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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 031001243–6227–02]

RIN 0648–AQ41

### Gray's Reef National Marine Sanctuary Regulations

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Final rule; notice of public availability of final management plan/final environmental impact statement and record of decision.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is issuing a final revised management plan and revised regulations for the Gray's Reef National Marine Sanctuary (GRNMS or sanctuary). The revised regulations prohibit anchoring in the sanctuary, restrict all fishing except that conducted by rod and reel, handline, or spearfishing gear without powerheads, and requires all other forms of fishing gear to be stowed and not available for immediate use when a vessel with such gear is in the sanctuary.

**DATES:** *Effective Date:* Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the revised designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on October 12, 2006. Announcement of the effective date of the final regulations will be published in the **Federal Register**.

**ADDRESSES:** Copies of the final management plan/final environmental impact statement and the record of

decision are available upon request to the Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, Georgia 31411; 912/598–2381.

**FOR FURTHER INFORMATION CONTACT:** Greg McFall, Acting Sanctuary Superintendent, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, Georgia 31411; 912/598–2345.

#### SUPPLEMENTARY INFORMATION:

##### Introduction

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434(e)) the National Marine Sanctuary Program (NMSP) issues a revised management plan for GRNMS. The plan includes several revisions to existing regulations and several new regulations for the sanctuary. The new regulations restrict fishing at GRNMS to use of rod and reel, handline, and spearfishing gear without powerheads, by prohibiting the injuring, catching, harvesting, or collecting of any marine organism or part thereof in the sanctuary except by these gear types. All other forms of fishing gear must be stowed when a vessel is in the sanctuary. The regulations also prohibit anchoring vessels in the sanctuary. These measures will afford better protection to the nationally significant marine resources and habitats at GRNMS.

In the Draft Management Plan/Draft Environmental Impact Statement (68 FR 62033, October 31, 2003), Alternative “a” was identified as the preferred alternative for fishing, which would have prohibited spearfishing as well as all other types of fishing except with rod and reel and handline gear. However, NOAA has decided to adopt fishing alternative “c”, which continues to allow use of spearfishing gear without powerheads. While it has been effectively demonstrated in other areas that selective removal of large individual fish by spearfishing can adversely affect the reproductive viability of a given population, the sanctuary has little data on the actual level of spearfishing at GRNMS. In order to assess socioeconomic factors of spearfishing activities at the sanctuary, a focused study will be initiated to determine the level of spearfishing and other fishing activities. The sanctuary will also use the ongoing, long-term

biological data collected through the Marine Resources Monitoring, Assessment, and Prediction Program (MARMAP) and diver census methods to evaluate fish populations at GRNMS.

NOAA therefore defers taking action on spearfishing as was proposed in the DMP/DEIS for a period of two years while additional information is collected on this activity in GRNMS. The issue will be reviewed again with the benefit of additional socioeconomic and biological analyses. NOAA will then determine what action to take, if any, given the additional data.

NOAA has also determined that establishing hook limits on rod and reel and handline gear, as described in the proposed rule and the DMP/DEIS, would complicate compliance and law enforcement. Law enforcement officials noted that the hook limitations would be extremely difficult to enforce. The preferred alternative, therefore, does not impose hook limits in the regulations.

Existing regulations are revised to address placing or abandoning structures on the submerged lands; using underwater explosives or devices generating electrical current; and moving or damaging historical resources. The permit regulations for the sanctuary are revised and clarified. Prior to permit issuance, the Director of the NMSP is required to consider and make certain findings regarding, among other things, the duration of the activity and its effects; the cumulative effects; and whether it is necessary to conduct the proposed activity in the sanctuary. Permit holders are required to display a copy of the permit on board any vessel or aircraft used in the permitted activity.

The final management plan details the goals and objectives and management responsibilities for the Sanctuary, as well as a series of action plans that outline marine resource protection, administration, research and monitoring, exploration, outreach and education, and performance evaluation activities that are planned for the next five years. The activities are designed to address specific issues facing the sanctuary and in doing so, help achieve the management objectives of the GRNMS and the larger mandates of the NMSP.

This document provides the final regulations and the revised Designation Document for the sanctuary; and announces the availability of the final

management plan and the final environmental impact statement (FMP/FEIS).

### Background

Gray's Reef National Marine Sanctuary, which was designated on January 16, 1981 (46 FR 7942), consists of approximately 16.68 square nautical miles of ocean waters and hard bottom located 17.5 nautical miles off Sapelo Island, Georgia. It is one of the largest nearshore rocky reefs off the southeastern United States and is in a transition zone between temperate and tropical waters. Some reef fish populations and plant communities change seasonally, while others are year-round residents. Migratory fish move through the sanctuary, using the reef for food and shelter. Loggerhead sea turtles, a threatened species, use GRNMS for foraging and resting. The reef is also close to the only known calving ground for the highly endangered Northern right whale.

The hard bottom habitat at the sanctuary is composed of marine sediments (mud, sand, and shells) that were deposited between 2–3,000,000 years ago. These marine sediments were consolidated into rock during subsequent glacial periods by numerous changes in sea level that repeatedly exposed and then submerged the areas of GRNMS as the coastline advanced and retreated across the continental shelf.

Recent bottom mapping indicates that the area is a single rock unit. It is made of calcareous sandstone that formed as a result of the compacting marine sediments and aerial exposure. The irregularities of the bathymetry can be attributed to the easily erodable sandstone that has dissolved and pitted, creating the appearance of isolated ledges and patches of hard bottom.

