

section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*For the reasons discussed above, I certify this proposed regulation:*

1. Is not a "significant regulatory action" under Executive Order 12866,
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

**The Boeing Company:** Docket No. FAA–2010–0853; Directorate Identifier 2010–NM–116–AD.

#### Comments Due Date

(a) We must receive comments by October 29, 2010.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–27–1289, dated April 7, 2010.

#### Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

#### Unsafe Condition

(e) This AD results from reports that the warning horn did not sound during the takeoff warning system test of the S132 "nose up stab takeoff warning switch." The Federal Aviation Administration is issuing this AD to detect and correct a takeoff warning system switch failure, which could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

#### Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Test

(g) Within 6 months after the effective date of this AD, test the stabilizer takeoff warning switches, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–27–1289, dated April 7, 2010. Repeat the test at intervals not to exceed 750 flight hours.

#### Replacement and Re-test

(h) If any stabilizer takeoff warning switch fails the test required in paragraph (g) or (h) of this AD, replace the stabilizer takeoff warning switch with a new switch and test the new switch before further flight, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–27–1289, dated April 7, 2010. Within 750 flight hours after replacement of any switch, test the replaced switch, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–27–1289, dated April 7, 2010, and repeat this test on the replaced switch thereafter at intervals not to exceed 750 flight hours.

#### Special Flight Permit

(i) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

#### Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if

requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6472; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on September 3, 2010.

**Jeffrey E. Duven,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–22847 Filed 9–13–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 070726412–0071–01]

RIN 0648–AV88

### Proposed Research Area Within the Gray's Reef National Marine Sanctuary

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is proposing to create a research area within the Gray's Reef National Marine Sanctuary (GRNMS, or Sanctuary). A research area is a region specifically designed for conducting controlled scientific studies in the absence of certain human activities that could affect the results. NOAA proposes to prohibit fishing, diving, and stopping while transiting in the proposed research area.

**DATES:** Comments must be received by December 13, 2010.

Dates for public hearings are:

(1) October 19, 6–8 p.m., Richmond Hill City Center, 529 Cedar Street, Richmond Hill, GA.

(2) October 20, 6–8 p.m., Bulloch County Courthouse, 30 N. Main Street, Statesboro, GA.

(3) October 21, 6–8 p.m., College of Coastal Georgia, Southeast Georgia Conference Center, 3700 Altama Avenue, Brunswick, GA.

**ADDRESSES:** You may submit comments, identified by 0648–AV88, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov> (search for docket NOAA–NOS–2009–0103)

- **Mail:** Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411, Attn: Dr. George Sedberry, Superintendent.

**Instructions:** No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

ONMS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Copies of the draft environmental impact statement and proposed rule can be downloaded or viewed on the Internet at <http://www.regulations.gov> (search for docket #NOAA–NOS–2009–0103) or at <http://graysreef.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Resource Protection Coordinator Becky Shortland at (912) 598–2381.

#### **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### **A. Gray's Reef National Marine Sanctuary**

NOAA designated GRNMS as the nation's fourth national marine sanctuary in 1981 for the purposes of: protecting the quality of this unique and fragile ecological community; promoting scientific understanding of this live bottom ecosystem; and enhancing public awareness and wise use of this significant regional resource. GRNMS is located 16 miles offshore of Sapelo Island, Georgia, on an area of continental shelf stretching from Cape Hatteras, North Carolina, to Cape Canaveral, Florida (referred to as the South Atlantic Bight). GRNMS protects 16.68 square nautical miles of open ocean and submerged lands of particularly dense and nearshore

patches of productive live bottom habitat. The sanctuary is influenced by complex ocean currents and serves as a mixing zone for temperate (colder water) and sub-tropical species. An estimated 180 species of fish, encompassing a wide variety of sizes, forms, and ecological roles, have been recorded at GRNMS. Loggerhead sea turtles, a threatened species, use GRNMS year-round for foraging and resting, and the highly endangered northern right whale is occasionally seen in Gray's Reef.

