

necessary to accommodate aircraft using the new RNAV (GPS) SIAPs at the airport. This action would enhance the safety and management of IFR operations at the Airport. This also would correct the name of the airport from Show Low Municipal Airport to Show Low Regional Airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Show Low Regional Airport, Show Low, AZ.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### AWP AZ E5 Show Low, AZ [Modified]

Show Low Regional Airport, AZ  
(Lat. 34°15'56" N., long. 110°00'20" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Show Low Regional Airport and within 3 miles each side of the 038° bearing of the Show Low Regional Airport extending from the 6.7-mile radius to 10 miles northeast of the airport, and within 2.1 miles each side of the 085° bearing of the Show Low Regional Airport extending from the 6.7-mile radius to 7.9 miles east of the airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at Lat. 34°35'00" N., long. 109°51'00" W.; to lat. 34°14'00" N., long. 109°22'00" W.; to lat. 33°49'00" N., long. 110°36'00" W.; to lat. 34°10'00" N., long. 110°37'00" W.; thence to the point of beginning.

Issued in Seattle, Washington, on October 13, 2010.

**Rob Henry,**

*Acting Manager, Operations Support Group,  
Western Service Center*

[FR Doc. 2010–26579 Filed 10–21–10; 8:45 am]

**BILLING CODE 4910–13–P**

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 100222109–0471–01]

**RIN 0648–AY35**

#### Flower Garden Banks National Marine Sanctuary Regulations

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration

(NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule; Request for public comments; Public Availability of Draft Management Plan and Draft Environmental Assessment.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) proposes to amend the regulations for the Flower Garden Banks National Marine Sanctuary (FGBNMS or sanctuary) to improve vessel and user safety, protect sanctuary resources from user impacts, clarify vessel pollution discharge language, and make other technical changes and corrections.

**DATES:** *Comments.* Comments on the proposed rule and the draft environmental assessment must be received no later than January 20, 2011.

*Public Hearing.* A public hearing will take place on Thursday, December 9, 2010 from 4 p.m. to 8 p.m. at the Flower Garden Banks National Marine Sanctuary office building at 4700 Avenue U, Building 216, Galveston, TX 77551.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Electronic Submission:* Submit electronic comments to docket number NOAA–NOS–2010–0208 via the Federal e-Rulemaking Portal at <http://www.regulations.gov>.

- *Mail:* George Schmahl, Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551.

*Instructions:* All comments received are a part of the public record and will be generally 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.

NOAA will accept anonymous comments (for electronic comments submitted via the Federal e-Rulemaking Portal, enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

Copies of the draft management plan, draft environmental assessment, and this **Federal Register** notice are available for public review and download at <http://flowergarden.noaa.gov/management/mpr.html>.

**FOR FURTHER INFORMATION CONTACT:**

George Schmahl, Superintendent,  
Flower Garden Banks National Marine  
Sanctuary, 4700 Avenue U, Building  
216, Galveston, TX 77551.

E-mail:

[fgbnmsmanagementplan@noaa.gov](mailto:fgbnmsmanagementplan@noaa.gov).

Phone: (409) 621-5151.

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

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate and protect as a national marine sanctuary areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). The primary objective of the NMSA is to protect sanctuary resources, such as coral reefs, and cultural resources, such as historical shipwrecks, historic structures, and archaeological sites.

NOAA issued a notice of designation for Flower Garden Banks National Marine Sanctuary to Congress and simultaneously published the notice (together with implementing regulations) in the **Federal Register** in 1991 (56 FR 63634, Dec. 5, 1991). The sanctuary was subsequently designated by Congress and signed into law by the President, effective January 17, 1992 (Pub. L. 102-251).

The Flower Garden Banks National Marine Sanctuary originally consisted of two areas known as East and West Flower Garden Banks (56 FR 63634; Pub. L. 102-251). Congress added Stetson Bank to the sanctuary in 1996 (Pub. L. 104-283). These three areas are located in the northwestern Gulf of Mexico and are described as underwater hills formed by rising domes of ancient salt. The banks range in depth from 55 feet to nearly 500 feet, providing conditions that support several distinct habitats, including the northern-most coral reefs in the continental United States. These and similar formations throughout the northern Gulf of Mexico provide the foundation for essential habitat for a variety of species. The combination of location and geology makes the Flower Garden Banks an extremely productive and diverse ecosystem, but it also presents a unique set of challenges for managing and protecting its natural wonders.