The exposed rock offers moderate relief (0.5 to 10 feet in height) with sandy, flat-bottomed troughs between. The series of rock ledges and sand expanses has produced a complex habitat of caves, burrows, troughs, and overhangs that provide a solid base on which temperate and tropical marine flora and fauna attach and grow. This rocky platform with its rich carpet of remarkable attached organisms is known locally as a "live bottom" habitat.

The sanctuary is a small but very important part of the broad continental shelf off the southeastern coast sometimes known as the South Atlantic Bight (SAB). The SAB extends from Cape Hatteras, North Carolina to Cape Canaveral, Florida. The outer reaches are dominated by the Gulf Stream

flowing northeastward. The inner area is defined by the curve of the coastline between the two capes and is dominated by tidal currents, river runoff, local winds, seasonal storms, hurricanes, and atmospheric changes. While GRNMS lies in the inner-shelf zone of the SAB—which causes great seasonal variations in temperature, salinity, and water clarity—it is also influenced by the Gulf Stream. The Gulf Stream draws deep nutrient-rich water to the region, and carries and supports many of the tropical fish species and other animals found in the sanctuary. Ocean currents transport fish and invertebrate eggs and larvae from other areas, linking the Sanctuary to reefs both north and south. GRNMS is the only protected natural reef area in the SAB.

The sanctuary's area constitutes a tiny percentage of the ocean space off the coast, yet the sanctuary's value as a natural marine habitat is recognized nationally and internationally. The live bottom is a flourishing ecosystem that attracts mackerel, grouper, black sea bass, angelfish, and a variety of other fishes. GRNMS is one of the most popular recreational fishing and sport diving destinations along the Georgia coast. Sport fishing occurs year-round but intensifies in warmer months and with the migration of pelagic game fish.

The sanctuary is located near an area of Georgia coastline that has experienced a dramatic increase in population. Aerial and on-water surveys indicate that visitation to GRNMS has increased significantly since 1981. With continued technological innovations such as global positioning systems (GPS), electronic fish finders, and improved watercraft design, it is likely that there will be increasing pressure on the resources of the sanctuary. With its new management plan and regulations, NOAA hopes to continue to protect GRNMS for the continued appreciation and use by the current and future generations.

Because this action includes changes to the sanctuary's Designation Document, the FMP/FEIS is developed pursuant to section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)) consistent with, and in fulfillment of, the requirements of the National Environmental Policy Act of 1969.

### Revised Designation Document

NOAA specifies in the Designation Document that the submerged lands at GRNMS are legally part of the sanctuary and are included in the boundary description. At the time the sanctuary was designated in 1981, Title III of the Marine Protection, Research, and Sanctuaries Act (now also known as the

National Marine Sanctuaries Act) characterized national marine sanctuaries as consisting of coastal and ocean waters but did not expressly mention the submerged lands thereunder. NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98–498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)). Therefore, to be consistent with the NMSA, NOAA is updating the Designation Document and the boundary description, and is replacing the term "seabed" with "submerged lands." Although certain fishing activities have been regulated at GRNMS since 1981, terms are being added to the Designation Document to authorize regulations for use of allowable fishing gear and to prohibit the possession of non-allowed gear. This allows sanctuary fishing regulations for GRNMS, recommended by the South Atlantic Fishery Management Council (SAFMC), to be issued for the sanctuary. The Designation Document is also updated to authorize regulating drilling into the submerged lands of the sanctuary; constructing, placing or abandoning material or matter; discharging or depositing material or matter outside the sanctuary that subsequently enters and injures a sanctuary resource or quality; using explosives or devices that produce electric current underwater; and moving, removing, injuring, or possessing historical resources.

Language in Article 4 Section 2 providing authority for temporary emergency regulations has been revised to provide NOAA greater discretion to act in emergency situations to protect sanctuary resources on a temporary basis, and is now more consistent with the NMSA's primary objective of resource protection. Rather than show that ecosystem damage would be immediate, serious and irreversible before it could promulgate emergency regulations, NOAA must now show an actual or imminent risk of destruction, loss of, or injury to a sanctuary resource or quality. In addition, while emergency regulations must still be issued on a temporary basis, the 120-day limit has been removed.

Article 6 of the Designation Document is also updated regarding the process to modify the Designation. The requirement that modifications to the Designation must be approved by the President is deleted and replaced with the requirement that modifications be approved by the Secretary of Commerce

or his or her designee. This is consistent with amendments to the NMSA that were enacted after the Sanctuary was designated in 1981 and which removed Presidential approval as a requirement for designation.

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

Preamble

Under the Authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, (the Act), the waters and the submerged lands thereunder at Gray's Reef in the South Atlantic Bight off the coast of Georgia are hereby designated a National Marine Sanctuary for the purposes of: (1) Protecting the quality of this unique and fragile ecological community; (2) promoting scientific understanding of this live bottom ecosystem; and (3) enhancing public awareness and wise use of this significant regional resource.

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, by any means except by use of rod and reel, and handline gear;

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

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

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

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]

**Summary of the Regulatory Amendment**

The regulatory changes clarify that "submerged lands" are within the boundary and are part of the sanctuary. This updates the boundary regulation to make it consistent with the NMSA and its definition of areas of the "marine environment" that may be designated as a sanctuary.

