



This document is scheduled to be published in the Federal Register on 07/18/2014 and available online at <http://federalregister.gov/a/2014-16632>, and on FDsys.gov

Billing Code 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Docket No. 130813710-4485-02

RIN 0648-BD60

Gray's Reef National Marine Sanctuary Regulations and Management Plan

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

ACTION: Final rule.

SUMMARY: NOAA is updating the regulations and management plan for Gray's Reef National Marine Sanctuary (GRNMS or Sanctuary). The regulations are revised to clarify the prohibition on anchoring and add an exemption to allow the use of weighted marker buoys that are continuously tended by vessel operators during otherwise lawful fishing or diving activities, not attached to a vessel, and not capable of holding a boat at

anchor. An environmental assessment has been prepared that includes analysis of the consequences of this action. A revised management plan outlining management priorities for GRNMS for the next 5-10 years has also been prepared. No changes were made from the proposed to final rule.

DATES: Effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Copies of the environmental assessment and final management plan described in this rule are available upon request to Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411, Attn: Becky Shortland, Resource Protection Coordinator. These documents can also be viewed on the Web and downloaded at <http://graysreef.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Becky Shortland at (912) 598-2381 or becky.shortland@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Gray's Reef National Marine Sanctuary

Gray's Reef National Marine Sanctuary (GRNMS or sanctuary) off the coast of Georgia contains one of the largest nearshore, live-bottom reefs of the southeastern United States. Located 16 miles offshore from Sapelo Island, GRNMS is currently the only protected natural reef on the continental shelf off the Georgia coast and one of only a few marine protected areas in the ocean between Cape Hatteras, North Carolina and Cape Canaveral, Florida. NOAA designated GRNMS as the nation's fourth national marine sanctuary in 1981 for the purposes of: protecting the quality of this unique and fragile ecological community; promoting scientific understanding of this live bottom ecosystem; and enhancing public awareness and wise use of this significant regional resource. GRNMS protects 22 square miles of open ocean and submerged lands of particularly dense and nearshore patches of productive live bottom habitat. The sanctuary is influenced by complex ocean currents and serves as a mixing zone for temperate (colder water) and sub-tropical species. The series of rock ledges and sand expanses provide a solid base upon which temperate and tropical marine flora and fauna attach and flourish.

B. Need for action

The National Marine Sanctuaries Act of 1972 (NMSA; 16 USC §1431 et seq.) section 304(e) requires that NOAA review and evaluate,

among other things, the site-specific management techniques and strategies to ensure that each sanctuary continues to fulfill the purposes and policies of the NMSA. Emerging issues, such as the effects of invasive lionfish on sanctuary resources, were not adequately addressed in the 2006 GRNMS plan. The new management plan reflects some of these emerging issues and presents management priorities for GRNMS for the next 5-10 years. The regulatory changes will, in the case of the anchoring prohibition, clarify that attempting to anchor is also prohibited because deployment of anchors, even if the anchors do not set on the bottom, can result in negative impacts to the submerged lands. The regulatory changes will also allow the placement of weighted marker buoys used during otherwise lawful fishing or diving activities. The weighted marker buoys will be used for diving safety (markers provide a stationary point for divers to more accurately locate a site and for boat operators to find divers on their ascent), and to assist recreational fishers for marking and relocating a fishing spot as their boat drifts. Therefore, the purpose of deployment of a weight on the bottom is for safety or convenience while conducting diving and recreational fishing activities, since anchoring is not allowed.

II. Summary of the Revisions to GRNMS Regulations

The regulatory action will clarify a prohibition and add an exemption.

a. Clarification of anchoring prohibition:

NOAA is clarifying the prohibition on anchoring in the sanctuary (15 CFR 922.92 (a)(10)) by adding "...or attempting to anchor" to GRNMS's existing anchoring regulation. This will facilitate law enforcement efforts and protect sanctuary resources by allowing authorized officers to enforce the anchoring prohibition even when an anchor has not yet been set in the submerged lands of the sanctuary. Enforcement officials have experienced occasions where sanctuary users were "attempting" to anchor in GRNMS despite the prohibition, but because the anchor had not yet been "set," the prohibition did not apply. This amendment will better align the regulation with its original intent.

b. Exemption for marker buoys:

Current GRNMS regulations prohibit placing any material on the submerged lands of the sanctuary, including weights for marker buoys that sit on the seafloor to mark locations during recreational diving or fishing (15 CFR 922.92 (a)(2)). NOAA is adding an exemption to this regulation for bottom placement of weighted marker buoys

that are continuously tended and used during otherwise lawful fishing or diving activities, are not attached to a vessel, and are not capable of holding a boat at anchor. Weights used with a marker buoy must not have a combined weight of more than 10 pounds, must be attached with not greater than one-fourth inch (1/4") line and must be removed from the sanctuary within twelve (12) hours of deployment. NOAA (or any authorized officer) could remove any weighted marker buoy that is not continuously tended, without notice. By "continuously tended", NOAA means that the buoy is in use by fishers or divers at the time it is observed and that the fishers' or divers' boat is in some proximity to the buoy.