The FGBNMS regulations implementing the designation were first

published on December 5, 1991 (56 FR 63634). Those regulations became effective on January 18, 1994 (58 FR 65664) and were later amended with an effective date of January 22, 2001 to include Stetson Bank in the boundaries of the Flower Garden Banks National Marine Sanctuary consistent with Public Law 104-283 (65 FR 81176). The regulations set forth the sanctuary boundaries; prohibited a relatively narrow range of activities; established requirements applicable to certain activities; and established permit and certification procedures, among other things. To prevent injuries to corals from anchoring, NOAA amended the FGBNMS regulations in 2001 (66 FR 58370) to conform to the regulations adopted by the International Maritime Organization and prohibit all anchoring and mooring in the sanctuary with the exception that vessels 100 feet (30.48 meters) and under in length are permitted to moor at sanctuary mooring buoys.

The ONMS is required by NMSA Section 304(e) to periodically review sanctuary management plans to ensure that sanctuary management continues to best conserve, protect, and enhance the nationally significant living and cultural resources at each site. Management plans generally outline regulatory goals, describe boundaries, identify staffing and budget needs, and set priorities and performance measures for resource protection, research and education programs. They also guide the development of future management activities. Due to such review, NOAA has decided to update and revise the 1991 FGBNMS management plan to address recent scientific discoveries, advancements in managing marine resources, and new resource management issues.

The FGBNMS management plan review process began in October 2006 with the release of the *Flower Garden Banks National Marine Sanctuary State of the Sanctuary Report* and public meetings to obtain information about the public's interests and priorities for FGBNMS management. Subsequently, NOAA worked with the FGBNMS Advisory Council to prioritize issues and develop appropriate management strategies and activities for the preparation of a draft revised management plan. Based on this input, NOAA prepared a draft revised management plan that consists of six action plans: Sanctuary expansion, education and outreach, research and monitoring, resource protection, visitor use, and operations and administration. Pursuant to the National Environmental Policy Act, 42 U.S.C. 4331-4345

(NEPA), NOAA also prepared a programmatic environmental assessment to analyze the environmental impacts associated with the proposed management plan revision and this proposed rule.

The resource protection and visitor use action plans in the draft management plan include several strategies that would require changes to the FGBNMS regulations. NOAA therefore is proposing to amend the FGBNMS regulations to make several substantive changes to reflect these new strategies. The changes would address conflicts between different types of visitors, protection of rays and whale sharks, and vessel discharge and deposits. The changes would also eliminate outdated references to paragraphs that no longer exist, update cross references to other paragraphs, and establish definitions for various new terms adopted in this proposed rulemaking.

**II. Summary of the Proposed Revisions**

This rulemaking proposes to take the following five actions:

1. Require any vessel moored in the sanctuary to exhibit the blue and white International Code flag "A" ("alpha" dive flag) whenever a SCUBA diver is in the water and remove the "alpha" dive flag once all divers exit the water and return on board the vessel;

2. Clarify that the prohibition on discharge or deposit of any material or other matter applies to discharges and deposits "from within or into" the sanctuary; and clarify that the exception to the discharge/deposit prohibition for fish, fish parts, or chumming materials (bait) applies only to discharges or deposits made during the conduct of fishing with conventional hook and line gear within the sanctuary;

3. Eliminate the exception that allows for the discharge or deposit of biodegradable effluents in the sanctuary; eliminate the phrase "routine vessel operation"; clarify that the exception applies only to discharge or deposit of clean vessel deck wash down, clean vessel engine cooling water, clean bilge water, or anchor wash, and clean effluent from an operable Type I or II marine sanitation device (MSD); require vessel operators to lock all MSDs in a manner that prevents discharge or deposit of untreated sewage; and add definitions for the terms "clean" and "harmful matter" to provide quality requirements for discharges and deposits;

4. Add a new prohibition on killing, injuring, attracting, touching, or disturbing a ray or whale shark; and add definitions for the terms "attract or

attracting” and “disturb or disturbing a ray or whale shark”; and

5. Make technical corrections to eliminate outdated references of paragraphs that no longer exist in the regulations; and update cross references to other paragraphs.