The regulations also modify the sanctuary fishing regulations that have been in effect since 1981. The original regulations prohibited the use of specific fishing gear within the sanctuary, particularly wire fish traps and bottom trawls. The new regulation prohibits the injuring, catching, harvesting, or collecting of any marine organism by any means except by rod and reel, handline, or spearfishing gear without powerheads. This establishes a

clearer, more enforceable approach for the sanctuary fishing regulations than those currently in effect. Rod and reel gear is the predominant fishing gear now in use at GRNMS and continues to be allowed under the regulations. To facilitate enforcement of the gear restriction, a related regulation requires that all forms of fishing gear other than rod and reel, handline, or spearfishing gear without powerheads be stowed when vessels are in the sanctuary.

The final regulations also prohibit anchoring vessels within the sanctuary. The unique bottom formations and habitats at GRNMS are vulnerable to the effects of anchoring. The documented increases of population in the region and of visitor use at GRNMS suggest that the risk from vessel anchoring will also increase and that prohibiting anchoring helps protect the live bottom habitat and the associated living marine resources that GRNMS was designated to protect. This regulation has little impact on current users of the sanctuary. Based on findings of a socioeconomic study (Ehler and Leeworthy) conducted in 2002, virtually none of the activities that occur at GRNMS require anchoring. Fishermen routinely allow their boats to drift during bottomfishing or are trolling for migratory species, and divers frequently use a "live-boat" for drift diving, due to the strong currents. There is overall support for the ban on anchoring among users surveyed during the socioeconomic study. In an emergency situation, boaters are allowed to anchor in the sanctuary and existing boundary marker buoys provide a place for a boat to moor in an emergency as well.

Finally, the regulations for the issuance of permits adds a new permit category for assisting in managing the sanctuary. This authorizes the NMSP to issue a permit to the sanctuary manager and qualified individuals outside the NMSP for activities that otherwise would be prohibited, if the activities assist in sanctuary management and if they satisfy permit criteria. The permit criteria require the NMSP or the Superintendent to consider, and make certain findings regarding, factors including the duration of a proposed activity, its cumulative effects, and whether it is necessary to conduct the proposed activity in the sanctuary. A permit holder is required to display a copy of the permit in any vessel or aircraft being used in the permitted activity.

The following regulatory changes are also included in this document: The term "seabed" is replaced with "submerged lands of the sanctuary" to be consistent with usage in the NMSA.

The prohibition against dredging, drilling into or altering submerged lands of the sanctuary specifically includes bottom formations to call attention to one of the critical elements of the ecosystem at GRNMS. The original prohibition against constructing any structure other than a navigation aid is revised to include constructing, placing, or abandoning any structure or material on the sanctuary submerged lands. This change, among other things, prohibits activities that have been identified in the Florida Keys National Marine Sanctuary, where materials are placed on the submerged lands to create lobster habitat. The prohibition against using poisons, electric charges, explosives, or similar methods to take any marine animal not otherwise prohibited from being taken is revised to prohibit the use underwater of explosives and devices producing electric current, while the reference to poisons is removed because it is already addressed by the prohibition against discharges. Use of these items is prohibited regardless of whether marine animals are being taken. The regulation prohibiting tampering with, damaging or removing historic or cultural resources is revised to prohibit moving, removing, damaging, or possessing any sanctuary historical resource, or attempting any of these. This change better protects these resources from being removed and facilitates enforcement by prohibiting their possession.

#### Comments and Responses

During the public comment period, 144 written comments were received. Seven (7) public hearings were also held with approximately 125 individuals in attendance. Comment during the public hearings was derived out of round table discussions and recorded on flip charts at each of the small group tables. Written and verbal comments were compiled and grouped by general topics into a 10-page summary, which was reviewed and considered by the GRNMS Advisory Council on January 28, 2004.

Substantive comments received are summarized below, followed by NOAA's response. Multiple but similar comments have been treated as one comment for purposes of response. Comments beyond the scope of the proposed action are neither summarized nor responded to.

*Comment 1:* Many members of the public that have an interest in spearfishing commented that spearfishing at Gray's Reef should not be prohibited as proposed in the draft plan. The sanctuary does not have specific data on the number of people who spearfish and the amount of fish

they take. If spearfishing is prohibited, then all bottom fishing at the sanctuary should be prohibited too. Bottom fishing takes far more fish and leaves far more debris on the reef than spearfishing does.

*Response:* Spearfishing was considered for regulation during the original 1981 GRNMS designation. No regulations, however, were adopted at that time, except the prohibition of powerheads (explosives) for spearfishing. While the number of recreational divers spearfishing at GRNMS appears to be small, spearfishing typically targets the larger individual fish among the reef-dependent species. Large fish are important to the reproductive health of species. Some fish populations are overfished or approaching overfished status. Some researchers have commented on the lack of large snapper-grouper individuals at GRNMS (Bohnsack pers. comm.).

Research has shown significantly reduced populations of larger predatory fishes where spearfishing occurs (SAFMC, 1990; Bohnsack, 1982; Chapman and Kramer, 1999; Jouvenel and Pollard, 2001). Larger predators are favored targets of spearfishermen. Reduction in the larger predatory fishes can have a "top-down" effect on fish populations by allowing other fish populations to increase, altering the composition of the overall natural communities including invertebrates.