The sanctuary contains one of the largest nearshore live-bottom reefs in the southeastern United States. Within the sanctuary, rock outcroppings stand above the shifting sands. The series of rock ledges and sand expanses has produced a complex habitat of burrows, troughs, and overhangs that provide a solid base for the abundant sessile invertebrates to attach and grow. This topography supports an unusual assemblage of temperate and tropical marine flora and fauna. This flourishing ecosystem attracts numerous species of benthic and pelagic fish including mackerel, grouper, red snapper, black sea bass, angelfish, and a host of other fishes. Since GRNMS lies in a transition area between temperate and tropical waters, the composition of reef fish populations changes seasonally.

#### **B. Purpose and Need for Research Area**

In 2008, NOAA released a report on the condition of GRNMS providing a summary of the status of resources, pressures on those resources, current conditions and trends, and management responses to the pressures that threaten the integrity of the marine environment. Specifically, the document includes information on water quality, habitat, living resources, and maritime archaeological resources and the human activities that affect them. Overall, the resources protected by GRNMS appear to be in fair condition, as defined in the 2008 GRNMS condition report. Emerging threats to the sanctuary include invasive species, contamination of organisms by waterborne chemicals from human coastal activities, climate change and ever increasing coastal populations and recreational use of the sanctuary. For a copy of the 2008 GRNMS condition report, please visit <http://sanctuaries.noaa.gov/science/condition/grnms/welcome.html>.

NOAA's regulations for the sanctuary limit fishing gear in the sanctuary to rod and reel (which is used by the vast majority of users in the sanctuary), and handline. Despite these gear restrictions, fishing continues to impact the living marine resources and habitat of the

sanctuary. Recreational fishing is the primary fishing activity and occurs throughout the sanctuary but tends to be concentrated in certain areas.

Because fishing is allowed throughout the sanctuary, NOAA has limited options for gaining better management information on the effects it has on fish and invertebrate populations and their habitats. A research area would allow investigations to evaluate possible impacts from fishing—particularly bottom fishing—on the sanctuary's natural resources by providing a zone relatively free of human activities and impacts that can be compared to the rest of the sanctuary. The research area would also allow researchers to more accurately determine the effects of natural events (e.g., hurricanes) and cycles (e.g. droughts) on the sanctuary. The research area could also serve as an important sentinel site to monitor and study impacts of climate change, such as ocean acidification, which can be better determined in the absence of additional human factors such as fishing. Sentinel sites are areas well suited to ensure sustained observations of environmental change, to track indicators of ecosystem integrity, and to provide early warning services. Currently the effects of subtle natural variability may be masked by the sometimes overwhelming effect of fishing. The ability to conduct these investigations in a marine environment free of human influences is critical to meet the resource protection and scientific research mandates of the GRNMS.

To provide for comprehensive and coordinated conservation and management of natural resources of GRNMS as required by the National Marine Sanctuaries Act (NMSA), research that includes a control or research area where human impacts are limited is needed. There are currently no natural live-bottom areas in the South Atlantic Bight that have been set aside for scientific use. Because GRNMS is relatively shallow, it affords the opportunity to conduct experiments and make observations using SCUBA in a productive reef habitat that is relatively close to shore. The proximity of the sanctuary to coastal universities and marine research laboratories makes GRNMS a logical natural area that can be used to further understanding and management of these complex ecosystems. There is scientific agreement that without having an area of the naturally occurring live bottom devoted to research, it becomes very difficult to understand how these reefs function in the life history of many economically valuable species, and the

effects of extractive uses on that productivity. NOAA believes the proposed action provides a balance between user concerns and the research opportunities that are emphasized in the sanctuary's goals and objectives.

### C. Research Area Background

The concept of a research (control) area within the sanctuary has been under discussion for many years. The idea was first raised by members of the public in 1999 during the early stages of the GRNMS management plan review process at public scoping meetings. The GRNMS advisory council set a target to increase the opportunity to distinguish scientifically between natural and human-induced change to species populations in the sanctuary (NMSP 2006). As a means to reach this target, the Sanctuary Advisory Council (SAC) formed a broad-based Research Area Working Group (RAWG) to consider the concept of a research area within the sanctuary.

The RAWG consisted of representatives from research, academia, conservation groups, sport fishing and diving interests, education, commercial fishing, law enforcement and state and federal agency representatives. The RAWG employed a consensus-driven, constituent-based process. A Geographic Information System (GIS) tool was also developed by NOAA to analyze options RAWG members brought forward; this tool is described in more detail in the environmental impact statement supporting this action.