#### A. Dive Flag Requirements

NOAA proposes to require any vessel engaged in diving activity within the FGBNMS to clearly exhibit the blue and white International Code flag “A” (“alpha” dive flag) whenever a SCUBA diver from that vessel is in the water and remove the “alpha” dive flag once all SCUBA divers exit the water and return on board the vessel. The U.S. Coast Guard (USCG) requires any vessel in Federal waters engaged in diving operations to use a rigid replica of the “alpha” dive flag of a size not less than 1 meter in height, when that vessel is of a size that makes it impracticable to exhibit all lights and shapes prescribed in USCG regulations (33 CFR 83.27). The USCG also requires the vessel operator to take measures to ensure all-round visibility of the “alpha” dive flag. Because the entire sanctuary is within Federal waters, NOAA proposes to require the use of the “alpha” dive flag, whenever a vessel is engaged in diving activity in the sanctuary. This regulation would apply to all vessels engaged in diving operations, not just to vessels of a size that makes it impracticable to exhibit all lights and shapes prescribed in USCG regulations.

#### B. General Discharge/Deposit Prohibition

To ensure consistency among the regulations for other sanctuaries, this rule clarifies that the prohibition on discharging or depositing any material or other matter applies to discharges and deposits “from within or into” the sanctuary. Adding the word “into” is intended to clarify that the prohibition does not only apply to discharges and deposits originating in the sanctuary. The prohibition also applies, for example, to discharges and deposits above the sanctuary. The rule also clarifies that the exception to the prohibition on discharges or deposits for fish, fish parts, or chumming materials (bait) applies only to discharges made during the conduct of fishing with conventional hook and line gear within the sanctuary. This rule prevents the dumping of fish, fish parts, or chumming materials at all other times except for during fishing with conventional hook and line gear within the sanctuary.

#### C. Vessel Discharges and Deposits

NOAA proposes to amend the FGBNMS prohibition on discharges or deposits from vessels. This rule clarifies that the FGBNMS regulation (§ 922.122 (a)(3)(i)(B)) for discharge or deposit of vessel waste generated by marine sanitation devices approved in accordance with the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*, was not intended to allow the discharge of untreated sewage (e.g., discharges from Type III MSDs) into the sanctuary. Type I and Type II MSDs treat sewage, whereas Type III MSDs store waste until it is removed at designated pump-out stations on shore or discharged at sea. Therefore, NOAA proposes to modify the FGBNMS regulations to clarify that only discharges or deposits of effluent from properly functioning Type I or II MSDs are allowed in the sanctuary.

In addition, NOAA proposes to require all MSDs be locked in a manner that prevents discharge or deposit of untreated sewage. The requirement that MSDs be locked (e.g., locking closed an overboard discharge valve) helps prevent both intentional and unintentional overboard discharges of untreated sewage within the sanctuary. The revised regulations would allow vessels to discharge clean effluent from a Type I or Type II MSD. The use of the word “clean” would replace the use of the word “biodegradable” in the discharge regulations. Under the revised regulations, “clean” means not containing detectable levels of harmful matter; and “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 (§ 922.131) pursuant to 42 U.S.C. 9601(14) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

NOAA decided to remove the term “biodegradable” from the regulations because NOAA determined that the term has no recognized legal definition, and products are labeled “biodegradable” without reference to a fixed set of standards. NOAA could define the term; however, it would not be reasonable to expect a vessel operator to know which of the wide spectrum of products labeled as “biodegradable” meet NOAA’s definition. Defining the terms “clean” and “harmful matter” provide vessel operators with a

definition of what is prohibited, and focuses on the types of contaminants that pose the greatest threat to water quality within the sanctuary.

Since the phrase “routine vessel operations” lacks a legal definition and potentially raises enforcement and compliance issues, NOAA proposes to replace the exception for “water generated from routine vessel operations” with the requirement that clean deck wash down, clean cooling water, and clean bilge water all be free of detectable levels of “harmful matter” as defined by the regulations. This facilitates compliance by clearly identifying what types of discharges and deposits from routine vessel operations are permitted under the regulations, and focuses on those contaminants that pose the greatest threat to water quality. The requirement also makes the discharge regulations consistent with recent requirements implemented for other national marine sanctuaries.

#### D. Killing, Injuring, Attracting, Touching or Disturbing a Ray or Whale Shark

Approximately 20 species of sharks and rays have been documented at the Flower Garden and Stetson Banks; some are seasonal, others frequent the sanctuary year-round. During the winter months, spotted eagle rays (*Aetobatus narinari*) are visitors to all three banks. The reason for the seasonality of their visits is unclear, but their occurrence is quite predictable. Summer months usually bring whale sharks (*Rhincodon typus*) to the area. These filter-feeding creatures can reach over 30 feet (9 meters) in length. Manta rays (*Manta birostris*) and the very similar-looking mobula rays (*Mobula spp.*) are regular visitors to the sanctuary throughout the year. At least 58 different individual manta rays have been documented and identified by distinctive markings on their undersides. Recent acoustic tracking of the manta rays has revealed that the mantas are moving between the three banks of the sanctuary.