Although the use of powerheads is prohibited at GRNMS, powerhead cartridges found on site indicate that this gear is still in use. Law enforcement officials have expressed concerns that some commercial spearfishing operations may be harvesting large numbers of undersized fish from the region.

NOAA recognizes that while it has been effectively demonstrated in other areas that selective removal of large individual fish by spearfishing can adversely affect the reproductive viability of a given population, the sanctuary has little data on the actual level of spearfishing at GRNMS. The sanctuary will, therefore, gather additional socioeconomic information on this activity in GRNMS and review the issue again in two years. The additional socioeconomic information coupled with ongoing biological studies of fish populations will enable management to better evaluate the impact of current and potentially future levels of spearfishing at GRNMS.

NOAA therefore defers taking action on spearfishing as was proposed in the draft management plan for a period of two years while additional information

is collected on this activity in GRNMS. NOAA will then determine what action to take, if any, given the additional information.

*Comment 2:* (U.S. Environmental Protection Agency, Region IV) The language used in the Preferred Alternative could be strengthened to expressly prohibit the use or possession of spearguns, nets, bandit gear, buoy gear, traps, pots, etc., in the GRNMS. The distinction between permitted activities and prohibited activities should be made unambiguously clear.

*Response:* NOAA has determined that prohibiting specific gear types could add more complication and confusion for fishermen by lengthening the list of restricted fishing methods and gear, versus clearly identifying what gear is allowed in GRNMS. The allowable gear regulation approach was endorsed by the GRNMS Advisory Council and the SAFMC as the best approach.

*Comment 3:* (South Atlantic Fishery Management Council) The SAFMC voted to support the DMP/DEIS and proposed fishing regulatory language contained in the November 2003 public hearing document. Prohibiting anchoring and the other proposed actions are consistent with the SAFMC's Essential Fish Habitat (EFH) and EFH-Habitat Area of Particular Concern (HAPC) designations and with the SAFMC's habitat policies. The SAFMC did, however, request that GRNMS reconsider the proposed 3-hook limit.

*Response:* NOAA has adopted Alternative "c" of the proposed allowable gear regulation, to permit only rod and reel, handline, and spearfishing gear without powerheads in the sanctuary. NOAA has determined that the 3-hook limit on rod and reel and handline gear, as defined in the draft proposed rule, complicates law enforcement and compliance. Hooks vary significantly in size and identification since hooks are made by different manufactures in different countries. Uses are also varied, making compliance difficult for users and interpretation of the regulations difficult for law enforcement. Therefore, NOAA defines the gear allowance without a limit on the number of hooks.

The process of developing fishing regulations for GRNMS has complied with the NMSA, including Section 304(a)(5), and the Memorandum of Understanding executed by the SAFMC, NOAA Fisheries Service, and the NMSP.

*Comment 4:* (Georgia Department of Natural Resources, Coastal Resources Division, Marine Fisheries Section) Prohibiting anchoring and the other proposed actions are consistent with the

SAFMC's EFH and EFH-HAPC designations and with the Council's habitat policies. The anchoring prohibition and similar marine resource action plan strategies to protect the live bottom habitat are appropriate and consistent not only with the SAFMC's EFH definitions/policies, but also with the goals and objectives of the NMSP.

*Response:* See response to comment 3 above. The prohibition of anchoring is consistent with the SAFMC's EFH and EFH-HAPC designations of GRNMS, as well as the goals and objectives of the NMSP.

*Comment 5:* (U.S. Navy, Commander Navy Region Southeast) The Navy requested that the document expand the statements regarding military activities to specifically indicate that the sanctuary designation did not limit or restrict ongoing or future military use for training and operations.

*Response:* Existing regulations governing national defense exemptions for current activities have not changed.

Current Department of Defense activities are essential for national defense and are not subject to the regulatory prohibitions. The exemption of additional activities having significant impacts will be determined in consultation between the Director and the Department of Defense.

*Comment 6:* (U.S. Navy, Commander Navy Region Southeast) The Navy recommended modification of the next to last sentence in the section on Military Activities on page 53 of the FEIS to read "Military aircraft do not routinely fly below 1500 feet or within a one nautical mile radius of the Sanctuary."

*Response:* NOAA acknowledges the Navy's comment and has determined that the language as it exists in the FMP/FEIS (already published), coupled with the regulations governing national defense activities, will adequately address this concern.

*Comment 7:* (U.S. Coast Guard, Commander (OLE), 7th Coast Guard District) Section 922.92(5)(ii) of the regulations states that "There shall be a rebuttable presumption that any marine organism or part thereof found in the possession of a person within the sanctuary has been collected or removed from the Sanctuary." A "rebuttable presumption" places the burden of proving that any organism in possession of an alleged violator was actually caught in the sanctuary on the enforcement entity, something that is very difficult to do unless directly observed. Section 5 (ii) as written would be extremely difficult to enforce. The Coast Guard recommended changing this text to simply prohibit possession

of any marine organism or part thereof when within the sanctuary and when in possession of any fishing gear or means except rod and reel and handline gear that is available for use. The prohibition text should also ensure that it is illegal to possess any species caught with a gear type prohibited in the sanctuary.