The weighted marker buoys will be used for diving safety (markers provide a stationary point for divers to more accurately locate a site and for boat operators to find divers on their ascent), and to assist recreational fishers for marking and relocating a fishing spot as their boat drifts. Because anchoring in GRNMS is currently prohibited, recreational diving must be conducted by "live-boat" (non-anchored vessels), and recreational fishing by trolling or drifting with a

vessel. Public comment and Sanctuary Advisory Council discussion during scoping for the management plan review indicated strong support for regulatory exemption of weighted marker buoys. Although the use of marker buoys for recreational fishing is more a matter of convenience than safety, the impact of weighted marker buoys from diving or fishing on sanctuary resources is negligible and therefore, NOAA will allow this practice for both of these activities.

III. Responses to Public Comments

During the public comment period, four (4) written comments were received through the electronic rulemaking portal <http://www.regulations.gov>. Three (3) public hearings were also held to receive comment, but no members of the public attended any of the three. The written comments were grouped into two (2) general topics that are summarized below, followed by NOAA's response.

Comment 1: NOAA should move forward with the proposed rule, specifically the exemption for weighted marker buoys.

Response: Comment noted.

Comment 2: Although weighted marker buoys are proposed with certain limitations to reduce impacts to the submerged lands, impacts are still possible. Therefore, the exemption should be allowed only for a set, temporary period of time to benefit diving safety and to document actual effects, if any, on GRNMS resources. Once documented, a decision could be made to eliminate or continue the exemption to allow the use of weighted marker buoys in GRNMS.

Response: NOAA agrees that the proposed rule to allow the use of weighted marker buoys will contribute to diving safety in GRNMS. NOAA also determined that the expected effects on sanctuary resources from weights of ten (10) pounds or less placed temporarily on the submerged lands will be minimal. In addition, NOAA is committed to managing the resources of GRNMS in an adaptive manner, as demonstrated by the deliberate and transparent management plan review process that takes place every 5-10 years. Any impacts of weighted markers on sanctuary resources would be brought to NOAA's attention during the next management plan review, which is open to public participation. Instead of an automatic end date for the regulation on weighted marker buoys, the next management plan review would be the appropriate mechanism for modifying this regulation, if appropriate.

IV. Changes from the Proposed Rule

No changes were made from the proposed to final rule.

V. Classification

A. National Environmental Policy Act

NOAA has prepared an environmental assessment to evaluate the impacts of the rulemaking. Copies are available at the address and Web site listed in the ADDRESSES section of this final rule.

B. Executive Order 12866: Regulatory Impact

This final rule has been determined to be not significant as that term is defined in Executive Order 12866.

C. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

D. 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) at the proposed rule stage that

this final rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published with the proposed rule. No comments were received regarding this certification. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

E. Paperwork Reduction Act

This proposed rule would not require any additional collection of information, and therefore no paperwork reduction act action is required. 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.

VI. References

A complete list of all references cited herein is available upon request (see ADDRESSES section).

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fishing gear, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 9, 2014.

Christopher Cartwright

Chief Financial Officer, National Ocean Service

National Oceanic and Atmospheric Administration.

Accordingly, for the reasons set forth above, NOAA is amending part 922, title 15 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. In § 922.92, revise paragraphs (a)(2) and (10) to read as follows:

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

(a) * * *

(2) Constructing any structure other than a navigation aid, or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands of the Sanctuary except weighted marker buoys that are continuously tended and used during otherwise lawful fishing or diving activities and that are not attached to a vessel and not capable of holding a boat at anchor. Weights used with a marker buoy shall not have a combined weight of more than 10 pounds, shall be attached with not greater than one-fourth inch (1/4") line and shall be removed from the Sanctuary within twelve (12) hours of deployment. Any weighted marker buoy that is not continuously tended may be removed by the Assistant Administrator or designee or an authorized officer, without notice.

* * * * *

(10) Anchoring, or attempting to anchor, any vessel in the Sanctuary, except as provided in paragraph (d) of this section when responding to an emergency threatening life, property, or the environment.

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[FR Doc. 2014-16632 Filed 07/17/2014 at 8:45 am; Publication
Date: 07/18/2014]