be responsible for such other functions as the President may direct.

(b) The Special Representative, except where otherwise expressly provided by statute, Executive order, or instructions of the President, shall be the chief representative of the United States for each negotiation under the trade agreements program and shall participate in other negotiations which may have a direct and significant impact on trade.

(c) The Special Representative shall prepare, for the President's transmission to Congress, the annual report on the trade agreements program required by section 163(a) of the Act. At the request of the Special Representative, other agencies shall assist in the preparation of that report.

(d) The Special Representative, except where expressly otherwise provided or prohibited by statute, Executive order, or instructions of the President, shall be responsible for the proper administration of the trade agreements program, and may, as he deems necessary, assign to the head of any Executive agency or body the performance of his duties which are incidental to the administration of the trade agreements program.

(e) The Special Representative shall consult with the Trade Policy Committee in connection with the performance of his functions, including those established or delegated by this Order, and shall, as appropriate, consult with other Federal agencies or bodies. With respect to the performance of his functions under Title IV of the Act, including those established or delegated by this Order, the Special Representative shall also consult with the East-West Foreign Trade Board.

(f) The Special Representative shall be responsible for the preparation and submission of any Proclamation which relates wholly or primarily to the trade agreements program. Any such Proclamation shall be subject to all the provisions of Executive Order 11030, as amended, except that such Proclamation need not be submitted to the Director of the Office of Management and Budget.

(g) The Secretary of State shall advise the Special Representative, and the Committee, on the foreign policy implications of any action under the trade agreements program. The Special Representative shall invite appropriate departments to participate in trade negotiations of particular interest to such departments, and the Department of State shall participate in trade negotiations which have a direct and significant impact on foreign policy.

SEC. 3. *The Trade Policy Committee.* (a) As provided by section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872), as amended by section 602(b) of the Act, there is established the Trade Policy Committee hereinafter referred to as the Committee. The Committee shall be composed of:

(1) The Special Representative, who shall be Chairman.
(2) The Secretary of State.
(3) The Secretary of the Treasury.
(4) The Secretary of Defense.
(5) The Attorney General.
(6) The Secretary of the Interior.
(7) The Secretary of Agriculture.
(8) The Secretary of Commerce.
(9) The Secretary of Labor.
(10) The Assistant to the President for Economic Affairs.
(11) The Executive Director of the Council on International Economic Policy. Each member of the Committee may designate an officer of his agency, whose status is not below that of an Assistant Secretary, to serve in his stead, when he is unable to attend any meetings of the Committee. The Chairman, as he deems appropriate, may invite representatives from other agencies to attend the meetings of the Committee.

(b) The Committee shall have the functions conferred by the Trade Expansion Act of 1962, as amended, upon the inter-agency organization referred to in section 242 thereof, as amended, the functions delegated to it by the provisions of this Order, and such other functions as the President may from time to time direct. Recommendations and advice of the Committee shall be submitted to the President by the Chairman.

(c) The recommendations made by the Committee under section 242(b)(1) of the Trade Expansion Act of 1962, as amended, with respect to basic policy issues arising in the administration of the trade agreements program, as approved or modified by the President, shall guide the administration of the trade agreements program. The Special Representative or any other officer who is chief representative of the United States in a negotiation in connection with the trade agreements program shall keep the Committee informed with respect to the status and conduct of negotiations and shall consult with the Committee regarding the basic policy issues arising in the course of negotiations.

(d) Before making recommendations to the President under section 242(b)(2) of the Trade Expansion Act of 1962, as amended, the Committee shall, through the Special Representative, request the advice of the Adjustment Assistance Coordinating Committee, established by section 281 of the Act.

(e) The Committee shall advise the President as to what action, if any, he should take under section 337(g) of the Tariff Act of 1930, as amended by section 341 of the Act, relating to unfair practices in import trade.

(f) The Trade Expansion Act Advisory Committee established by Section 4 of Executive Order 11075 of January 15, 1963, is abolished and all of its records are transferred to the Trade Policy Committee.

SEC. 4. *Trade Negotiations Under Title I of the Act.* (a) The functions of the President under section 102 of the Act concerning notice to, and consultation with, Congress, in connection with agreements on nontariff barriers to, and other distortions of, trade, are hereby delegated to the Special Representative.

(b) The Special Representative, after consultation with the Committee, shall prepare, for the President's transmission to Congress, all proposed legislation and other documents necessary or appropriate for the implementation of, or otherwise required in connection with, trade agreements; provided, however, that where implementation of an agreement on nontariff barriers to, and other distortions of, trade requires a change in a domestic law, the department or agency having

the primary interest in the administration of such domestic law shall prepare and transmit to the Special Representative the proposed legislation necessary or appropriate for such implementation.

(c) The functions of the President under section 131(c) of the Act with respect to advice of the International Trade Commission and under section 132 of the Act with respect to advice of the departments of the Federal Government and other sources, are delegated to the Special Representative. The functions of the President under section 133 of the Act with respect to public hearings in connection with certain trade negotiations are delegated to the Special Representative, who shall designate an interagency committee to hold and conduct any such hearings.