*Response:* The U.S. Coast Guard is a key enforcement partner to NOAA in the protection of sanctuary resources and NOAA appreciates its comment to improve the regulation. The rebuttable presumption does not place any additional burden on the enforcement entity; rather it operates such that any person located inside the sanctuary and found in possession of a marine organism is presumed to have taken that organism from the sanctuary. Thus, no actual observation of a violation is required—it is presumed—and the burden is shifted to the alleged violator to provide some evidence proving the organism was in fact not taken from the sanctuary. Although the presumption can be overcome by the introduction of contrary evidence, NOAA regards the rebuttable presumption as generally useful to enforcement of the sanctuary regulations and, therefore, believes it should be retained in the final regulations. Language in the text of the allowable gear regulation addresses possession of species caught in the sanctuary with prohibited gear types.

*Comment 8:* (U.S. Coast Guard, Commander (OLE), 7th Coast Guard District) Section 922.92(6) of the DMP/DEIS prohibits gear other than rod and reel and handline gear unless "stowed and not available for use." This term is later defined as "stowed and not available for immediate use." This disparity between prohibition and definition will cause confusion and may make this prohibition unenforceable. The definition and prohibition language should be aligned.

*Response:* NOAA has corrected this typographical error in the FMP/FEIS by adding the word "immediate" in Section (6).

*Comment 9:* (U.S. Coast Guard, Commander (OLE), 7th Coast Guard District) Rod and reel gear is defined in the definitions section, and the definition includes a limit on the number of hooks per line to capture baitfish and a limit on the size and type of hooks that can be used. This limitation should be removed, as it is extremely difficult to enforce. However, if this limit is retained these prohibitions should be moved from the definition section and be included under the new regulation section. This will help simplify the regulations, a key component of an enforceable regulation.

*Response:* NOAA has changed the regulation. See response to comment 3 above.

*Comment 10:* (U.S. Coast Guard, Commander (OLE), 7th Coast Guard District) Prior to implementing a final rule, GRNMS should coordinate with NOAA General Counsel for Enforcement and Litigation to update GRNMS' penalty schedule. The current penalty schedule was last revised in January 1997, and a proposed revision drafted in 2002 has not gone into effect.

Unfortunately, the proposed revision is not adequate and does not address the proposed regulation changes in the DMP/DEIS. In addition, the majority of potential violations within GRNMS are likely to be small and perpetrated by recreational fishermen. Any penalty schedule update should reflect this.

*Response:* NOAA has developed a national penalty schedule for the NMSP. Penalty schedules, however, are not established by rulemaking; they are for internal guidance and have no binding effect on the amount of a penalty that may be assessed for a violation. Rather they are intended for consistency across a national system. The NMSA remains the authority for, and the source of, penalties that NOAA may assess.

*Comment 11:* The South Carolina Aquarium fully supports the increased protection proposed in the DMP/DEIS. Limits placed on spearfishing and anchoring would help to minimize damage due to human activities on Gray's Reef.

*Response:* NOAA has chosen the prohibition on anchoring (alternative "a"). Regarding spearfishing, see response to comment 1 above.

*Comment 12:* The Coastal Group, Georgia Chapter, Sierra Club strongly supports the two major regulatory changes in the management plan: the prohibition of dropping anchor except in an emergency and the elimination of spearfishing from the sanctuary.

*Response:* NOAA has chosen the prohibition on anchoring (alternative "a"). Regarding spearfishing, see response to comment 1 above.

*Comment 13:* The Center for a Sustainable Coast believes that to truly serve as a sanctuary for marine life, GRNMS must ultimately be managed as a reserve to protect all species within its bounds against fishing and any other activities that disturb natural resources. To strengthen the capacity of efforts to improve water resource management, the GRNMS Management Plan should include analysis of the relationship of watersheds, water use, and water quality with the inter-tidal and marine areas. GRNMS must work to enhance and support greater awareness about

these issues, and work to build a lasting intergovernmental management structure capable of resolving the complex water issues that may impact Gray's Reef and other marine resources.

*Response:* During the scoping process for the revised management plan, many comments received asked that GRNMS consider marine reserve status (no-take) for the sanctuary. As noted in the FMP/FEIS (pages 29 and 69–70), GRNMS determined that marine reserves are best addressed through our partnership with SAFMC as they continue deliberations on a network of reserves in the region.

NOAA agrees that water quality is critical to the continued sustainability of the protected resources at GRNMS. Therefore an extensive water quality monitoring program has been implemented at GRNMS. Education programs, such as the Rivers to Reef module, are also bringing awareness to students and teachers.

*Comment 14:* Many commenters expressed general support for increased protection of marine resources in the sanctuary and/or that NOAA adopt the preferred fishing alternative "a."

*Response:* See responses to comments 11 through 13 above.

*Comment 15:* One member of the public commented that GRNMS should be managed as a "sanctuary;" and/or allow only dive activities; and/or allow only transit through the sanctuary with fishing gear stowed.

*Response:* GRNMS is managed as a "national marine sanctuary," which is defined in the NMSA as "an area of the marine environment of special national significance due to its resource or human-use values, which is designated as such to ensure its conservation and management." As such, all uses are evaluated as to whether they are compatible with the primary objective of resource protection. Ongoing research and monitoring are conducted to support that objective.

*Comment 16:* One commenter suggested that GRNMS should consider designating 25–50 percent of the sanctuary as a reserve for non-extractive uses. Protect Gray's Reef NMS as representative hard-ground live bottom habitat in the South Atlantic Bight.

*Response:* See response to comment 13 above.