The principle conclusion of the RAWG, which was ultimately adopted by the entire SAC, was that significant research questions exist at GRNMS that can only be addressed by establishing a research area. The final SAC recommendations to NOAA, presented in 2008, also included the unanimous recommendation that all fishing be prohibited in the research area.

In the decision to recommend prohibition of all fishing in the research area, the RAWG took into consideration new information on the growing knowledge of the linkages between benthic and pelagic natural communities. The RAWG also considered methods used by sport fishermen to fish both coastal pelagic and bottom fish (reef) species at the same time. In addition, downriggers and planers, currently permitted in the sanctuary, allow anglers to fish the entire water column, including near the bottom. These gear types can impact benthic communities and allow catch of bottom fish, a primary marine resource to be studied in the research area. Therefore, allowing any fishing

including trolling for pelagic fish species could significantly compromise the integrity and effectiveness of a research area.

Law enforcement officials expressed concern that the enforcement of prohibitions on fishing would be more difficult if diving or stationary vessels were allowed to continue in the research area, due to the difficulty of determining the activities of a boat's occupants from a distance or as officers approach a boat. The SAC also observed that any recreational diving activity in the research area would make law enforcement difficult and could undermine the validity of the research area.

From 2004–2008, the RAWG and SAC also continued to evaluate criteria and boundaries utilizing the GIS tool and incorporating new information as it became available. Ultimately, four boundary scenarios were recommended as viable locations for a research area in GRNMS. These boundary scenarios and several activity restrictions became the focus of public scoping during March and April 2008. After consideration of public comments and deliberations by the RAWG, the sanctuary superintendent received final recommendations from the SAC in January 2009. The proposed action presented in this document are the direct result of the RAWG's recommendations that were adopted by the SAC and provided to GRNMS superintendent, and comments received during the spring 2008 public scoping. Several alternatives to the proposed action are analyzed in the accompanying draft environmental impact statement (DEIS).

### E. South Atlantic Fishery Management Council

The action recommended to GRNMS by the SAC would close the research area to all fishing activity. Therefore, pursuant to section 304(a)(5) of the National Marine Sanctuaries Act (16 U.S.C. 1434(a)(5); NMSA), NOAA's Office of National Marine Sanctuaries (ONMS) consulted with the South Atlantic Fishery Management Council (SAFMC or Council) to develop fishing regulations associated with this proposed research area.

On March 4, 2009, the SAFMC passed a motion to: "Defer to Gray's Reef NMS for rule-making in terms of the establishment of the Research Area." On April 22, 2009, the Council's decision to allow ONMS to draft the fishing regulations was formally communicated when the SAFMC sent a letter to the GRNMS Superintendent deferring

fishing regulations for this action to the ONMS.

## II. Proposed Revisions to GRNMS Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities subject to regulation by the Secretary to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. To implement this action, NOAA proposes to modify the GRNMS terms of designation, which were most recently published in the **Federal Register** on October 12, 2006 (74 FR 60055), to read as follows (new text in bold and deleted text in brackets and italics):

1. No change to Article 1, Designation and Effect

2. No change to Article 2, Description of the Area

3. No change to Article 3, Characteristics of the Area

4. Article 4, Scope of Regulation, Section 1, Activities Subject to Regulation, is modified by:

a. Modifying the 4th bullet of Section 1 to read as follows: "Injuring, catching, harvesting, or collecting any marine organism or any part thereof, living or dead, or attempting any of these activities; [ *by any means except by use of rod and reel, and handline gear;*]"

b. Modifying the 6th bullet of Section 1 as follows: "Using explosives, or devices that produce electric charges underwater; [and]"

c. Modifying the 7th bullet of Section 1 as follows: "Moving, removing, injuring, or possessing a historical resource, or attempting to move, remove, injure, or possess a historical resource[.] , and"

d. Adding the following at the end of Section 1: "**8. Diving.**"

5. No Change to Article 5, Relation to Other Regulatory Programs

6. No change to Article 6, Alteration of This Designation

The revised terms of designation would read as follows:

### Revised Designation Document for the Gray's Reef National Marine Sanctuary

#### Article 1. Designation and Effect

The Gray's Reef National Marine Sanctuary was designated on January 16, 1981 (46 FR 7942). The Act authorizes the Secretary of Commerce to

issue such regulations as are necessary to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational or aesthetic resources and qualities of a national marine sanctuary. Section 1 of Article 4 of this Designation Document lists activities of the type that are presently being regulated or may need to be regulated in the future, in order to protect sanctuary resources and qualities. Listing in Section 1 does not mean a type of activity is currently regulated or would be regulated in the future. If a type of activity is not listed, however, it may not be regulated except on an emergency basis, unless section 1 is amended to include the type of activity following the same procedures by which the original designation was made. Nothing in this Designation Document is intended to restrict activities that do not cause an adverse effect on the resources or qualities of the sanctuary or on sanctuary property or that do not pose a threat of harm to users of the sanctuary.

#### *Article 2. Description of the Area*

The sanctuary consists of an area of ocean waters and the submerged lands thereunder located 17.5 nautical miles due east of Sapelo Island, Georgia. The exact coordinates are defined by regulation (15 CFR 922.90).

#### *Article 3. Characteristics of the Area*

The sanctuary consists of submerged calcareous sandstone rock reefs with contiguous shallow-buried hard layer and soft sedimentary regime which supports rich and diverse marine plants, invertebrates, finfish, turtles, and occasional marine mammals in an otherwise sparsely populated expanse of ocean seabed. The area attracts multiple human uses, including recreational fishing and diving, scientific research, and educational activities.

#### *Article 4. Scope of Regulation*

##### **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, ecological, historical, scientific, educational, cultural, archaeological or aesthetic resources and qualities of the area. Because an activity is listed here does not mean that such activity is being or would be regulated. If an activity is listed, however, the activity can be regulated, after compliance 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)).

1. Dredging, drilling into, or otherwise altering the submerged lands of the sanctuary;

2. Within the boundary of the sanctuary, discharging or depositing any material or other matter or constructing, placing, or abandoning any structure, material or other matter; or discharging or depositing any material or other matter outside the boundary of the sanctuary that subsequently enters the sanctuary and injures a sanctuary resource or quality;

3. Vessel operations, including anchoring;

4. Injuring, catching, harvesting, or collecting any marine organism or any part thereof, living or dead, or attempting any of these activities;

5. Possessing fishing gear that is not allowed to be used in the sanctuary;

6. Using explosives, or devices that produce electric charges underwater;

7. Moving, removing, injuring, or possessing a historical resource, or attempting to move, remove, injure, or possess a historical resource; and

8. Diving.

##### **Section 2. Emergency Regulation**

Where necessary to prevent or minimize the destruction of, loss of, or injury to a sanctuary resource or quality; or to minimize the imminent risk of such destruction, loss or injury, any activity, including any not listed in Section 1 of this Article, is subject to immediate temporary regulation, including prohibition.

#### *Article 5. Relation to Other Regulatory Programs*

##### **Section 1. Defense Activities**

The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practical.

##### **Section 2. Other Programs**

All applicable regulatory programs will remain in effect, and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the sanctuary unless authorizing any activity prohibited by a regulation implementing Article 4.

#### *Article 6. Alteration of This Designation*

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the procedures

outlined in paragraphs (a) and (b) of section 304 of the Act including public hearings, consultation with interested Federal, State, and local government agencies, and the South Atlantic Fishery Management Council, review by the appropriate congressional committees, and approval by the Secretary of Commerce or designee.

*[End of designation document]*

### **III. Summary of Proposed Revisions to the Sanctuary Regulations**

#### *A. Establishment of a Research Area*

The proposed regulations would establish a research area within the GRNMS that would prohibit fishing, diving and stopping a vessel within the area. This area is referred to as the Southern Boundary Option. Please refer to the GRNMS Web site and the draft environmental impact statement supporting this rulemaking for more information and a map depicting the location of the proposed research area within the GRNMS. The research area, which would occupy the southern portion of the GRNMS, would be wholly within the boundary of the sanctuary and would not change its overall size. The total area that would be designated as a research area inside GRNMS would be 6.25 square nautical miles (see the Appendix for coordinates).

According to boat sighting data from 1999–2007, only 9.2 percent of boats sighted in the sanctuary visited or transited the area of the proposed research area, leading to the conclusion that this area is not as popular with sport fishermen and sport divers as the north-central portion of the sanctuary. NOAA believes the proposed action provides a balance between user concerns and the research opportunities that are emphasized in the sanctuary's goals and objectives.