(d) The functions of the President under section 135 of the Act with respect to advisory committees and, notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. I), except that of reporting annually to Congress, which are applicable to advisory committees under the Act are delegated to the Special Representative. In establishing and organizing general policy advisory committees or sector advisory committees under section 135(c) of the Act, the Special Representative shall act through the Secretaries of Commerce, Labor and Agriculture, as appropriate.

(e) The functions of the President with respect to determining ad valorem amounts and equivalents pursuant to sections 601 (3) and (4) of the Act are hereby delegated to the Special Representative. The International Trade Commission is requested to advise the Special Representative with respect to determining such ad valorem amounts and equivalents. The Special Representative shall seek the advice of the Commission and consult with the Committee with respect to the determination of such ad valorem amounts and equivalents.

(f) Advice of the International Trade Commission under section 131 of the Act, and other advice or reports by the International Trade Commission to the President or the Special Representative, the release or disclosure of which is not specifically authorized or required by law, shall not be released or disclosed in any manner or to any extent not specifically authorized by the President or by the Special Representative.

SEC. 5. *Import Relief and Market Disruption.* (a) The Special Representative is authorized to request from the International Trade Commission the information specified in sections 202(d) and 203(i) (1) and (2) of the Act.

(b) The Secretary of the Treasury, in consultation with the Secretary of Commerce or the Secretary of Agriculture, as appropriate, is authorized to issue, under section 203(g) of the Act, regulations governing the administration of any quantitative restrictions proclaimed in order to provide import relief and is authorized to issue, under section 203(g) of the Act or 352(b) of the Trade Expansion Act of 1962, regulations governing the entry, or withdrawal from warehouses for consumption, of articles pursuant to any orderly marketing agreement.

(c) The Secretary of Commerce shall exercise primary responsibility for monitoring imports under any orderly marketing agreement.

SEC. 6. *Unfair Trade Practices.* (a) The Special Representative, acting through an interagency committee which he shall designate for such purpose, shall provide the opportunity for the presentation of views, under sections 301(d)(1) and 301(e)(1) of the Act, with respect to unfair or unreasonable foreign trade practices and with respect to the United States response thereto.

(b) The Special Representative shall provide for appropriate public hearings under section 301(e)(2) of the Act; and, shall issue regulations concerning the filing of requests for, and the conduct of, such hearings.

(c) The Special Representative is authorized to request, pursuant to section 301(e)(3) of the Act, from the International Trade Commission, its views as to the probable impact on the economy of the United States of any action under section 301(a) of the Act.

SEC. 7. *East-West Foreign Trade Board.* (a) In accordance with section 411 of the Act, there is hereby established the East-West Foreign Trade Board, hereinafter referred to as the Board. The Board shall be composed of the following members and such additional members of the Executive branch as the President may designate:

(1) The Secretary of State.

(2) The Secretary of the Treasury.

(3) The Secretary of Agriculture.

(4) The Secretary of Commerce.

(5) The Special Representative for Trade Negotiations.

(6) The Director of the Office of Management and Budget.

(7) The Executive Director of the Council on International Economic Policy.

(8) The President of the Export-Import Bank of the United States.

(9) The Assistant to the President for Economic Affairs.

The President shall designate the Chairman and the Deputy Chairman of the Board. The President may designate an Executive Secretary, who shall be Chairman of a working group which will include membership from the agencies represented on the Board.

(b) The Board shall perform such functions as are required by section 411 of the Act and such other functions as the President may direct.

(c) The Board is authorized to promulgate such rules and regulations as are necessary

or appropriate to carry out its responsibilities under the Act and this Order.

(d) The Secretary of State shall advise the President with respect to determinations required to be made in connection with sections 402 and 409 of the Act (dealing with freedom of emigration) and section 403 (dealing with United States personnel missing in action in Southeast Asia), and shall prepare, for the President's transmission to Congress, the reports and other documents required by sections 402 and 409 of the Act.

(e) The President's Committee on East-West Trade Policy, established by Executive Order 11789 of June 25, 1974, as amended by section 6(d) of Executive Order 11808 of September 30, 1974, is abolished and all of its records are transferred to the Board.

SEC. 8. *Generalized System of Preferences.* (a) The Special Representative, in consultation with the Secretary of State, shall be responsible for the administration of the generalized system of preferences under Title V of the Act.

(b) The Committee, through the Special Representative, shall advise the President as to which countries should be designated as beneficiary developing countries, and as to which articles should be designated as eligible articles for the purposes of the system of generalized preferences.

SEC. 9. *Prior Executive Orders.* (a) Executive Order 11789 of June 25, 1974, and Section 6(d) of Executive Order 11808 of September 30, 1974, relating to the President's Committee on East-West Trade Policy are hereby revoked.

(b)(1) Sections 5(b), 7, and 8 of the Executive Order 11075 of January 15, 1963, are hereby revoked effective April 3, 1975; (2) the remainder of Executive Order 11075, and Executive Order 11106 of April 18, 1963 and Executive Order 11113 of June 13, 1963, are hereby revoked.

[40 FR 18422, Apr. 28, 1975]

Subtitle D—Regulations Relating to Telecommunications and Information [Reserved]

FINDING AIDS

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