Whale sharks and rays are transient creatures and migrate between areas for feeding and mating. The sanctuary is a place where rays and whale sharks should be protected from human-induced death, injury or other harm. Divers can physically harm rays and whale sharks by attracting, touching, riding, or pursuing these animals. Their external sensory systems are affected by unnatural activation, which has unknown consequences on their ability to sense their environment. These animals may actively avoid diver interaction by changing direction or diving, and may exhibit violent shuddering. When these responses

occur, rays and whale sharks expend energy in ways other than feeding and other natural activities, which can affect their overall health. In addition, people can cause injury to the skin of these animals through touching, and can expose the animals to other potential injuries. Finally, attracting rays and whale sharks changes their behavior and may negatively impact their health. As an example of how rays have been affected by divers, stingrays in the Cayman Islands have developed shoaling behavior and altered feeding habits, as well as exhibit skin abrasions from handling. Scientific citations regarding the concerns and examples here can be found in the references section of the draft environmental assessment (see **ADDRESSES** for instructions on obtaining a copy).

These species are not listed under the Endangered Species Act (ESA) or designated as depleted under the Marine Mammal Protection Act (MMPA) because they are not mammals. Therefore, they are not protected in the same manner as threatened or endangered species protected under the ESA or depleted marine mammals protected under the MMPA. NOAA proposes to strengthen the protection of rays and whale sharks from harm (or likelihood thereof) in the sanctuary by prohibiting killing, injuring, attracting, touching, or disturbing these animals. The intent is to prevent human interaction with rays and whale sharks in such a manner that the animals change direction, dive away from human interaction, shudder, or have any other adverse behavioral or physical reaction. In order to make this new prohibition as clear as possible, NOAA is proposing to add definitions for the terms “attract or attracting” and “disturb or disturbing a ray or whale shark” in § 922.121.

#### *E. Technical Corrections*

NOAA proposes to make a technical correction to eliminate the references in the regulations to § 922.122(a)(iv), because that clause no longer exists. This subparagraph references a specific prohibition on vessel anchoring activities that was eliminated from the FGBNMS regulations in 2001 (66 FR 58370).

NOAA also proposes to update cross references in § 922.122(a) that may change as a result of the re-designation of paragraphs associated with this proposed rule.

### **III. Classification**

#### *A. National Environmental Policy Act*

NOAA has prepared a draft programmatic environmental assessment to analyze the potential environmental impacts of this proposed rulemaking. Copies are available at the address and Web site listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on this proposed rule will be published in the final programmatic environmental assessment and preamble to the final rule.

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

Under Executive Order 12866, if the proposed regulations are “significant” as defined in section 3(f) 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 Executive Order 12866.

#### *C. Executive Order 13132: Federalism Assessment*

All of the proposed actions would occur in the Exclusive Economic Zone beyond State jurisdiction. NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

#### *D. Paperwork Reduction Act*

This rule does not contain any new information or revisions to the existing information collection requirement that was previously approved for this rule by OMB (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

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.

#### *E. Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows: *Regulations regarding dive flag requirements.* NOAA proposes to require any vessel engaged

in diving activities within FGBNMS clearly exhibit the blue and white International Code flag “A” (“alpha” dive flag) whenever a SCUBA diver is in the water and remove the “alpha” dive flag once all SCUBA divers exit the water and return on board the vessel. The SBA does not provide a category of business for recreational fishing or diving operators in their list of size standards for small businesses; however, it provides a category for “sporting goods store” and “marina”, which can be used to approximate the size standards for the businesses affected by this rule. According to the SBA, a small business in the sporting goods or marina industries is one that has annual receipts of less than \$7 million. Sanctuary staff identified three local businesses that currently offer trips to FGBNMS for customers from the Galveston, TX area that would be affected by the flag requirement. Each of these businesses falls under the SBA’s definition of a “small entity” for the purposes of this action. It is possible that other diving businesses based from other areas in Texas and Louisiana might offer trips to FGBNMS, but this situation is unlikely given the availability of other dive sites closer to these areas. The cost of complying with this requirement would be the cost of acquiring a blue and white International Code flag “A.” This expense, even for the small entities affected, is a negligible one, and NOAA also considers the cost of exhibiting a flag negligible, particularly since many dive operators are already required to use the flag in coastal waters and therefore probably already own a flag. This proposed regulation would address a safety issue by reducing conflicts among users and is not expected to have any economic impact to these small businesses.