*Comment 17:* Several members of the public commented that non-extractive diving as a compatible use at GRNMS is growing; more divers prefer recreational diving for wildlife observation and photography. Conflicts are arising due to spearfishing at GRNMS because the fish, particularly larger fish, are either killed or scared away. Most

spearfishermen do not use GRNMS, but prefer other offshore sites.

*Response:* See response to comment 1 above.

*Comment 18:* Several members of the public asked if the proposed regulations restrict use of commonly used equipment such as downriggers and marker buoys?

*Response:* The FMP/FEIS does not propose restrictions on commonly used equipment such as downriggers and marker buoys. The document specifically states on page 65: "Items that are deployed and subsequently retrieved the same day, such as fishing line and small marker buoys, are not considered 'deposited' in the Sanctuary."

*Comment 19:* A member of the public commented that GRNMS should reduce all commercial and recreational fish harvest to "sustainable levels." GRNMS should ban all commercial fishing and charter/head boats in order to achieve sustainable levels of harvest.

*Response:* NOAA is responsible for the conservation and management of fish stocks within the Federal 200-mile limit exclusive economic zone of the Atlantic Ocean off the southeastern U.S. under the Magnuson-Stevens Fishery Conservation and Management Act. Under this mandate, sustainable levels of fish harvest are an objective for a wide range of fish species. Achieving sustainable fishing levels can be done better on a regional level well beyond the boundaries of GRNMS. However, the allowable fishing gear approach to GRNMS regulation does restrict certain types of fishing gear that have a negative impact on sustainable levels of many fish species.

*Comment 20:* One member of the public commented that GRNMS should regulate fishing gear by prohibiting specific gear instead of allowing specific gear.

*Response:* NOAA believes that fishing alternative "b" would not be in the best interest of the sanctuary or its users. The allowable gear approach is simple, clear, and easily understood by the fishing community and by the public generally. It means that gear identified as allowable is the only gear that may be used in the sanctuary; use of all other gear types is prohibited. This is a simpler, clearer approach than attempting to list all possible gear types that are prohibited. It also simplifies and facilitates monitoring and law enforcement, and eliminates the costs to users who develop and utilize fishing gear in the sanctuary that may have to be prohibited in the future due to damage to the resources.

*Comment 21:* One commenter was concerned that all diving activities will be eliminated at GRNMS.

*Response:* This plan does not propose eliminating diving at GRNMS. Although impacts on bottom resources from diving activities are a concern, GRNMS will establish a comprehensive outreach and education program to address these concerns. The revised regulations for GRNMS are very clear that only specific fishing gear is allowed and any other form of collection, harvest, or injury to marine organisms is prohibited.

*Comment 22:* The National Marine Manufacturers Association has strong reservations about NMSP's proposal to prohibit anchoring in the sanctuary because there is no evidence that at any point NMSP considered the effect this proposal would have on boater safety. NMSP should formally consult with the U.S. Coast Guard (USCG) Office of Boating Safety for recommendations on how to make NMSP's management policies consistent with proper boater safety procedures. NMMA also urges NMSP to adopt anchoring alternative "b" and establish and maintain a mooring buoy system in the appropriate places to enhance boater safety.

*Response:* NOAA involved the USCG, area boaters, fishermen, and divers on many occasions in the development of the FMP/FEIS through GRNMS Advisory Council meetings, scoping, and workshops. A representative of the 7th USCG District sits on the Advisory Council, along with a recreational angler and a recreational dive operator. The USCG's comment in its formal consultation letter response on the DMP/DEIS stated that: "There are no objectionable vessel safety concerns contained within this proposal."

Regarding anchoring alternative "b," NOAA has concluded that a mooring buoy system is not needed, in part because the proposed regulation allows for use of anchors in emergency situations. The GRNMS Advisory Council, and other users surveyed in the socioeconomic studies cited in the FMP/FEIS, also consistently advised that a mooring buoy system was not needed in the sanctuary because boaters (fishermen and divers) prefer to drift or troll. The potential negative impacts from concentrated use around mooring buoys is also a concern for the sanctuary. GRNMS will continue to monitor use in the sanctuary and may reconsider mooring buoys in the next management plan review if the sanctuary finds that they are needed.

*Comment 23:* A couple members of the public commented that NOAA should install mooring buoys in the sanctuary to enhance fishing, diving and

research activities if anchoring is prohibited; consider 25–30 moorings and moveable moorings to minimize the negative impacts of concentrated activities.

*Response:* See response to comment 22 above.

*Comment 24:* Several commenters expressed that NOAA should choose the preferred alternative "a" for anchoring.

*Response:* NOAA has chosen the preferred alternative "a" for anchoring.

*Comment 25:* One commenter stated that anchoring alternative "c" is not a good option because it assumes that sandy areas in GRNMS have no biological value. It makes little sense to anchor in the sandy areas away from fishing and diving locations.

*Response:* NOAA acknowledges the concern about the biological importance of sandy areas in the sanctuary. Page 38 of the FMP/FEIS points out the high infaunal diversity in sandy bottom areas of the sanctuary. NOAA has chosen the preferred alternative "a" for anchoring.

*Comment 26:* One member of the public commented that the prohibition on anchoring is inappropriate because there is no concrete or photographic evidence of anchor damage.

*Response:* Numerous photos have documented damage from anchoring at GRNMS. Page 61 of the FMP/FEIS shows anchoring gear photographed on a live bottom area at GRNMS. Numerous studies in other locations have also definitively documented the significant damage to delicate invertebrates, corals and hard bottoms from anchoring practices. The prohibition of anchoring is not a limiting factor for visitors to be able to conduct recreational activities in GRNMS. Anchoring continues to be allowed in emergency circumstances.