#### *B. Activities Prohibited Within the Research Area*

If adopted, the regulatory changes would prohibit: (1) Injuring, catching, harvesting, or collecting sanctuary resources (including by fishing); (2) diving within the research area; and (3) stopping a vessel in the research area. The proposed regulations would add prohibitions specific to the research area in addition to the existing prohibitions set out in 922.92, which apply throughout the Sanctuary. In the proposed research area, the following activities would be prohibited and thus unlawful for any person to conduct or cause to be conducted: Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any

part thereof, living or dead (there would be a rebuttable presumption that any marine organism or part thereof, living or dead, found in the possession of a person within the research area has been collected from the research area); possessing, carrying, or using any fishing gear or means for fishing unless such gear or means 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; diving; stopping a vessel when transiting the research area.

#### C. Enforcement

If adopted, the proposed regulations would be enforced by NOAA and other authorized agencies (*i.e.*, United States Coast Guard, and Georgia Department of Natural Resources) in a coordinated and comprehensive way. Enforcement actions for an infraction would be prosecuted under the appropriate statutes or regulations governing that infraction. The prohibition against catching or harvesting marine organisms would include a rebuttable presumption that any marine organism or part thereof found in the possession of a person within the research area has been collected from the research area.

#### D. Permitting

If adopted, a research area in the southern portion of the sanctuary would provide researchers a valuable opportunity to discern between human-induced and natural changes in the Gray's Reef area. Researchers would be required to obtain permits to conduct activities related to research that would otherwise be prohibited by the regulations.

The ONMS regulations, including the regulations for the GRNMS, allow NOAA to issue permits to conduct activities that would otherwise be prohibited by the regulations (15 CFR 922 and 922.93). Most permits are issued by the Superintendent of the GRNMS. Requirements for filing permit applications are specified in ONMS regulations and the Office of Management and Budget-approved application guidelines (OMB control number 0648-0141). Criteria for reviewing permit applications are also contained in the ONMS regulations at 15 CFR 922.93. In general, permits may be issued for activities related to scientific research, education, and management.

#### IV. Classification

##### A. National Marine Sanctuaries Act

Section 301(b) of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1434) provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other resource management authorities. Section 304(a)(4) of the NMSA requires the procedures specified in section 304 for designating a national marine sanctuary be followed for modifying any term of designation. This action proposes to revise the terms of designation (*e.g.*, scope of regulations) for the GRNMS. Therefore, NOAA is required to comply with Section 304. In addition, Section 304(a)(5) of the NMSA requires that NOAA consult with the appropriate fishery management council on any action proposing to regulate fishing. As stated in the preamble above, NOAA has worked with the South Atlantic Fishery Management Council, State of Georgia, and NOAA Fisheries Service on this issue and all necessary requirements have been completed. In accordance with Section 304, the appropriate documents are being submitted to the specified Congressional committees.

##### B. National Environmental Policy Act

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321-4370(a)), a DEIS has been prepared for this proposed action. The DEIS contains a statement of the purpose and need for the project, description of proposed alternatives including the no action alternative, description of the affected environment, and evaluation and comparison of environmental consequences including cumulative impacts. The preferred alternative incorporates the creation of a research area in the Southern Option Boundary, and proposed prohibition of fishing, diving, and stopping a vessel while transiting through the research area. Copies of the DEIS are available upon request at the address and Web site listed in the ADDRESSES section of this rule.

##### C. Executive Order 12866: Regulatory Impact

Under Executive Order (E.O.) 12866, if the proposed regulations are "significant" as defined in section 3(f)(1), (2), (3), or (4) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This proposed

rule has been determined to be not significant within the meaning of E.O. 12866.

##### D. Executive Order 13132: Federalism Assessment

All of the proposed actions would occur in the Exclusive Economic Zone beyond state jurisdiction. There are no federalism implications as that term is used in E.O. 13132. The changes will not preempt State law, but will simply complement existing State authorities. In keeping with the intent of the Order, NOAA consulted with a number of entities within the region, the State of Georgia, and the South Atlantic Fishery Management Council which participated in development of the research area.

##### E. Regulatory Flexibility Act

In accordance with the requirements of section 603(a) of the Regulatory Flexibility Act (RFA; 5 U.S.C. 603(a)), NOAA has prepared an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed action on small businesses. Section 603(b) (5 U.S.C. 603(b)) requires that each IRFA contain a description of the reasons the action is being considered, a succinct statement of the objectives of, and legal basis for, the action, a description of and, where feasible, an estimate of the number of small entities to which the proposed action will apply, a description of the projected reporting, recordkeeping and other compliance requirements of the proposed action, including an estimate of the classes of small entities which would be subject to the requirement and the type of professional skills necessary for preparation of the report or record, and an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed action.

In addition, section 603(c) (5 U.S.C. 603(c)) requires that each IRFA contain a description of any significant alternatives to the proposed action which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed action on small entities. A statement of why NOAA is considering this action and the objectives of, and legal basis for, the proposed rule is contained in the preamble section for the proposed rule and is not repeated here. The analysis conducted to meet the remaining requirements under the RFA follows.

## Initial Regulatory Flexibility Act Analysis

The Small Business Administration has established thresholds on the designation of businesses as “small entities.” A fish-harvesting business is considered a “small” business if it has annual receipts not in excess of \$3.5 million (13 CFR 121.201). Sports and recreation businesses and scenic and sightseeing transportation businesses are considered “small” businesses if they have annual receipts not in excess of \$6 million (13 CFR 121.201). According to these limits, each of the businesses listed below are considered small entities. All analyses are based on the most recently updated and best available information.

In 2002, a survey of charter fishing boat owners/operators was completed. This survey identified 15 charter boats that utilize GRNMS as one of their fishing locations. It was estimated that their 2001 total gross revenue was

\$1,029,000 and their total operating expenses was \$582,000 with total profit of \$447,000. Converting these values to 2008 dollars using the consumer price index results in gross revenue of \$1,251,264, total operating expenses of \$707,712, and total profit of \$543,552. The survey found that approximately 40 percent of their fishing activity took place in GRNMS.

The economic impact of the five alternatives considered for this action, and further described in the DEIS, can be estimated by combining results from the 2002 survey with boat location analysis completed in 2008. The results of this analysis are summarized in Table 1. The five alternatives contain a no action alternative (i.e., no designation of a research area) and four alternatives distinguished by different locations within the sanctuary and by varying sizes. The Southern Boundary Option (preferred) impacts 9 percent of recreational fishing resulting in impacts of \$46K to total gross revenue and \$20K

to total profit. The Optimal Scientific Boundary Option impacts 67 percent of recreational fishing resulting in impacts of \$335K to total gross revenue and \$146K to total profit. The Minimal User Impact Boundary Option impacts 15 percent of recreational fishing resulting in impacts of \$75K to total gross revenue and \$32K to total profit. The Compromise Boundary Option impacts 35 percent of recreational fishing resulting in impacts of \$175K to total gross revenue and \$76K to total profit.

This analysis assumes that all economic value associated with the areas closed is lost. Any factor that could mitigate or off-set the level of impact is not addressed. The estimated impacts are thought of as “maximum potential losses” because impacted businesses may take action to at least mitigate or off-set most losses (i.e., by conducting charter operations somewhere nearby).

TABLE 1—ESTIMATED ECONOMIC IMPACTS TO RECREATIONAL CHARTER FISHING BUSINESSES BY ALTERNATIVE, IN 2008 \$

Alternative	Percent impact	Total impact to gross revenue	Total impact to profit
No Action .....	0	.....	.....
Southern Boundary Options (preferred) .....	9	46,047	20,003
Optimal Scientific Boundary Option .....	67	335,339	145,672
Minimal User Impact Boundary Option .....	15	75,076	32,613
Compromise Boundary Option .....	35	175,177	76,097

No economic impact is expected to result to recreational charter diving businesses because there appear to be none currently operating within the sanctuary. In September 2007, in-person interviews were conducted with all businesses and organizations offering scuba diving trips along the Georgia coast. Four charter scuba operations and one scuba diving club were identified and interviewed. The interviews gathered information that included operating profiles, preferred diving locations and methods, detailed business data (revenue and costs), and general opinions of the current state of scuba diving and spearfishing off the Georgia coast. None of the businesses offer scuba diving trips to GRNMS.

## F. Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by OMB under control number 0648–0141. The public reporting burden for national marine sanctuary permits is estimated to average 1 hour 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.

Nationwide, NOAA issues approximately 200 national marine sanctuary permits each year. Of this amount, three permits are active for research activities within the GRNMS. Even though this proposed rule may result in a few additional permits applications for scientific research at GRNMS, this rule would not appreciably change the average annual number of respondents or the reporting burden for this information requirement. Therefore, NOAA has determined that the proposed regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (see ADDRESSES) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395–7285. Notwithstanding any

other provision of the law, no person is required to respond 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 PRA, unless that collection of information displays a currently valid OMB Control Number.

## List of Subjects in 15 CFR Part 922

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

Dated: September 3, 2010.

**Holly Bamford,**

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

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

## PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

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

2. In § 922.92, revise the section heading to read as follows:

**§ 922.92 Prohibited or otherwise regulated activities—Sanctuary-wide.**

\* \* \* \* \*

3. In § 922.93, revise paragraph (a) to read as follows:

**§ 922.93 Permit procedures and criteria.**

(a) A person may conduct an activity prohibited by § 922.92(a)(1) through (a)(10) and § 922.94 if conducted in accordance within the scope, purpose, manner, terms and conditions of a permit issued under this section and § 922.48.

\* \* \* \* \*

4. Add § 922.94 to Subpart I to read as follows:

**§ 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. The exceptions described in § 922.92(a) and (b) also apply to the prohibitions in this section:

(a)(1)(i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead.

(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 research area has been collected from the research area.

(2) Using any fishing gear or means for fishing, or possessing, or carrying any fishing gear or means for fishing unless such gear or means 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.

(3) Diving.

(4) Stopping a vessel in the research area.

(b) [Reserved]

5. Add Appendix A to Subpart I to read as follows:

## Appendix A to Subpart I of Part 922— Gray's Reef National Marine Sanctuary Research Area Boundary Coordinates

[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)	Longitude (west)
1 .....	31.36250 N .....	–80.92111 W
2 .....	31.38444 N .....	–80.92111 W
3 .....	31.38444 N .....	–80.82806 W
4 .....	31.36250 N .....	–80.82806 W
5 .....	31.36250 N .....	–80.92111 W

[FR Doc. 2010–22567 Filed 9–10–10; 11:15 am]

**BILLING CODE 3510–NK–P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

**RIN 3038–AC46**

### Commodity Pool Operations: Relief From Compliance With Certain Disclosure, Reporting and Recordkeeping Requirements for Registered CPOs of Commodity Pools Listed for Trading on a National Securities Exchange; CPO Registration Exemption for Certain Independent Directors or Trustees of These Commodity Pools; Correction

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This document corrects a missing e-mail address in a proposed rule published in the **Federal Register** of September 9, 2010, regarding relief from certain disclosure, reporting and recordkeeping requirements that Commission staff previously has issued on a case-by-case basis to commodity pool operators (CPOs).

## FOR FURTHER INFORMATION CONTACT:

David A. Stawick, 202–418–5071.

## Correction

In proposed rule FR Doc. 2010–22395, beginning on page 54794 in the issue of September 9, 2010, make the following correction. In the **ADDRESSES** section, add the e-mail address *etfcpoexemptcomment@cftc.gov* in the place of “[email address TBD]”.

Dated: September 9, 2010.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2010–22906 Filed 9–13–10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–142800–09]**

**RIN 1545–BI96**

### Guidance Regarding Deferred Discharge of Indebtedness Income of Corporations and Deferred Original Issue Discount Deductions; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document contains a correction to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–142800–09) that was published in the **Federal Register** on Friday, August 13, 2010 (75 FR 49428) primarily affecting C corporations regarding the acceleration of deferred discharge of indebtedness (COD) income (deferred COD income) and deferred original issue discount (OID) deductions (deferred OID deductions) under section 108(i)(5)(D), and the calculation of earnings and profits as a result of an election under section 108(i). In addition, these regulations provide rules applicable to all taxpayers regarding deferred OID deductions under section 108(i) as a result of a reacquisition of an applicable debt instrument by an issuer or related party.

## FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Robert M. Rhyne, (202) 622–7790 and Rubin B. Ranat, (202) 622–7530 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**