*Regulation of Vessel Discharges/Deposits.* Small entities that may be affected by the vessel discharge regulation fall under three categories: Commercial fishing businesses, recreational fishing businesses, and non-consumptive (diving) charter businesses. According to the SBA, a small business in the commercial fishing industry is one that has annual receipts of less than \$4 million. A small business in the recreational fishing or dive operator industry is estimated to have less than \$7 million in annual receipts, as discussed above. The exact number of commercial and recreational fishing businesses that operate in FGBNMS is unknown and currently being investigated, but NOAA social scientists estimate that there are fewer than 15 small businesses in these three

categories combined. Each of these businesses is considered a “small entity” based on the standards set out above. Significant adverse impacts are not expected to result for any of the sanctuary’s small entities from the proposed prohibition on discharging or depositing any material or other matter from within or into the sanctuary because in the course of normal, lawful operations, no small entity activities are expected to produce such discharges/deposits. Additionally, this proposed regulation would except discharges/deposits likely to come from vessel-based small entities, including clean effluent 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 (33 U.S.C. 1321 *et seq.*). This proposed regulation would also except clean vessel wash down, clean vessel engine cooling water, clean vessel engine exhaust, and fish, fish parts, or chumming materials (bait) used in or resulting from fishing with conventional hook and line gear within the sanctuary, provided that such later discharge or deposit is during the conduct of such fishing.

The proposed modification to the sanctuary’s discharge/deposit regulation clarifying that discharges allowed from marine sanitation devices applies only to Type I and Type II marine sanitation devices would not introduce any new restrictions on the 15 or fewer small entities operating in the sanctuary, and would merely clarify the original intent of the sanctuary’s discharge regulation. Most vessels large enough to support fishing or diving business to an offshore location such as FGBNMS have a marine sanitation device on board. All types of marine sanitation devices allow a vessel operator to either withhold discharges if they are not properly treated (Type III) or to treat wastewater prior to discharge (Type I and II); therefore this proposed regulation would not require a small entity to significantly alter its usual practices. To the extent that this clarification might affect customary, though illegal, sewage discharge practices of some small entities, the adverse affect on those operations is expected to be less than significant because such discharges may legally occur beyond the sanctuary’s boundary, or vessel sewage may be pumped out and disposed of at mainland ports and harbors. Additionally, some small entities may receive indirect benefits from this clarification, especially as it might

pertain to preventing large volume discharges from larger vessels, since this prohibition may contribute to sustaining favorable environmental quality in their area of operation.

The proposed modification to the sanctuary’s discharge/deposit regulation that would specify that discharging or depositing fish, fish parts, or chumming materials (bait) may occur only during the conduct of fishing with conventional hook and line gear within the sanctuary is not expected to have a significant adverse impact on small entities, because it would not apply to the conduct of such fishing within the sanctuary. NOAA believes no small entities currently discharge fish or fish parts in the sanctuary as a result of fishing outside the sanctuary boundaries, so no small businesses would be affected by this proposed regulation. In some areas “chumming” is a practice that has been associated with non-consumptive recreational activities (e.g., attracting sharks for photography), or in some cases research activities (e.g., attracting birds for study). NOAA believes that there are currently no small entities carrying on such activities in the sanctuary. Small businesses not engaged in fishing with conventional hook and line gear could apply for and, if appropriate, be granted a sanctuary permit (e.g., research or education) to conduct this otherwise prohibited discharge/deposit.

*Regulation to protect rays and whale sharks.* NOAA proposes to increase protection of rays and whale sharks from harm and harassment by adding a prohibition on killing, injuring, attracting, touching, or disturbing these animals. As mentioned above, three small businesses currently operate vessels that allow customers the opportunity to swim and/or SCUBA dive with rays and whale sharks. NOAA believes that divers’ experience of the sanctuary marine environment would not be diminished by this prohibition since swimming or diving near these animals would still be allowed under the proposed regulation. Because the divers’ experience will not be significantly altered by these rules, NOAA anticipates no decreased demand for the services the affected small entities provide. Therefore, significant adverse economic impacts to small businesses are not expected to result from this proposed regulatory action even if the proposed regulation requires the companies to slightly alter their current practices.

Because this action would not have a significant economic impact on a substantial number of small entities, no

initial regulatory flexibility analysis was prepared.