*Comment 27:* One member of the public commented that there is no purpose to establishing a working group to explore the concept of a marine research area because there is no such thing as a "natural process along a populated coast," and a marine research area would have a negative impact on the fishing community. Designating a research area would open the door to closing the entire sanctuary to fishing; other live bottom areas in the region should be chosen for a research reserve instead of GRNMS.

*Response:* After consideration of the public comments on the DMP/DEIS, the Advisory Council recommended that the sanctuary establish a working group to advise the Advisory Council on the development of the concept of a marine research area. The Advisory Council, with the concurrence of the sanctuary, established the Marine Research Area Concept Working Group (RAWG),

which met from May 2004 until March 2005. The Working Group was comprised of representatives from education, fishing, diving, research and conservation, law enforcement, and other regional, private, State, and Federal organizations. The recommendations from the Working Group to the Advisory Council can be found in Section III under the Research and Monitoring Action Plan (RM–2). The Advisory Council deliberated on the Working Group's recommendations at its June 2005 meeting and made its recommendations to the sanctuary (also found at RM–2).

NOAA has accepted the recommendations of the Advisory Council and made a decision to more formally consider the concept of a research area in the sanctuary through a public process guided by requirements of NEPA and the NMSA.

*Comment 28:* Members of the public commented that GRNMS should consider an area only for research in the sanctuary; the reserve could serve as a "constant" for monitoring marine resources, and help improve information specific to Gray's Reef.

*Response:* See response to Comment 27 above. The research area concept should be considered and an investigation of its benefits will move forward.

*Comment 29:* Members of the public commented that GRNMS should consider a "rotational" marine research area (either geographically or temporally).

*Response:* See response to comment 27 above.

*Comment 30:* One member of the public noted that if the document is to follow the provisions of NEPA, it must have a List of Preparers contained within.

*Response:* A full list of preparers is included in the FMP/FEIS in an appendix entitled List of Preparers.

*Comment 31:* A member of the public urged GRNMS to formally incorporate a study of birds which occupy the reef as part of Goal 2 as research into the ecology of the reef.

*Response:* Surveys of birds in the sanctuary have become a regular part of the monitoring program.

## Miscellaneous Rulemaking Requirements

### National Marine Sanctuaries Act

Section 301(b) of the National Marine Sanctuaries Act (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 National Marine Sanctuaries Act (16 U.S.C. 1434(a)(4)) requires that the procedures specified in section 304 for designating a national marine sanctuary be followed for modifying any term of designation. Because this action revises the sanctuary designation document (*i.e.*, the sanctuary boundary is revised to specifically include the submerged land), NOAA must comply with the requirements of section 304. All necessary requirements have been completed.

#### *National Environmental Policy Act*

When changing a term of designation of a national marine sanctuary, section 304 of the NMSA (16 U.S.C. 1434) requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and that the DEIS be made available to the public. The DEIS, along with a draft management plan, was released on October 31, 2003 (68 FR 62033). The public comment period ended on December 31, 2003. A final environmental impact statement and final management plan were published and made available to the public on July 28, 2006.

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

The final rule has been determined to be not significant within the meaning of section 3(f) of Executive Order 12866 because it will not result in: (1) An annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety; (2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) A material alteration of the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of such recipients; or (4) Novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

NOAA has concluded that this regulatory action does not fall within the definition of "policies that have federalism implications" within the meaning of Executive Order 13132. The Sanctuary does not include State waters. Furthermore, the proposed changes will not preempt State law, but will simply complement existing State authorities. In keeping with the intent of the

Executive Order, however, the NMSP consulted with the Georgia Department of Natural Resources during development of the FMP/FEIS and these regulations.

#### *Regulatory Flexibility Act*

The Assistant General Counsel for Legislation and Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the FMP/FEIS for GRNMS does not have a significant economic impact on a substantial number of small entities. We received no comment on this certification or the economic impact of the rule. While minor modifications have been made to the rule proposed, the basis for the certification has not changed. Thus, no regulatory flexibility analysis was required and none has been prepared.

The factual basis for this certification follows:

This final rule is associated with a FMP/FEIS that was developed for the Gray's Reef National Marine Sanctuary (GRNMS), located off Sapelo Island, Georgia. A FMP is a planning and management document that describes the objectives, policies, and activities for a sanctuary. The final rule includes: (1) A prohibition on anchoring within the Sanctuary (except in emergencies); (2) a revision of Sanctuary regulations to allow fishing only with rod and reel, handline gear, and spearfishing gear without powerheads; and (3) a gear stowage requirement to facilitate enforcement.

Current socioeconomic studies and on-site surveys indicate that the majority of users in GRNMS are recreational fishermen who use personal boats and rod and reel gear. There are approximately two dozen charter fishing operations along the Georgia coast that occasionally target the Sanctuary. Commercial fishing activity is negligible, as most commercial fishing gear is prohibited by existing regulations. Furthermore, nearly all users conduct their activities in a manner that complies with the final rule.

#### *Paperwork Reduction Act*

This proposed rule involves an existing information collection requirement currently approved by OMB (OMB approval number 0648-0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The proposed rule will not require any change to the currently approved OMB approval and would not result in any change in the public burden in applying

for and complying with NMSP permitting requirements.