#### IV. Request for Comments

NOAA requests comments on this proposed rule and the draft environmental assessment for 90 days after publication of this notice.

Dated: October 19, 2010.

**Christopher Cartwright,**  
*Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management.*

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

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Wildlife, Wildlife refuges, Wildlife management areas.

For the reasons discussed in the preamble, NOAA proposes to amend part 922, title 16 of the Code of Federal Regulations 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. Amend § 922.121 to add definitions of “Attract or attracting”, “Clean”, “Disturb or disturbing a ray or whale shark”, and “Harmful matter” in alphabetical order to read as follows:

##### § 922.121 Definitions.

\* \* \* \* \*

*Attract or attracting* means the conduct of any activity that lures or may lure any animal in the Sanctuary 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).

*Clean* means not containing detectable levels of harmful matter.

*Disturb or disturbing a ray or whale shark* means to, or attempt to, ride, pursue, 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, for example, causing or threatening to cause the ray or whale shark to shudder or alter one or more of its natural behavioral traits or patterns.

*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.

\* \* \* \* \*

3. Amend § 922.122 as follows:

a. Add new paragraph (a)(2)(iii).

b. Revise paragraphs (a)(3)(i) introductory text, (a)(3)(i)(A), (a)(3)(i)(B), and (a)(3)(i)(C).

c. Redesignate paragraphs (a)(7) through (10) as paragraphs (a)(8) through (11), respectively.

d. Add new paragraph (a)(7).

e. Revise paragraph (c).

f. Amend paragraphs (d), (e), (f), and (g) by removing the phrase “paragraphs (a)(2) through (10)” wherever it appears and adding in its place “paragraphs (a)(2) through (11)”.

The additions and revisions read as follows:

**§ 922.122 Prohibited or otherwise regulated activities**

(a) \* \* \*

(2) \* \* \*

(iii) Mooring a vessel in the Sanctuary without clearly displaying the blue and white International Code flag “A” (“alpha” dive flag) whenever a SCUBA diver from that vessel is in the water or removing the “alpha” dive flag before all SCUBA divers exit the water and return back on board the vessel.

\* \* \* \* \*

(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;

\* \* \* \* \*

(7) Killing, injuring, attracting, touching, or disturbing a ray or whale shark in the Sanctuary.

\* \* \* \* \*

(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.

\* \* \* \* \*

**§ 922.123 [Amended]**

4. Amend § 922.123 (a) and (c) by removing the phrase “paragraphs (a)(2) through (10)” and adding in its place “paragraphs (a)(2) through (11).”

[FR Doc. 2010-26762 Filed 10-21-10; 8:45 am]

**BILLING CODE 3510-NK-P**

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1450**

**Virginia Graeme Baker Pool and Spa Safety Act; Public Accommodation**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Proposed interpretive rule.

**SUMMARY:** The Consumer Product Safety Commission (“Commission” or “CPSC”) is proposing this interpretive rule to interpret the term “public accommodations facility” as used in the Virginia Graeme Baker Pool and Spa Safety Act.

**DATES:** Written comments in response to this document must be received no later than December 21, 2010.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC-2010-0102, by any of the following methods:

**Electronic Submissions**

Submit electronic comments in the following way: Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through <http://www.regulations.gov>.

**Written Submissions**

Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper (preferably in five copies), disk, or CD-ROM submissions), to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

**Docket:** For access to the docket to read background comments or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Barbara E. Little, Regulatory Affairs Attorney, Office of General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; [blittle@cpsc.gov](mailto:blittle@cpsc.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8001, (“VGB Act” or “Act”) requires that drains in public pools and spas be equipped with ASME/ANSI A112.19.8 compliant drain covers, and that each public pool and spa with a single main drain other than an unblockable drain be equipped with certain secondary anti-entrapment systems. Section 1404(c) of the Act. The Act defines “public pool and spa” in relevant part as a “swimming pool or spa that is open exclusively to patrons of a hotel or other public accommodations facility.” Section 1404(c)(2)(B)(iii) of the Act. The Act does not define the term “public accommodations facility.”

In response to numerous inquiries regarding what constitutes a public accommodations facility under the VGB Act, the Commission published a proposed interpretive rule on the definition of “public accommodations facility” on March 15, 2010 (75 FR 12167). The proposed interpretive rule would interpret “public accommodations facility” to mean: “An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor.”

CPSC received six comments on the proposed interpretive rule, including two comments from State health departments, one from the Tennessee Hospitality Association, one from an