The public reporting burden for these permit application requirements is estimated to average 1.00 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. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to, David Bizot, National Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM-6, Silver Spring, MD 20910, by e-mail to [David.Bizot@noaa.gov](mailto:David.Bizot@noaa.gov), by fax to (301) 713-0404; or by e-mail to [David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov), or fax to (202) 395-7285.

The proposed revised permit regulations would require the Director of the NMSP to consider the proposed activity for which a permit application has been received. The proposed modifications to the permit procedures and criteria (15 CFR 922.113) would further refine current requirements and procedures of the general National Marine Sanctuary Program regulations (15 CFR 922.48(a) and (c)). The proposed modifications would also clarify existing requirements for permit applications found in the Office of Management and Budget approved applicant guidelines (OMB Control Number 0648-0141). The revised permit regulations would add language about: the qualifications, finances, and proposed methods of the applicant; the compatibility of the proposed method with the value of the Sanctuary and the primary objective of protection of Sanctuary resources and qualities; the necessity of the proposed activity; and the reasonably expected end value of the proposed activity.

Notwithstanding any other provision of 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 Paperwork Reduction Act, 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.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 4, 2006.

**John H. Dunnigan,**

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

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

## **PART 922—[AMENDED]**

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

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

■ 2. The regulations for GRNMS (15 CFR part 922, subpart I) are revised to read as follows:

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

Sec.

922.90 Boundary.

922.91 Definitions.

922.92 Prohibited or otherwise regulated activities.

922.93 Permit procedures and criteria.

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

#### **§ 922.90 Boundary.**

The Gray's Reef National Marine Sanctuary (Sanctuary) consists of approximately 16.68 square nautical miles 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:

Datum: NAD83

Geographic Coordinate System

- (1) N 31.362732 degrees W 80.921200 degrees
- (2) N 31.421064 degrees W 80.921201 degrees
- (3) N 31.421064 degrees W 80.828145 degrees
- (4) N 31.362732 degrees W 80.828145 degrees
- (5) N 31.362732 degrees W 80.921200 degrees

#### **§ 922.91 Definitions.**

In addition to those definitions found at § 922.3, 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 paid 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.

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

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.93, 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.

(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, handline, or spearfishing gear without powerheads. (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) Except for possessing fishing gear stowed and not available for immediate use, possessing or using within the Sanctuary any fishing gear or means except rod and reel, handline, or spearfishing gear without powerheads.

(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 any vessel in the Sanctuary, except as provided in § 922.92 when responding to an emergency threatening life, property, or the environment.

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

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

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

(b) Applications for such permits should be addressed to the Director, National Marine Sanctuary Program, ATTN: Manager, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

(c) The Director, at his or her discretion may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.92(a)(1) through (10). The Director must also find that the activity will:

- (1) Further research related to the resources and qualities of the Sanctuary;
- (2) Further the educational, natural, or historical resource value of the Sanctuary;
- (3) Further salvage or recovery operations in connection with a recent air or marine casualty; or

(4) Assist in managing the Sanctuary.

(d) The Director shall not issue a permit unless the Director also finds that:

(1) The applicant is professionally qualified to conduct and complete the proposed activity;

(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(3) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;

(4) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to the activity's impacts on Sanctuary resources and qualities;

(5) The proposed activity will be conducted in a manner compatible with the primary objective of protection of

Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(6) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary as a source of recreation, or as a source of educational or scientific information considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

(7) It is necessary to conduct the proposed activity within the Sanctuary to achieve its purposes;

(8) The reasonably expected end value of the activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse impacts on Sanctuary resources and qualities from the conduct of the activity; and

(9) There are no other factors that make the issuance of a permit for the activity inappropriate.

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

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

(g) The Director may, *inter alia*, make it a condition of any permit issued to require the submission of one or more reports of the status and progress of such activity.

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

[FR Doc. E6-16841 Filed 10-11-06; 8:45 am]

BILLING CODE 3510-NK-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD05-06-078]

RIN 1625-AA08

#### Special Local Regulations for Marine Events; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing special local regulations during the "Red Bull Flugtag Baltimore", a marine event to be held October 21, 2006 on the waters of the Patapsco River, Inner Harbor, Baltimore, MD. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Baltimore Inner Harbor during the event.

**DATES:** This rule is effective from 10:30 a.m. to 5:30 p.m. on October 21, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket (CGD05-06-078) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sens, Project Manager, Fifth Coast Guard District, Inspections and Investigations Branch, at (757) 398-6204.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On August 16, 2006, we published a Notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Patapsco River, Inner Harbor, Baltimore, MD in the **Federal Register** (71 FR 47159). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support craft and other

vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts, area newspapers and local radio stations.

#### Background and Purpose

On October 21, 2006, Red Bull North America will sponsor "Red Bull Flugtag Baltimore" at the Inner Harbor in Baltimore, MD. The event will consist of 30 teams who attempt to fly a human powered craft from an 80-foot long flight deck that extends over the water immediately adjacent to the southwest corner of the promenade surrounding the Baltimore Inner Harbor. The regulated area originates at the southwest corner of the Inner Harbor adjacent to the Maryland Science Center and extends outward over the water within an approximately 150 yard arc. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

#### Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the Notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Patapsco River, Inner Harbor, Baltimore, Maryland.

#### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Baltimore Inner Harbor during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally,