

Billing Code 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 160907827-6827-01]

RIN 0648-BG02

Mallows Bay – Potomac River National Marine Sanctuary; Notice of Proposed Rulemaking and Availability of Draft Environmental Impact Statement 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: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes to designate approximately 52 square miles of waters encompassing and surrounding Maryland’s Mallows Bay as the Mallows Bay – Potomac River National Marine Sanctuary (MPNMS or sanctuary). NOAA also proposes regulations to implement the sanctuary designation and establish the sanctuary’s terms of designation to protect historical, archeological, and cultural resources of national significance. A draft environmental impact statement (DEIS) and draft management plan (DMP) have also been prepared for this proposed action. The purpose of this action is to supplement and complement current Maryland state regulations and resource protection efforts to ensure long term protection of the nationally significant collection of historic shipwrecks and other maritime cultural heritage resources. NOAA is soliciting public

comment on the proposed rule, draft environmental impact statement, and draft management plan. NOAA will also begin consultations under Section 106 of the National Historic Preservation Act (NHPA) and solicit public comments specifically related to the identification and assessment of the historic properties within the affected area in compliance with Section 106 review process.

DATES: NOAA will consider all comments received by March 31, 2017. Public meetings will be held on the following dates:

- 1) March 7, 2017, 6:00 p.m. to 9:00 p.m., La Plata, MD, and
- 2) March 9, 2017, 6:00 p.m. to 9:00 p.m., Arnold, MD.

ADDRESSES: You may submit comments on this document, identified by NOAA-NOS-2016-0149, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NOS-2016-0149, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Paul Orlando, Regional Coordinator, Northeast and Great Lakes Region, 410 Severn Ave, Suite 207-A, Annapolis MD 21403.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address,

etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the proposed rule, DEIS, and DMP can be downloaded or viewed on the internet at www.regulations.gov (search for docket # NOAA-NOS-2016-0149) or at www.regulations.gov/#!docketDetail;D=NOAA-NOS-2016-0149. Copies can also be obtained by contacting the person identified under “For Further Information Contact”.

The public meeting locations are:

1) La Plata, MD: Charles County Government Building, 200 Baltimore St., La Plata, MD, 20646 (March 7, 2017)

2) Arnold, MD: Anne Arundel Community College, Center for Applied Learning and Technology (CALT) Building, Room 100, 101 College Pkwy., Arnold, MD 21012 (March 9, 2017)

FOR FURTHER INFORMATION CONTACT: Paul Orlando, Regional Coordinator, Northeast and Great Lakes Region at (240) 460-1978, paul.orlando@noaa.gov

SUPPLEMENTARY INFORMATION:

I. Introduction

A. 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 national marine sanctuaries 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 the sanctuary system's biological and cultural resources, such as coral reefs, marine animals, historical shipwrecks, historic structures, and archaeological sites.

NOAA is considering the Mallows Bay area of the tidal Potomac River for designation as a national marine sanctuary. The area is 40 miles south of Washington, D.C., located off the Nanjemoy Peninsula of Charles County, Maryland. This is an area of national significance featuring unique historical, archaeological, cultural, ecological, and esthetic resources and qualities, which offer opportunities for conservation, education, recreation, and research. Its maritime landscape is home to a diverse collection of historic shipwrecks that date back to the Civil War and potentially date to the American Revolutionary War, totaling nearly 200 known vessels including the remains of the largest "Ghost Fleet" of World War I, wooden steamships built for the U.S. Emergency Fleet. The fleet was constructed at more than 40 shipyards in 17 states as part of the massive national wartime preparation. The area's archaeological and cultural resources cover centuries of history from the earliest American Indian presence in the region about 12,000 years ago to the Revolutionary, Civil and two World Wars, as well as successive regimes of Potomac fishing industries.

The Maryland Department of Natural Resources (DNR), Maryland Historical Trust, Maryland Department of Tourism, and Charles County, MD, have worked together with community partners to initiate conservation and compatible public access strategies in and

around Mallows Bay, consistent with numerous planning and implementation documents. In 2010, DNR purchased a portion of land adjacent to Mallows Bay and made it available to Charles County to create and manage Mallows Bay County Park, the main launch point for access to the historic shipwrecks. Pursuant to the NHPA, Maryland Historical Trust has stewardship and oversight responsibility for the shipwrecks, along with hundreds of other historic sites around the state. DNR manages the waterbody and associated ecosystem resources, including land use, resource conservation and extraction activities. The lands on either side of Mallows Bay County Park are held by the U.S. Department of Interior's Bureau of Land Management and a private citizen.

On September 16, 2014, pursuant to section 304 of the National Marine Sanctuaries Act and the Sanctuary Nomination Process (SNP; 79 FR 33851), a coalition of community groups submitted a nomination asking NOAA to designate Mallows Bay – Potomac River as a national marine sanctuary. The nomination cited conservation goals to protect and conserve the fragile remains of the Nation's cultural heritage as well as the opportunities to expand public access, recreation, tourism, research, and education to the area. The nomination was endorsed by a diverse coalition of organizations and individuals at local, state, regional, and national levels including elected officials, businesses, Native American, environmental, recreation, conservation, fishing, tourism, museums, historical societies, and education groups. The nomination identified opportunities for NOAA to protect, study, interpret, and manage the area's unique resources, including by building on existing local, county, and State of Maryland efforts to manage the area for the protection of shipwrecks. NOAA's review of the nomination against

the criteria and considerations of the SNP, including the requirement for broad-based community support indicated strong merit in proposing this area as a national marine sanctuary. Therefore, NOAA completed its review of the nomination and, on January 12, 2015, added the area to the inventory of nominations that are eligible for designation. All nominations submitted to NOAA can be found at: <http://www.nominate.noaa.gov/nominations/>

NOAA began the sanctuary designation process for Mallow's Bay – Potomac River National Marine Sanctuary on October 7, 2015 with the publication of a notice of intent (NOI; 80 FR 60634) to prepare a DEIS and the initiation of a public process, as required under the NMSA and the National Environmental Policy Act (NEPA). The DEIS evaluates alternatives related to the proposed designation of Mallow's Bay – Potomac River National Marine Sanctuary, including a no action alternative. The NOI also announced NOAA's intent to fulfill its responsibilities under the requirements of the NHPA.

B. Need for Action

The proposed designation would allow NOAA to complement current state-led efforts to conserve and manage the nationally significant maritime cultural heritage resources while enhancing public awareness and appreciation, and facilitating to the extent compatible with the primary objective of resource protection, all public and private uses including recreation and tourism, as directed by the NMSA. The threats to these resources are related to actions or conditions that result in the damage or loss of the historic resources. Over time direct damage both intentionally and unintentional has occurred from breaking, redistribution of shipwrecks and

artifacts, defacing and physical alteration, burning, and removal from the area. Additionally, indirect damage to the resources has occurred from the accumulation and entanglement of trash and marine debris around the resources and from weather-related processes such as wind, flood, and ice events.

The proposed sanctuary would concentrate on the protection, access and interpretation of the maritime cultural features of the area, including the Ghost Fleet, other vessels of historic significance, and related maritime infrastructure. The State of Maryland currently has a comprehensive set of management measures for the protection of the natural environment, including wildlife, fish, birds, water quality, and habitat. As such, NOAA's proposed sanctuary regulations would focus only on the protection of the shipwrecks and associated maritime cultural heritage resources.

NOAA's proposed management actions will be primarily non-regulatory in nature with a concise set of regulations focused on protecting the maritime cultural heritage resources. Although the Maryland Submerged Archeological Historic Property Act (Md. Code Ann., State Fin. & Proc. sections 5A-333 et seq.) provides a basic level of protection for maritime cultural heritage resources in Mallows Bay and adjacent areas of the Potomac River, the proposed action would allow NOAA's management under the NMSA to supplement and complement the existing authority and the current management framework in the area. The proposed national marine sanctuary would address ongoing threats to the maritime cultural heritage resources while providing opportunities for research, education, recreation, and tourism through coordinated and comprehensive management and conservation the resources in collaboration with the State of

Maryland and Charles County. NOAA is also proposing to carry out education, science, and interpretative programs that describe for visitors and user communities the relationship between the shipwreck structures and their interplay with the natural system.

C. Designation process

National Marine Sanctuary Designation Process

The National Marine Sanctuaries Act authorizes NOAA to identify, designate, and protect areas of the marine and Great Lakes environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or aesthetic qualities as national marine sanctuaries. NOAA may identify areas to consider for national marine sanctuary designation through the community-based Sanctuary Nomination Process as described in the final rule (79 FR 33851) establishing the process. The NMSA process for designating a new national marine sanctuary has four steps:

Scoping: NOAA announces its intent to designate a new national marine sanctuary and asks the public for input on potential boundaries, resources that could be protected, issues NOAA should consider and any information that should be included in the detailed resource analysis in a draft environmental impact statement.

Sanctuary Proposal: NOAA prepares draft designation documents including a DMP, DEIS that analyzes a range of alternatives, proposed regulations, and proposed boundaries.

Public Review: The public, agency partners, tribes, and other stakeholders provide input on the draft documents. The public review step also includes the formal consultations required

under NEPA, the NMSA, the NHPA, and other relevant statutes. NOAA considers all input and determines appropriate changes.

Sanctuary Designation: NOAA makes a final decision and prepares final documents.

Before the designation becomes effective, the Governor reviews the documents. Congress also has the opportunity to review the documents.

Public Scoping Process

On October 7, 2015, NOAA initiated the public scoping process with the publication of a NOI in the Federal Register (80 FR 60634) asking for public input on the proposed designation and informing the public that NOAA intended to prepare a DEIS evaluating alternatives related to the proposed designation of Mallow's Bay – Potomac River National Marine Sanctuary under the NMSA. That announcement initiated a 90-day public comment period during which NOAA would solicit additional input related to the scale and scope of the proposed sanctuary, including ideas presented in the community nomination. The NOI also announced NOAA's intent to fulfill its responsibilities under the requirements of the NHPA.

During the public comment period, NOAA solicited input on the range of issues to be considered in an environmental impact statement to designate this area as a national marine sanctuary. NOAA specifically asked for information that would assist in the development of alternatives including proposed regulations and boundaries. NOAA accepted public comments through a web-based portal and by mail from October 7, 2015 through January 15, 2016, and hosted two public scoping meetings. During the scoping comment period, NOAA received

approximately 264 comments from individuals, businesses, organizations, and local, state, and federal agencies. The first scoping meeting was held on November 4, 2015 in La Plata, MD, where approximately 125 people attended and 51 oral and written comments were received. The second meeting was held on November 10, 2015 in Annapolis, MD. Approximately 100 people attended that meeting, and 23 oral and written comments were received.

The written comments received included 141 from individuals, nine from businesses, 46 from organizations, two from local agencies, two from state agencies, and four from federal agencies. Comments were also submitted by U.S. Representative Steny Hoyer and U.S. Senator Ben Cardin. All comments are available for review online at <https://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2015-0111>.

The majority of comments received during the scoping period generally support the proposed sanctuary designation based on the considerable value and significance of the natural, maritime, archaeological, and cultural resources within the area including those related to Native American history and activities, the immense potential for ecological and archaeological research of the area's resources, and the economic and educational benefits of increased tourism and public access and awareness. The public comments also identified several additional potential benefits, including restoration of the Chesapeake watershed, economic revitalization of the local area, and promoting heritage and ecotourism.

Several comments opposed the nomination predominantly citing opposition to the possibility of increased government intervention, specifically regarding fossil collection and fishing activities that could potentially be impacted by a sanctuary designation.

The comments also identified boundary alternatives for consideration during the designation process. Several comments supported the boundary proposed in the sanctuary nomination package, intended to align with the boundary of the Mallows Bay-Widewater Archaeological and Historic District submitted by the State of Maryland (National Register Listing Number 15000173, April 24, 2015). However, the majority of comments supported an expanded boundary. Several comments supported a northward expansion to Mattawoman Creek, but most of the comments supported a larger boundary extending from Chapman Park in the North to Chapel point in the South. One comment suggested an even larger northern boundary extending to Piscataway Creek. Most of the support for the expanded boundaries was based on the benefits of the additional protection that the commenters felt a larger boundary would provide to the significant natural and maritime cultural heritage resources in the area.

Several comments did not support a boundary expansion citing issues related to management, local impact, and government overreach. Some comments expressed concerns regarding how the boundaries would affect the Commonwealth of Virginia's interests and one comment noted that Virginia should be excluded from the sanctuary boundary.

Additional comments addressed regulatory frameworks, access issues, migratory bird protections, designation timeline goals, intergovernmental collaboration, infrastructure, education and outreach programming, and interpretation plans.

NOAA used these public comments to inform the preparation of the draft management plan, draft environmental impact statement, and the proposed sanctuary regulations. The proposed designation reflects the general public support for the protection of all nationally

significant maritime cultural heritage resources in the area. It also incorporates the need for enhanced recreation and access to the proposed sanctuary to support tourism and the local economy.

In this proposed rule, NOAA is proposing to regulate damage to the maritime cultural heritage resources in a 52-square mile area of Maryland waters of the Potomac River as described below. The proposed boundaries were expanded beyond the initially nominated area and the National Register Historic District based on public comments, additional research conducted related to the historical and archaeological resources of the area, and input from Maryland Department of Natural Resources, Maryland Historical Trust, and Charles County.

The environmental effects of this proposed designation and alternatives are analyzed in a DEIS published concurrently with this proposed rule summary statement. NOAA has also developed an associated draft management plan describing comprehensive proposed management framework envisioned for the area, including non-regulatory programs and activities actions and strategies to promote opportunities for research, education, and recreation in the area. NOAA is seeking public comment on the proposed rule, DEIS, and draft management plan, which are available at <http://sanctuaries.noaa.gov/mallows-bay/> or may be obtained by contacting the individual listed under the heading FOR FURTHER INFORMATION CONTACT.

II. Summary of the Proposed Regulations

1. Adding new Subpart S and Reserving Subpart T

NOAA is proposing to amend 15 CFR part 922 by adding a new subpart (subpart S) that contains site-specific regulations for MPNMS. This subpart would include the proposed boundary, contain definitions of common terms used in the new subpart, provide a framework for co-management of the sanctuary, identify prohibited activities and exceptions, and establish procedures for certification of existing uses, permitting otherwise prohibited activities, and emergency regulation procedures. Several conforming changes would also be made to the national regulations as described detail below.

NOAA is concurrently working on designating a separate new national marine sanctuary in Wisconsin's Lake Michigan waters as part of a separate rulemaking process, and those regulations would be published in their own new subpart (subpart T). As such, in this rulemaking, NOAA proposes to add and reserve subpart T for any future site-specific regulations that might be issued. NOAA would later harmonize the regulations for the Wisconsin Lake Michigan designation process with any final rule associated with this action.

2. Proposed Sanctuary Name

NOAA has proposed to name the sanctuary the "Mallows Bay – Potomac River National Marine Sanctuary (MPNMS)" based on the nomination submitted by the community. The name aptly identifies the area where the proposed sanctuary is located. NOAA has also selected the acronym of "MPNMS" to avoid having a longer acronym, such as "MBPRNMS," and avoid duplication with an acronym already in use within the national marine sanctuary system, such as "MBNMS" used for Monterey Bay National Marine Sanctuary. NOAA is asking for public input

on this proposed name. The public may also suggest an alternative name and state the reasons for suggesting an alternative name.

3. Proposed Sanctuary Boundary

NOAA is proposing to designate an area of approximately 52 square miles of the Potomac River as MPNMS. The northern boundary of the area would extend approximately 200 yards upstream of the Dominion Power lines near Ben Doane Road, Maryland to Possum Nose, Virginia. The southern boundary would extend from the end of Owens Drive east of Chotank Creek, Virginia to Benny Gray Point, Maryland. The boundary would encompass all tidal waters within this boundary from mean high tide in Maryland to mean low tide in Virginia, which serves as the boundary between Maryland and Virginia. Areas where the Virginia state line is otherwise delineated, the Quantico exclusion zone, and the area around the Quantico marina would be excluded from the sanctuary. The detailed legal boundary description is included in section 922.200 and the coordinates are located in 15 CFR part 922, subpart S, appendix A. A map of the area is shown in the DEIS.

The proposed MPNMS would include all of the known WWI-era U.S. Emergency Fleet Corporation vessels in Maryland waters, as well as a number of historically, archaeologically, and recreationally significant shipwrecks not currently included in the National Register Historic District that is located within the proposed area. The area incorporates marine battlescapes such as the land-sea engagements in the Civil War, among the first in that conflict, and one Revolutionary War battlescape; the site of the first military balloon launch from a purpose built

“aircraft carrier” in history; the site of two major amphibious invasion operations: Butler’s attack from Budd’s Ferry to Quantico Creek on March 9, 1861, and the Liverpool Point to Aquia Creek crossings during the Fredericksburg Campaign; several wharves, landings, navigational aids of historic note; Confederate communications and contraband water routes during the Civil War, and the overall scene of the Union’s Potomac River blockade, 1861-1865.

The proposed boundary was developed based on the nomination submitted by the State of Maryland and expanded based on additional information and suggestions received during the public comment period. NOAA’s adjustments include moving both the northern and southern boundary lines to incorporate additional maritime culture heritage resources.

4. Definitions

a. Define MPNMS Sanctuary Resources

NOAA is proposing to narrowly define “sanctuary resources” for MPNMS to include only the maritime cultural heritage resources of the sanctuary area in accordance with the purpose of the proposed designation. The definition would not include biological and ecological resources of the area already managed by the State of Maryland. Creating this new site-specific definition requires NOAA to modify the national definition of “sanctuary resource” in the national regulations at section 922.3 to add an additional sentence that defines the term for MPNMS at section 922.201(a). This is similar to the approach taken for other national marine sanctuaries that do not share the full “sanctuary resource” definition such as Thunder Bay National Marine Sanctuary.

Additionally NOAA would add a definition in the MPNMS regulations at section 922.201(a) for sanctuary resource that uses the national definition for “historical resources” and expands it to specifically provide examples of the types of resources in this sanctuary that fall within that definition. The national definition of “historical resources” at section 922.3 describes the resource within the definition of “historical resource” to include resources that possess historical, cultural, archaeological or paleontological significance, such as sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. These historical resources also include “cultural resources,” “submerged cultural resources,” and also include “historical properties,” as defined in the National Historic Preservation Act.

The new MPNMS definition of sanctuary resources would then be defined in section 922.201 to include historical resources as defined by section 922.3. This would include any sunken watercraft and any associated rigging, gear, fittings, trappings, and equipment. It would also include personal property of the officers, crew, and passengers, and any cargo, as well as and any submerged or partially submerged prehistoric, historic cultural remains, such as docks, piers, fishing-related remains (e.g. weirs, fish-traps) or other cultural heritage materials. For MPNMS sanctuary resource would also mean any archaeological, historical, and cultural remains associated with or representative of historic or prehistoric American Indians and historic groups or peoples and their activities.

This proposed rule incorporates and adopts other common terms defined in the existing national regulations at section 922.3; some of those definitions include: “Cultural

resources,” which means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts; and “National Marine Sanctuary” or “Sanctuary,” which means 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.

5. Co-management of the Sanctuary

In order to further enhance the strong engagement forged by the State of Maryland and Charles County in nominating this area as a proposed national marine sanctuary and in contributing to the development of the draft designation documents, NOAA proposes to manage the sanctuary collaboratively with the state and county. NOAA proposes to establish the framework for co-management of the sanctuary at section 922.202 and intends to work out the operational details of the collaboration in a Memorandum of Understanding (MOU). Details on the execution of sanctuary management such as activities, programs, and permitting programs would be included in the MOU and can be updated to adapt to changing conditions or threats to the sanctuary resources. Any significant changes to the regulations or management plan would not only be jointly coordinated but also subject to public review.

6. Prohibited and regulated activities

NOAA is proposing to supplement and complement existing management of this area by proposing three regulations to protect the sanctuary resources in section 922.203(a).

a. Damaging Sanctuary Resources

As a complement to existing protections under state law and NHPA regulations, NOAA is proposing to prohibit damaging a sanctuary resource. The proposed regulation would prohibit moving, removing, recovering, altering, destroying, possessing, or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a sanctuary resource. The sanctuary prohibition on possessing a sanctuary resources would not apply to historical resources removed from the Sanctuary before the designation is complete. However, Maryland state regulations related to the limited removal of historical resources have been in effect since July 1, 1988 currently apply to these resources and will continue to do so. In the case of sanctuary resources that are covered under the Sunken Military Craft Act (SMCA; Pub. L. No. 108-375, Tit. XIV; 10 U.S.C. 113 note), NOAA and the U.S. Navy would cooperate on protecting those resources using the policy and procedures described in the 2015 Memorandum of Agreement (MOA). NOAA and the Maryland Historical Trust have tentatively identified one shipwreck as covered under the SMCA. A copy of the MOA is available at: <http://www.gc.noaa.gov/moa-2014-navy-signed.pdf>.

b. Damaging Sanctuary Signs

In addition to prohibiting damage to sanctuary resources, NOAA is also proposing to prohibit damage to sanctuary signs, notices, placards, monuments, stakes, posts, buoys, or boundary markers. These materials are part of the management of the sanctuary and may contribute to education and outreach programs. The materials are also federal property and

therefore NOAA proposes to prohibit damage from marking, defacing or altering the materials in any way.

c. Interfering with investigations

NOAA is proposing a regulation to prohibit interfering with sanctuary enforcement activities. This regulation will assist in NOAA's enforcement of the sanctuary regulations and strengthen sanctuary management.

d. Exemption for Emergencies and Law Enforcement

NOAA is proposing to include an exemption from the three regulations described above for activities that respond to emergencies that threaten lives, property or the environment, or are necessary for law enforcement purposes.

e. Department of Defense activities

NOAA is also proposing that Department of Defense (DOD) activities be carried out in a manner that avoids damage to sanctuary resources to the maximum extent practicable. In the event that DOD activities damage a sanctuary resource, NOAA and DOD would coordinate to work out a mitigation and restoration plan. Given the definition of sanctuary resources is limited to the historical resources and does not include biological or ecological resources NOAA does not anticipate that many, if any, current DOD activities would impact the resources.

7. Emergency regulations

As part of the proposed designation, NOAA is proposing to give the sanctuary authority to issue emergency regulations. Emergency regulations are used in limited cases and under specific conditions when there is an imminent risk to sanctuary resources and a temporary prohibition would prevent the destruction or loss of those resources. Under the NMSA, NOAA only issues emergency regulations that address an imminent risk for a fixed amount of time with a maximum of 6 months that can only be extended a single time. A full rulemaking process must be undertaken, including a public comment period, to consider making an emergency regulation permanent. NOAA would add the authority to issue emergency regulations by modifying the national regulations at section 922.44 to include MPNMS in a list of sanctuaries that have site-specific regulations related to emergency regulations, and adding detailed site-specific emergency regulations to the MPNMS regulations at section 922.204.

8. General Permits, Certifications, Authorizations, and Special Use Permits

a. General Permits

NOAA is proposing to include the authority to issue permits to allow certain activities that would otherwise violate the prohibition in MPNMS. Similar to other national marine sanctuaries, NOAA is proposing to consider these permits only for education, research, or management.

To address the above additions to the ONMS general permit authority for MPNMS, NOAA would amend regulatory text in the program-wide regulations in part 922, subpart E, to

add references to subpart S, as appropriate. NOAA would also add a new section 922.205 in subpart S titled “Permit procedures and review criteria” that would address site-specific permit procedures for MPNMS.

b. Certifications

Because of the possibility that preexisting activities, right of subsistence use or access permitted by other federal, state, local, or tribal agencies might be occurring within the MPNMS area that would otherwise be prohibited by MPNMS regulations, NOAA would add language at section 922.206 describing the process by which it can certify existing activities within the expansion area. In compliance with the NMSA, MPNMS regulations at section 922.206 would state that certification is the process by which permitted activities existing prior to the designation of the sanctuary that violate sanctuary prohibitions may be allowed to continue, provided certain conditions are met. Applications for certifying permitted existing uses would have to be received by NOAA within 180 days of the effective date of the designation.

c. Authorizations

NOAA also proposes to provide MPNMS with the authority to consider allowing an otherwise prohibited activity if such activity is specifically authorized by any valid Federal, state, or local lease, permit, license, approval, or other authorization issued after sanctuary designation. Authorization authority is intended to streamline regulatory requirements by reducing the need

for multiple permits and would apply to all proposed prohibitions at section 922.203. As such, NOAA proposes to amend the regulatory text at section 922.49 to add reference to subpart S.

d. Special Use Permits

NOAA has the authority under the NMSA to issue special use permits (SUPs) at national marine sanctuaries as established by Section 310 of the NMSA. SUPs can be used to authorize specific activities in a sanctuary if such authorization is necessary 1) to establish conditions of access to and use of any sanctuary resource; or 2) to promote public use and understanding of a sanctuary resource. The activities that qualify for a SUP are set forth in the Federal Register (78 FR 25957; May 3, 2013). Categories of SUPs may be changed or added to through public notice and comment. NOAA would not apply the SUP to activities in place at the time of the MPNMS designation.

SUP applications are reviewed to ensure that the activity is compatible with the purposes for which the sanctuary is designated and that the activities carried out under the SUP be conducted in a manner that do not destroy, cause the loss of, or injure sanctuary resources. NOAA also requires SUP permittees to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit. The NMSA allows NOAA to assess and collect fees for the conduct of any activity under a SUP. The fees collected could be used to recover the administrative costs of issuing the permit, the cost of implementing the permit, monitoring costs associated with the conduct of the activity, and the fair market value of the use of sanctuary resources.

9. Other Conforming Amendments

The general regulations in part 922, subpart A, for general information and part 922, subpart E, for regulations of general applicability would also have to be amended so that the regulations are accurate and up-to-date. The 10 sections that will need to be updated to reflect the increased number of sanctuaries or to add subpart S to the list of sanctuaries. The modified sections to conform to adding a new sanctuary are:

- Section 922.1 Applicability of regulations
- Section 922.40 Purpose.
- Section 922.41 Boundaries
- Section 922.42 Allowed activities
- Section 922.43 Prohibited or otherwise regulated activities
- Section 922.44 Emergency regulations
- Section 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.
- Section 922.48 National Marine Sanctuary permits—application procedures and issuance criteria
- Section 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity
- Section 922.50 Appeals of administrative action

10. Terms of Designation

Section 304(a)(4) of the National Marine Sanctuaries Act (NMSA) requires that the terms of designation include the geographic area included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that will be subject to regulation by the Secretary of Commerce to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. Thus, the terms of designation serve as a constitution for the Sanctuary.

NOAA is proposing to establish terms to designation that describe the geographic area, resources, and activities as described in details above. NOAA would add the terms of designation language as Appendix B to the MPNMS regulations at 15 CFR part 922, subpart S.

III. Classification

National Marine Sanctuaries Act

NOAA has determined that the designation of the Mallows Bay – Potomac River National Marine Sanctuary will not have a negative impact on the National Marine Sanctuary System and that sufficient resources exist to effectively implement sanctuary management plans and to update site characterizations. The finding for NMSA section 304(f) is published on the ONMS website for the Mallows Bay – Potomac River designation at <http://sanctuaries.noaa.gov/mallows-bay/>.

National Environmental Policy Act

NOAA has prepared a draft environmental impact statement to evaluate the environmental effects of the proposed rulemaking and alternatives as required by NEPA (42 U.S.C. 4321 et seq.) and the NMSA. Copies of the DEIS and related DMP are available at the address and web site listed in the ADDRESSES section of this proposed rule. NOAA is also soliciting public comments on the DEIS and DMP. Responses to comments received on this proposed rule as well as on the DEIS and draft management plan will be published in the final environmental impact statement and preamble to the final rule.

Coastal Zone Management Act

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with a state's coastal program on potential Federal regulations having an effect on state waters. Because MPNMS encompasses a portion of the Maryland State waters and is adjacent to the Commonwealth of Virginia lands and waters, NOAA intends to submit a copy of this proposed rule and supporting documents to the Maryland Coastal Zone Management Program and Virginia Coastal Zone Management Program for evaluation of Federal consistency under the CZMA. NOAA will publish the final rule and designation only after completion of the consultation requirements under the CZMA.

Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132 because NOAA supplements and complements state and local laws under the NMSA.

National Historic Preservation Act

The National Historic Preservation Act (NHPA; 16 U.S.C. 470 et seq.) is intended to preserve historical and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and State Historic Preservation Offices. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP (36 CFR part 800 et seq.). In fulfilling its responsibilities under the NHPA, NOAA is seeking to identify consulting parties in addition to the State Historic Preservation Officer (SHPO), and will complete the identification of historic properties and the assessment of the effects of the undertaking on such properties in scheduled consultations with those identified parties and the SHPO. By this notice NOAA seeks public input, particularly in regard to the identification of historic properties within the proposed areas of potential effect. Pursuant to 36 CFR 800.16(1)(1), historic properties includes: “any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural

importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.” If you, your organization(s), or business(es) would like to be considered a “consulting party” under Section 106 please contact the individual listed under the heading FOR FURTHER INFORMATION CONTACT; include contact information for the principal representative for the consultation; and describe you or your party’s interest in the proposed designation. In accordance with 36 CFR 800.3(f)(3), NOAA will consider all “consulting party” requests but has ultimate discretion in determining and inviting additional consulting parties.

Regulatory Flexibility Act

The Small Business Administration has established thresholds on the designation of businesses as “small entities”. A finfish fishing businesses is considered a small business if it has annual receipts of less than \$20.5 million. Scenic and Sightseeing and Recreational industries are considered small businesses if they have annual receipts not in excess of \$7.5 million. According to these limits, each of the businesses potentially affected by the proposed rule would most likely be small businesses. However, as further discussed below, these regulations will not have a significant economic impact on the affected small entities, and the Chief Counsel for Regulations for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have significant economic impact on a substantial number of small entities. Thus, NOAA is not required to and has not prepared an initial regulatory flexibility analysis.

Methodology. The analysis here is based on limited quantitative information on how much each activity occurs within the proposed sanctuary. Consequently, the result is more qualitative than quantitative.

Scales Used for Assessing Impacts. For assessing levels of impacts within an alternative, NOAA used three levels; “negligible”, “moderate” and “high” plus “no impacts”. For levels of impacts within the proposed alternatives being analyzed, negligible means very low benefits, costs, or net benefits (less than 1% change). Moderate impacts would be more than 1% but less than or equal to 10%, and high impacts would be more than 10%. For market economic values (revenue, costs, and profits), negligible would mean no likely impact whereas moderate and high could mean some measurable impact on market economic values at the levels noted above. NOAA analyzed the proposed national marine sanctuary described above.

Small business user groups include commercial fishing operation, recreation-tourism related businesses, and land use and development businesses. Other user groups not included here are research and education, people who receive passive economic use value from stabilization or improvement to the proposed sanctuary resources and the US Navy, none of whom are small businesses.

NOAA assessed three types of regulations included in the proposed action; (1) moving, removing, recovering, altering, inuring, etc., (2) marking, defacing or damaging etc., and (3) interfering with obstructing, etc. (see section 922.203 for full details).

Proposed Action.

Moving, Removing, etc. Regulation. Under the proposed rule, NOAA would not permit moving, removing, recovering, altering, injuring, destroying, possessing or attempting to move, remove, recover, alter, injure, destroy or possess a sanctuary resource (except where removed or possessed prior to sanctuary designation). Small businesses that could potentially be impacted include commercial fishing, recreational for-hire fishing operations, dive operations and other water recreation based operators.

The expected impact to all these business in the preferred alternative is “no impact”. The gear likely to be used to commercially fish or recreationally fish in the sanctuary will not be impacted by this regulation. Therefore, commercial fishing operations and for-hire operations are not expected to be impacted. Education and outreach will be used to educate user groups about the location of the sanctuary resources to prevent anchor damage. Divers will still be able to use the resource, but not able to take sanctuary resources, therefore the impact for this user group is also “no impact”.

Marking, defacing or damaging, etc. Regulation. Using the best information, there are no known businesses that rely on damaging or defacing sanctuary resources and no known businesses whose actions damage or deface sanctuary resources. Therefore, this prohibition is expected to have “no impact” on small businesses.

Interfering with, obstructing, delaying or preventing an investigation Regulation. This prohibition is also expected to have “no impact” on small businesses. There is no evidence that any small businesses in the area would be impacted by this prohibition.

All Regulations. NOAA expects the combined effects of all the regulations to have “no impact” on small businesses. However, it is possible that some small business may be able to leverage a sanctuary designation to increase awareness and interest in recreational opportunities within the sanctuary and sanctuary community. This could potentially improve the potential for business growth within the area. In which case, recreational operators could potentially see a positive “moderate” improvement. Additionally, these regulations will have no impact on personal property rights, land use and planning.

Paperwork Reduction Act

ONMS has a valid Office of Management and Budget (OMB) control number (0648–0141) for the collection of public information related to the processing of ONMS permits across the National Marine Sanctuary System. NOAA’s proposal to create MPNMS would likely result in an increase in the number of requests for ONMS general permits, special use permits, certifications, and authorizations because this action proposes to add general permits and special use permits, certifications, appeals, and the authority to authorize other valid federal, state, or local leases, permits, licenses, approvals, or other authorizations. An increase in the number of ONMS permit requests would require a change to the reporting burden certified for OMB control number 0648–0141. An update to this control number for the processing of ONMS permits would be requested as part of the final rule for sanctuary expansion.

Nationwide, NOAA issues approximately 500 national marine sanctuary permits each year. Of this amount, MPNMS is expected to add 4 to 5 permit requests per year. The public reporting burden for national marine sanctuaries permits is estimated to average 1.5 hours per

response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

Send comments regarding the burden estimate for this data collection requirement, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (see ADDRESSES) and by email to OIRA_submission@omb.eop.gov, or fax to (202) 395-7285.

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.

IV. Request for Comments

NOAA requests comments on this proposed rule by March 31, 2017. In addition to requesting comments on this proposed rule, NOAA is also soliciting input on the DEIS and DMP. In addition NOAA would like the public comments on the proposed name for the sanctuary.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Historic preservation, Intergovernmental relations, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife.

Dated: December 22, 2016.

W. Russell Callender,
Assistant Administrator
for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons discussed in the preamble, the National Oceanic and Atmospheric Administration proposes to amend 15 CFR part 922 as follows:

PART 922--NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for 15 CFR part 922 continues to read as follows:

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

2. Revise §922.1 to read as follows:

§922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D, and E of this part apply to all National Marine Sanctuaries and related site-specific regulations set forth in this part. Subparts B and C of this part apply to the sanctuary nomination process and to the designation of future Sanctuaries.

3. Amend §922.3 by revising the definition of “Sanctuary resource” to read as follows:

§922.3 Definitions.

* * * * *

Sanctuary resource means any living or non-living resource of a National Marine

Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource means an underwater cultural resource as defined at § 922.191. For Mallows Bay – Potomac River National Marine Sanctuary, Sanctuary resource is defined at §922.201(a).

* * * * *

4. Revise §922.40 to read as follows:

§922.40 Purpose.

The purpose of the regulations in this subpart and in the site-specific subparts is to implement the designations of the National Marine Sanctuaries by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological,

recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries are found at §§ 922.160 and 922.180, respectively.

5. Revise §922.41 to read as follows:

§ 922.41 Boundaries.

The boundary for each of the National Marine Sanctuaries is set forth in the site-specific regulations covered by this part.

6. Revise §922.42 to read as follows:

§ 922.42 Allowed activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in the site-specific regulations covered by this part, subject to any emergency regulations promulgated under this part, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including but not limited to, Federal, Tribal, and State fishery management authorities, and subject to the provisions of section 312 of the National Marine Sanctuaries Act (NMSA), (16 U.S.C. 1431 et seq.). The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

7. Revise §922.43 to read as follows:

§ 922.43 Prohibited or otherwise regulated activities.

The site-specific regulations applicable to the activities specified therein are set forth in the subparts covered by this part.

8. Revise §922.44 to read as follows:

§ 922.44 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition.

(b) The provisions of this section do not apply to the following national marine sanctuaries with site-specific regulations that establish procedures for issuing emergency regulations:

- (1) Cordell Bank National Marine Sanctuary, §922.112(e).
- (2) Florida Keys National Marine Sanctuary, §922.165.
- (3) Hawaiian Islands Humpback Whale National Marine Sanctuary, §922.185.
- (4) Thunder Bay National Marine Sanctuary, §922.196.
- (5) Mallows Bay – Potomac River National Marine Sanctuary, §922.204.
- (6) [Reserved]

9. Amend §922.47 by revising paragraph (b) to read as follows:

§922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

(b) The prohibitions listed in subparts F through P and R through T of this part do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the Director deems necessary to achieve the purposes for which the Sanctuary was designated.

10. Revise §922.48 to read as follows:

§ 922.48 National Marine Sanctuary permits - application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by subparts F through O and S and T of this part, if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O and S and T, as appropriate. For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by subpart P of this part if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.166. For the Thunder Bay National Marine Sanctuary and Underwater Preserve, a person may conduct an activity prohibited by subpart R of this part in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.195.

(b) Applications for permits to conduct activities otherwise prohibited by subparts F through O and S and T of this part, should be addressed to the Director and sent to the address specified in subparts F through O of this part, or subparts R through T of this part, as appropriate. An application must include:

- (1) A detailed description of the proposed activity including a timetable for completion;
- (2) The equipment, personnel and methodology to be employed;
- (3) The qualifications and experience of all personnel;
- (4) The potential effects of the activity, if any, on Sanctuary resources and qualities; and
- (5) Copies of all other required licenses, permits, approvals or other authorizations.

(c) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.

(d) 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 a prohibited activity, in accordance with the criteria found in subparts F through O of this part, or subparts R through T of this part, as appropriate. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

(e) A permit granted pursuant to this section is nontransferable.

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or subparts F through O of this part, or subparts R through T of this part or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

11. Revise §922.49 to read as follows:

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by subparts L through P of this part, or subparts R through T of this part, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of

Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in subpart P, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P of this part, whichever is later;

(2) The applicant complies with the other provisions of this section;

(3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by subparts L through P of this part, or subparts R through T of this part, as appropriate.

(c) Notification of filings of applications should be sent to the Director, Office of National Marine Sanctuaries at the address specified in subparts L through P of this part, or subparts R through T of this part, as appropriate. A copy of the application must accompany the notification.

(d) The Director may request additional information from the applicant as he or she deems reasonably necessary to determine whether to object to issuance of an authorization described in

paragraph (a) of this section, or what terms and conditions are reasonably necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the application.

(e) The Director shall notify, in writing, the agency to which application has been made of his or her pending review of the application and possible objection to issuance. Upon completion of review of the application and information received with respect thereto, the Director shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems reasonably necessary to protect Sanctuary resources and qualities, and reasons therefor.

(f) The Director may amend the terms and conditions deemed reasonably necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the provisions of § 922.50.

12. Revise § 922.50 to read as follows:

§ 922.50 Appeals of administrative action.

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit issued pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit, license or right of subsistence use or access under § 922.47; or, for those Sanctuaries described in subparts L through P and R through T of this part, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

(i) The granting, denial, conditioning, amendment, suspension or revocation by the Director of a National Marine Sanctuary or Special Use permit;

(ii) The conditioning, amendment, suspension or revocation of a certification under § 922.47; or

(iii) For those Sanctuaries described in subparts L through P and R through T of this part, the objection to issuance of or the imposition of terms and conditions on a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(2) For those National Marine Sanctuaries described in subparts F through K and S and T of this part, any interested person may also appeal the same actions described in paragraphs (a)(1)(i) and (ii) of this section. For appeals arising from actions taken with respect to these National Marine Sanctuaries, the term “appellant” includes any such interested persons.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director. Appeals should be addressed to the Assistant Administrator

for Ocean Services and Coastal Zone Management, NOAA 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910.

(c)(1) The Assistant Administrator may request the appellant to submit such information as the Assistant Administrator deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. For the Monitor National Marine Sanctuary, if the appellant has requested a hearing, the Assistant Administrator shall grant an informal hearing. For all other National Marine Sanctuaries, the Assistant Administrator may determine whether to hold an informal hearing on the appeal. If the Assistant Administrator determines that an informal hearing should be held, the Assistant Administrator may designate an officer before whom the hearing shall be held.

(2) The hearing officer shall give notice in the Federal Register of the time, place and subject matter of the hearing. The appellant and the Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator.

(d) The Assistant Administrator shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator shall notify the appellant of the final decision and the reason(s) therefore in writing. The

Assistant Administrator's decision shall constitute final agency action for the purpose of the Administrative Procedure Act.

(e) Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal may be extended by the Assistant Administrator or hearing office for good cause.

13. Add subpart S to read as follows:

**SUBPART S – MALLOWS BAY – POTOMAC RIVER NATIONAL MARINE
SANCTUARY**

Sec.

922.200 Boundary.

922.201 Definitions.

922.202 Joint management.

922.203 Prohibited or otherwise regulated activities.

922.204 Emergency regulations.

922.205 Permit procedures and review criteria.

922.206 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

Appendix A to Subpart S of Part 922 — Mallows Bay – Potomac River Marine Sanctuary

Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas

Appendix B to Subpart S of Part 922 — Mallows Bay – Potomac River Marine Sanctuary Terms of Designation

§ 922.200 Boundary.

The Mallows Bay – Potomac River National Marine Sanctuary consists of an area of approximately 39 square nautical miles (nmi²) (52 sq. mi) of waters of the state of Maryland in the Potomac River and the submerged lands thereunder, over, around, and under the underwater cultural resources in the Potomac River. The precise boundary coordinates are listed in appendix A to this subpart. The southern and western boundary of the sanctuary approximates the border between the Commonwealth of Virginia and the State of Maryland along the western side of the Potomac River and begins at Point 1 east of Choptank Creek in King George County near Hooes, VA. From this point the boundary continues to the west passing through the points in numerical order until it reaches Point 237 at Bull Bluff on the southern side of the mouth of Potomac Creek. From this point the boundary continues north across the mouth of Potomac Creek to Point 238 near Marlboro Point in Stafford, VA. and once again follows the points in numerical order until it reaches Point 269 at the southern side of the mouth of Aquia Creek. From this point the boundary continues north across the mouth of Aquia Creek to Point 270 near Brent Point in Stafford, VA. The boundary then continues north passing through the points in numerical order

until it reaches Point 312 north of Tank Creek near the restricted area in the Potomac River around Marine Base Quantico at the mouth of Chopawamsic Creek. From this point the boundary continues outside of and around the restricted area to the east and then north again passing through the points in numerical order until it reaches Point 343 south of Quantico Marina. From this point the boundary continues to the east, then north and west around the marina and then north again following the points in numerical order until it reaches Point 365 at Shipping Point on the southern side of the mouth of Quantico Creek in Quantico, VA. From this point the boundary moves to the NNE across the mouth of Quantico Creek to Possum Point near Dumfries, VA. From this point the boundary continues north passing through the points in numerical order until it reaches Point 390 SE of Southbridge, VA. From this point the boundary moves SE towards Point 391 in a straight line crossing the Potomac River until it intersects the shoreline of the river at Moss Point on the Maryland side at mean high water near Indian Head, MD just north of Goose Bay. From this intersection the boundary then follows the shoreline initially to the SW cutting across the mouths of creeks and streams along the eastern side of the Potomac River, then south past Sandy Point and around Mallows Bay. The boundary then continues following the shoreline south past Smith Point and Thomas Point where it turns to the SE and then east around Maryland Point. From here the boundary continues to follow the shoreline to the ENE past Riverside, MD until it intersects the line formed between Point 392 and Point 393 at Benny Gray Point on the western side of the mouth of Nanjemoy Creek on Tayloe Neck in Maryland. Finally, from this intersection the boundary crosses the Potomac

River to the SE in a straight line and continues to Point 393 east of Choptank Creek on the Virginia side of the Potomac River.

§ 922.201 Definitions.

(a) The following terms are defined for purposes of this subpart:

(1) Sanctuary resource means any historical resource with the Sanctuary boundaries, as defined in § 922.3. This includes, but is not limited to, any sunken watercraft and any associated rigging, gear, fittings, trappings, and equipment; the personal property of the officers, crew, and passengers, and any cargo; and any submerged or partially submerged prehistoric, historic cultural remains, such as docks, piers, fishing-related remains (e.g., weirs, fish-traps) or other cultural heritage materials. Sanctuary resource also means any archaeological, historical, and cultural remains associated with or representative of historic or prehistoric American Indians and historic groups or peoples and their activities.

(2) [Reserved]

(b) All other terms appearing in the regulations in this subpart are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 et seq., and 16 U.S.C. 1431 et seq.

§ 922.202 Joint management.

NOAA has primary responsibility for the management of the Sanctuary pursuant to the Act. However, NOAA shall co-manage the Sanctuary in collaboration with the State of Maryland and Charles County. The Director shall enter into a Memorandum of Understanding regarding this collaboration that shall address, but not be limited to, such aspects as areas of mutual concern, including Sanctuary programs, permitting, activities, development, and threats to Sanctuary resources.

§ 922.203 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) and (c) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Moving, removing, recovering, altering, destroying, possessing, or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a Sanctuary resource. This prohibition does not apply to possessing historical resources removed from the Sanctuary area before the effective date of the Sanctuary designation.

(2) Marking, defacing, or damaging in any way, or displacing or removing or tampering with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, buoys, or other boundary markers related to the Sanctuary.

(3) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or any permit issued under the Act.

(b) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to any activity necessary to respond to an emergency threatening life, property or the environment; or to activities necessary for valid law enforcement purposes.

(c)(1) Department of Defense activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources.

(2) In the event of destruction of, loss of, or injury to a Sanctuary resource resulting from an incident, including but not limited to discharges, deposits, and groundings, caused by a Department of Defense activity, the Department of Defense, in coordination with the Director, must promptly prevent and mitigate further damage and must restore or replace the Sanctuary resource in a manner approved by the Director.

§ 922.204 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of Maryland or her/his designee or designated agency.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

§ 922.205 Permit procedures and review criteria.

(a) Authority to issue general permits. The Director may allow a person to conduct an activity that would otherwise be prohibited by this subpart, through issuance of a general permit, provided the applicant complies with:

- (1) The provisions of subpart E of this part; and
- (2) The relevant site specific regulations appearing in this subpart.

(b) Sanctuary general permit categories. The Director may issue a sanctuary general permit under this subpart, subject to such terms and conditions as he or she deems appropriate, if the Director finds that the proposed activity falls within one of the following categories:

- (1) Research - activities that constitute scientific research on or scientific monitoring of national marine sanctuary resources or qualities;
- (2) Education - activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resources or qualities; or
- (3) Management - activities that assist in managing a national marine sanctuary.

(c) Review criteria. The Director shall not issue a permit under this subpart, unless he or she also finds that:

- (1) The proposed activity will be conducted in a manner compatible with the primary objective of protection of national marine sanctuary resources and qualities, taking into account the following factors:
 - (i) The extent to which the conduct of the activity may diminish or enhance national marine sanctuary resources and qualities; and
 - (ii) Any indirect, secondary or cumulative effects of the activity.

- (2) It is necessary to conduct the proposed activity within the national marine sanctuary to achieve its stated purpose.
- (3) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's stated purpose and eliminate, minimize, or mitigate adverse effects on sanctuary resources and qualities as much as possible.
- (4) The duration of the proposed activity and its effects are no longer than necessary to achieve the activity's stated purpose.
- (5) The expected end value of the activity to the furtherance of national marine sanctuary goals and purposes outweighs any potential adverse impacts on sanctuary resources and qualities from the conduct of the activity.
- (6) The applicant is professionally qualified to conduct and complete the proposed activity.
- (7) The applicant has adequate financial resources available to conduct and complete the proposed activity and terms and conditions of the permit.
- (8) There are no other factors that would make the issuance of a permit for the activity inappropriate.

§ 922.206 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.203(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the effective

date of sanctuary designation and within the sanctuary designated area and complies with § 922.49 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

(b) In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

(c) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit, license, or other authorization and the issuing agency and shall set forth reason(s) for the action taken.

(d) Requests for findings or certifications should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, Mallows Bay - Potomac National Marine Sanctuary, 1305 East West Hwy, 11th Floor, Silver Spring, MD 20910. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) For an activity described in paragraph (a) of this section, the holder of the authorization or right may conduct the activity prohibited by § 922.203(a)(1) through (3) provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 180 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this section; and

- (3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.
- (f) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by § 922.203 may conduct the activity without being in violation of applicable provisions of § 922.203, pending final agency action on his or her certification request, provided the holder is otherwise in compliance with this section.
- (g) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.
- (h) The Director may amend any certification made under this section whenever additional information becomes available that he/she determines justifies such an amendment.
- (i) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.
- (j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.50.

(k) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

Appendix A to Subpart S of Part 922 — Mallows Bay – Potomac River Marine Sanctuary
Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

Table A1 – Coordinates for Sanctuary

| Point ID | Latitude | Longitude |
|-----------------|-----------------|------------------|
| 1 | 38.36739 | -77.08823 |
| 2 | 38.36717 | -77.08948 |
| 3 | 38.36704 | -77.09072 |
| 4 | 38.36699 | -77.09216 |
| 5 | 38.36698 | -77.09295 |
| 6 | 38.36683 | -77.09370 |
| 7 | 38.36674 | -77.09433 |
| 8 | 38.36680 | -77.09469 |
| 9 | 38.36703 | -77.09430 |

| | | |
|----|----------|-----------|
| 10 | 38.36735 | -77.09456 |
| 11 | 38.36761 | -77.09482 |
| 12 | 38.36774 | -77.09518 |
| 13 | 38.36808 | -77.09629 |
| 14 | 38.36830 | -77.09729 |
| 15 | 38.36870 | -77.09816 |
| 16 | 38.36879 | -77.09873 |
| 17 | 38.36913 | -77.10063 |
| 18 | 38.36925 | -77.10201 |
| 19 | 38.36947 | -77.10402 |
| 20 | 38.36954 | -77.10569 |
| 21 | 38.36950 | -77.10722 |
| 22 | 38.36936 | -77.10863 |
| 23 | 38.36900 | -77.11124 |
| 24 | 38.36861 | -77.11351 |
| 25 | 38.36845 | -77.11467 |
| 26 | 38.36816 | -77.11552 |
| 27 | 38.36818 | -77.11624 |
| 28 | 38.36810 | -77.11658 |
| 29 | 38.36782 | -77.11717 |

| | | |
|----|----------|-----------|
| 30 | 38.36749 | -77.11806 |
| 31 | 38.36709 | -77.12039 |
| 32 | 38.36688 | -77.12209 |
| 33 | 38.36682 | -77.12429 |
| 34 | 38.36681 | -77.12705 |
| 35 | 38.36690 | -77.12792 |
| 36 | 38.36717 | -77.12974 |
| 37 | 38.36742 | -77.13146 |
| 38 | 38.36757 | -77.13329 |
| 39 | 38.36764 | -77.13392 |
| 40 | 38.36774 | -77.13577 |
| 41 | 38.36776 | -77.13724 |
| 42 | 38.36774 | -77.13795 |
| 43 | 38.36753 | -77.13850 |
| 44 | 38.36728 | -77.13890 |
| 45 | 38.36693 | -77.13928 |
| 46 | 38.36577 | -77.14035 |
| 47 | 38.36475 | -77.14148 |
| 48 | 38.36398 | -77.14256 |
| 49 | 38.36280 | -77.14402 |

| | | |
|----|----------|-----------|
| 50 | 38.36191 | -77.14499 |
| 51 | 38.36031 | -77.14648 |
| 52 | 38.35891 | -77.14763 |
| 53 | 38.35736 | -77.14879 |
| 54 | 38.35491 | -77.15073 |
| 55 | 38.35391 | -77.15170 |
| 56 | 38.35321 | -77.15266 |
| 57 | 38.35308 | -77.15292 |
| 58 | 38.35282 | -77.15334 |
| 59 | 38.35248 | -77.15365 |
| 60 | 38.35144 | -77.15461 |
| 61 | 38.35025 | -77.15589 |
| 62 | 38.34887 | -77.15758 |
| 63 | 38.34760 | -77.15944 |
| 64 | 38.34669 | -77.16101 |
| 65 | 38.34611 | -77.16212 |
| 66 | 38.34560 | -77.16323 |
| 67 | 38.34525 | -77.16412 |
| 68 | 38.34501 | -77.16493 |
| 69 | 38.34502 | -77.16541 |

| | | |
|----|----------|-----------|
| 70 | 38.34491 | -77.16578 |
| 71 | 38.34483 | -77.16626 |
| 72 | 38.34482 | -77.16666 |
| 73 | 38.34460 | -77.16748 |
| 74 | 38.34441 | -77.16840 |
| 75 | 38.34444 | -77.16902 |
| 76 | 38.34429 | -77.16950 |
| 77 | 38.34407 | -77.17030 |
| 78 | 38.34381 | -77.17097 |
| 79 | 38.34350 | -77.17163 |
| 80 | 38.34334 | -77.17206 |
| 81 | 38.34317 | -77.17263 |
| 82 | 38.34287 | -77.17360 |
| 83 | 38.34209 | -77.17576 |
| 84 | 38.34146 | -77.17773 |
| 85 | 38.34128 | -77.17854 |
| 86 | 38.34128 | -77.17906 |
| 87 | 38.34138 | -77.17955 |
| 88 | 38.34137 | -77.17966 |
| 89 | 38.34135 | -77.17980 |

| | | |
|-----|----------|-----------|
| 90 | 38.34133 | -77.18005 |
| 91 | 38.34131 | -77.18017 |
| 92 | 38.34122 | -77.18040 |
| 93 | 38.34116 | -77.18079 |
| 94 | 38.34119 | -77.18150 |
| 95 | 38.34120 | -77.18263 |
| 96 | 38.34122 | -77.18323 |
| 97 | 38.34115 | -77.18430 |
| 98 | 38.34095 | -77.18614 |
| 99 | 38.34079 | -77.18791 |
| 100 | 38.34064 | -77.18962 |
| 101 | 38.34059 | -77.19086 |
| 102 | 38.34052 | -77.19230 |
| 103 | 38.34053 | -77.19403 |
| 104 | 38.34068 | -77.19429 |
| 105 | 38.34078 | -77.19441 |
| 106 | 38.34064 | -77.19511 |
| 107 | 38.34055 | -77.19586 |
| 108 | 38.34048 | -77.19651 |
| 109 | 38.34040 | -77.19799 |

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|-----|----------|-----------|
| 110 | 38.34033 | -77.19986 |
| 111 | 38.34040 | -77.20078 |
| 112 | 38.34052 | -77.20213 |
| 113 | 38.34064 | -77.20333 |
| 114 | 38.34070 | -77.20421 |
| 115 | 38.34043 | -77.20531 |
| 116 | 38.34008 | -77.20635 |
| 117 | 38.33976 | -77.20698 |
| 118 | 38.33959 | -77.20767 |
| 119 | 38.33960 | -77.20782 |
| 120 | 38.33973 | -77.20824 |
| 121 | 38.33977 | -77.20867 |
| 122 | 38.33976 | -77.20888 |
| 123 | 38.33973 | -77.20909 |
| 124 | 38.33964 | -77.20958 |
| 125 | 38.33928 | -77.21080 |
| 126 | 38.33892 | -77.21195 |
| 127 | 38.33854 | -77.21310 |
| 128 | 38.33852 | -77.21378 |
| 129 | 38.33804 | -77.21485 |

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|-----|----------|-----------|
| 130 | 38.33792 | -77.21523 |
| 131 | 38.33761 | -77.21625 |
| 132 | 38.33724 | -77.21710 |
| 133 | 38.33692 | -77.21799 |
| 134 | 38.33673 | -77.21878 |
| 135 | 38.33658 | -77.21966 |
| 136 | 38.33647 | -77.22072 |
| 137 | 38.33640 | -77.22109 |
| 138 | 38.33596 | -77.22240 |
| 139 | 38.33567 | -77.22315 |
| 140 | 38.33526 | -77.22414 |
| 141 | 38.33483 | -77.22528 |
| 142 | 38.33444 | -77.22657 |
| 143 | 38.33408 | -77.22777 |
| 144 | 38.33340 | -77.22978 |
| 145 | 38.33291 | -77.23116 |
| 146 | 38.33264 | -77.23265 |
| 147 | 38.33231 | -77.23448 |
| 148 | 38.33227 | -77.23495 |
| 149 | 38.33259 | -77.23502 |

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|-----|----------|-----------|
| 150 | 38.33258 | -77.23529 |
| 151 | 38.33209 | -77.23529 |
| 152 | 38.33180 | -77.23634 |
| 153 | 38.33145 | -77.23785 |
| 154 | 38.33130 | -77.23898 |
| 155 | 38.33123 | -77.23965 |
| 156 | 38.33112 | -77.24061 |
| 157 | 38.33110 | -77.24127 |
| 158 | 38.33107 | -77.24231 |
| 159 | 38.33109 | -77.24303 |
| 160 | 38.33109 | -77.24356 |
| 161 | 38.33104 | -77.24483 |
| 162 | 38.33105 | -77.24512 |
| 163 | 38.33107 | -77.24533 |
| 164 | 38.33107 | -77.24607 |
| 165 | 38.33114 | -77.24689 |
| 166 | 38.33144 | -77.24694 |
| 167 | 38.33144 | -77.24716 |
| 168 | 38.33121 | -77.24719 |
| 169 | 38.33109 | -77.24770 |

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|-----|----------|-----------|
| 170 | 38.33117 | -77.24806 |
| 171 | 38.33139 | -77.24916 |
| 172 | 38.33133 | -77.24978 |
| 173 | 38.33139 | -77.25021 |
| 174 | 38.33150 | -77.25141 |
| 175 | 38.33159 | -77.25294 |
| 176 | 38.33150 | -77.25606 |
| 177 | 38.33158 | -77.25623 |
| 178 | 38.33177 | -77.25646 |
| 179 | 38.33187 | -77.25682 |
| 180 | 38.33184 | -77.25856 |
| 181 | 38.33196 | -77.26076 |
| 182 | 38.33201 | -77.26171 |
| 183 | 38.33218 | -77.26196 |
| 184 | 38.33233 | -77.26254 |
| 185 | 38.33243 | -77.26373 |
| 186 | 38.33247 | -77.26524 |
| 187 | 38.33264 | -77.26545 |
| 188 | 38.33289 | -77.26591 |
| 189 | 38.33319 | -77.26671 |

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|-----|----------|-----------|
| 190 | 38.33340 | -77.26757 |
| 191 | 38.33339 | -77.26797 |
| 192 | 38.33377 | -77.26839 |
| 193 | 38.33391 | -77.26862 |
| 194 | 38.33402 | -77.26888 |
| 195 | 38.33412 | -77.26937 |
| 196 | 38.33416 | -77.26960 |
| 197 | 38.33438 | -77.27005 |
| 198 | 38.33456 | -77.27032 |
| 199 | 38.33482 | -77.27065 |
| 200 | 38.33546 | -77.27098 |
| 201 | 38.33565 | -77.27125 |
| 202 | 38.33558 | -77.27149 |
| 203 | 38.33570 | -77.27231 |
| 204 | 38.33583 | -77.27267 |
| 205 | 38.33592 | -77.27292 |
| 206 | 38.33601 | -77.27324 |
| 207 | 38.33635 | -77.27474 |
| 208 | 38.33656 | -77.27539 |
| 209 | 38.33669 | -77.27564 |

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|-----|----------|-----------|
| 210 | 38.33683 | -77.27572 |
| 211 | 38.33694 | -77.27583 |
| 212 | 38.33708 | -77.27589 |
| 213 | 38.33719 | -77.27585 |
| 214 | 38.33728 | -77.27637 |
| 215 | 38.33738 | -77.27685 |
| 216 | 38.33768 | -77.27729 |
| 217 | 38.33803 | -77.27741 |
| 218 | 38.33829 | -77.27725 |
| 219 | 38.33883 | -77.27803 |
| 220 | 38.33888 | -77.27829 |
| 221 | 38.33863 | -77.27848 |
| 222 | 38.33868 | -77.27885 |
| 223 | 38.33899 | -77.27960 |
| 224 | 38.33924 | -77.28012 |
| 225 | 38.33939 | -77.28028 |
| 226 | 38.33954 | -77.28022 |
| 227 | 38.33978 | -77.27993 |
| 228 | 38.34024 | -77.27997 |
| 229 | 38.34082 | -77.28058 |

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|-----|----------|-----------|
| 230 | 38.34137 | -77.28120 |
| 231 | 38.34185 | -77.28191 |
| 232 | 38.34227 | -77.28244 |
| 233 | 38.34255 | -77.28270 |
| 234 | 38.34263 | -77.28289 |
| 235 | 38.34276 | -77.28333 |
| 236 | 38.34288 | -77.28399 |
| 237 | 38.34287 | -77.28458 |
| 238 | 38.35169 | -77.28785 |
| 239 | 38.35176 | -77.28762 |
| 240 | 38.35222 | -77.28722 |
| 241 | 38.35296 | -77.28696 |
| 242 | 38.35378 | -77.28704 |
| 243 | 38.35441 | -77.28734 |
| 244 | 38.35475 | -77.28746 |
| 245 | 38.35571 | -77.28759 |
| 246 | 38.35698 | -77.28798 |
| 247 | 38.35753 | -77.28814 |
| 248 | 38.35832 | -77.28794 |
| 249 | 38.35873 | -77.28777 |

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|-----|----------|-----------|
| 250 | 38.35909 | -77.28772 |
| 251 | 38.35949 | -77.28810 |
| 252 | 38.36243 | -77.29110 |
| 253 | 38.36281 | -77.29123 |
| 254 | 38.36306 | -77.29148 |
| 255 | 38.36425 | -77.29288 |
| 256 | 38.36685 | -77.29439 |
| 257 | 38.36867 | -77.29555 |
| 258 | 38.36937 | -77.29586 |
| 259 | 38.36998 | -77.29646 |
| 260 | 38.37142 | -77.29799 |
| 261 | 38.37293 | -77.30072 |
| 262 | 38.37327 | -77.30098 |
| 263 | 38.37342 | -77.30149 |
| 264 | 38.37356 | -77.30181 |
| 265 | 38.37371 | -77.30200 |
| 266 | 38.37392 | -77.30224 |
| 267 | 38.37426 | -77.30275 |
| 268 | 38.37482 | -77.30401 |
| 269 | 38.37519 | -77.30479 |

| | | |
|-----|----------|-----------|
| 270 | 38.39732 | -77.31009 |
| 271 | 38.39823 | -77.31030 |
| 272 | 38.39856 | -77.31060 |
| 273 | 38.39887 | -77.31075 |
| 274 | 38.39917 | -77.31067 |
| 275 | 38.40015 | -77.31074 |
| 276 | 38.40090 | -77.31146 |
| 277 | 38.40139 | -77.31216 |
| 278 | 38.40198 | -77.31237 |
| 279 | 38.40314 | -77.31278 |
| 280 | 38.40658 | -77.31377 |
| 281 | 38.40984 | -77.31466 |
| 282 | 38.41389 | -77.31693 |
| 283 | 38.41832 | -77.31913 |
| 284 | 38.41975 | -77.31931 |
| 285 | 38.42352 | -77.31972 |
| 286 | 38.42549 | -77.32030 |
| 287 | 38.42738 | -77.32081 |
| 288 | 38.43092 | -77.32240 |
| 289 | 38.43163 | -77.32242 |

| | | |
|-----|----------|-----------|
| 290 | 38.43351 | -77.32264 |
| 291 | 38.43385 | -77.32269 |
| 292 | 38.43430 | -77.32265 |
| 293 | 38.43462 | -77.32229 |
| 294 | 38.43498 | -77.32146 |
| 295 | 38.43526 | -77.32057 |
| 296 | 38.43522 | -77.32040 |
| 297 | 38.47321 | -77.31846 |
| 298 | 38.47434 | -77.31874 |
| 299 | 38.47561 | -77.31753 |
| 300 | 38.47655 | -77.31686 |
| 301 | 38.47748 | -77.31667 |
| 302 | 38.47821 | -77.31604 |
| 303 | 38.47871 | -77.31554 |
| 304 | 38.47885 | -77.31564 |
| 305 | 38.47905 | -77.31559 |
| 306 | 38.47922 | -77.31578 |
| 307 | 38.47943 | -77.31592 |
| 308 | 38.47986 | -77.31592 |
| 309 | 38.48494 | -77.31336 |

| | | |
|-----|----------|-----------|
| 310 | 38.48878 | -77.31142 |
| 311 | 38.49279 | -77.30997 |
| 312 | 38.49351 | -77.30981 |
| 313 | 38.49257 | -77.30624 |
| 314 | 38.49509 | -77.30103 |
| 315 | 38.49849 | -77.29738 |
| 316 | 38.50281 | -77.29424 |
| 317 | 38.50653 | -77.29712 |
| 318 | 38.50663 | -77.29695 |
| 319 | 38.50755 | -77.29621 |
| 320 | 38.50794 | -77.29610 |
| 321 | 38.50823 | -77.29611 |
| 322 | 38.50858 | -77.29613 |
| 323 | 38.50871 | -77.29604 |
| 324 | 38.50880 | -77.29604 |
| 325 | 38.50896 | -77.29612 |
| 326 | 38.51029 | -77.29518 |
| 327 | 38.51167 | -77.29327 |
| 328 | 38.51204 | -77.29382 |
| 329 | 38.51575 | -77.29102 |

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|-----|----------|-----------|
| 330 | 38.51736 | -77.29034 |
| 331 | 38.51778 | -77.29023 |
| 332 | 38.51797 | -77.29006 |
| 333 | 38.51828 | -77.28968 |
| 334 | 38.51867 | -77.28916 |
| 335 | 38.51883 | -77.28893 |
| 336 | 38.51897 | -77.28886 |
| 337 | 38.51905 | -77.28874 |
| 338 | 38.51902 | -77.28867 |
| 339 | 38.51904 | -77.28854 |
| 340 | 38.51909 | -77.28843 |
| 341 | 38.51922 | -77.28834 |
| 342 | 38.51935 | -77.28825 |
| 343 | 38.51945 | -77.28816 |
| 344 | 38.51883 | -77.28626 |
| 345 | 38.51945 | -77.28539 |
| 346 | 38.52021 | -77.28482 |
| 347 | 38.52115 | -77.28762 |
| 348 | 38.52130 | -77.28757 |
| 349 | 38.52175 | -77.28728 |

| | | |
|-----|----------|-----------|
| 350 | 38.52193 | -77.28687 |
| 351 | 38.52223 | -77.28639 |
| 352 | 38.52282 | -77.28636 |
| 353 | 38.52317 | -77.28616 |
| 354 | 38.52390 | -77.28552 |
| 355 | 38.52434 | -77.28500 |
| 356 | 38.52475 | -77.28427 |
| 357 | 38.52485 | -77.28385 |
| 358 | 38.52498 | -77.28362 |
| 359 | 38.52516 | -77.28351 |
| 360 | 38.52540 | -77.28331 |
| 361 | 38.52558 | -77.28310 |
| 362 | 38.52603 | -77.28307 |
| 363 | 38.52706 | -77.28312 |
| 364 | 38.52767 | -77.28309 |
| 365 | 38.52782 | -77.28322 |
| 366 | 38.53398 | -77.27927 |
| 367 | 38.53458 | -77.27946 |
| 368 | 38.53542 | -77.27940 |
| 369 | 38.53640 | -77.27899 |

| | | |
|-----|----------|-----------|
| 370 | 38.53725 | -77.27822 |
| 371 | 38.53714 | -77.27792 |
| 372 | 38.53680 | -77.27703 |
| 373 | 38.53820 | -77.27624 |
| 374 | 38.53908 | -77.27673 |
| 375 | 38.53962 | -77.27641 |
| 376 | 38.54088 | -77.27604 |
| 377 | 38.54218 | -77.27594 |
| 378 | 38.54311 | -77.27590 |
| 379 | 38.54345 | -77.27604 |
| 380 | 38.54416 | -77.27638 |
| 381 | 38.54523 | -77.27670 |
| 382 | 38.54603 | -77.27677 |
| 383 | 38.54678 | -77.27655 |
| 384 | 38.54732 | -77.27606 |
| 385 | 38.54806 | -77.27536 |
| 386 | 38.54901 | -77.27473 |
| 387 | 38.54986 | -77.27422 |
| 388 | 38.55036 | -77.27373 |
| 389 | 38.55131 | -77.27265 |

| | | |
|------|----------|-----------|
| 390 | 38.55133 | -77.27263 |
| 391* | 38.52603 | -77.25146 |
| 392* | 38.41053 | -77.12394 |
| 393 | 38.36739 | -77.08823 |

Note: The coordinates in the table above marked with an asterisk (*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

Appendix B to Subpart S of Part 922 — Mallow's Bay – Potomac River Marine Sanctuary Terms of Designation

Terms of Designation for the Proposed Mallow's Bay - Potomac River National Marine Sanctuary

Under the authority of the National Marine Sanctuaries Act, as amended (the “Act” or “NMSA”), 16 U.S.C. 1431 et seq., certain waters and submerged lands located off the Nanjemoy Peninsula of Charles County, Maryland and along the tidal Potomac River and its surrounding waters are hereby designated as a National Marine Sanctuary for the purposes of providing long-term protection and management of the historical resources and recreational, research, educational, and aesthetic qualities of the area.

Article I: Effect of Designation

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the historical resources and recreational, research, and educational qualities of the Mallows Bay – Potomac River National Marine Sanctuary (the “Sanctuary”). Section 1 of Article IV of this Designation Document lists those activities that may have to be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing an activity does not necessarily mean that it will be regulated; however, if an activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the same procedures by which the original Sanctuary designation was made.

Article II: Description of the Area

The Mallows Bay – Potomac River National Marine Sanctuary consists of an area of approximately 39 square nautical miles (nmi²) (52 sq. mi) of waters of the state of Maryland in the Potomac River and the submerged lands thereunder, over, around, and under the underwater cultural resources in the Potomac River. The southern and western boundary of the sanctuary approximates the border between the Commonwealth of Virginia and the State of Maryland for roughly 29 miles along the western side of the Potomac River and begins east of Choptank Creek in King George County near Hooes, VA. From this point the boundary approximates the border west and then north cutting across the mouths of Choptank Creek, Potomac Creek, and Aquia Creek. The boundary then continues past Widewater, VA and around the Marine Base Quantico restricted area to the east and then continues north again cutting across the mouth of Quantico

Creek. From a point just north of Quantico Creek and Possum Point near Dumfries, VA the boundary crosses the Potomac to the southeast until it intersects the Maryland shoreline at Moss Point near Indian Head, MD. From this point the eastern and northern boundary of the sanctuary, approximately 21 miles in length, follows the Maryland shoreline south past Sandy Point and Mallows Bay cutting across the mouths of streams and creeks. The boundary then continues following the shoreline south past Smith Point and Thomas Point where it turns to the east around Maryland Point. From here the boundary continues to follow the shoreline past Riverside, MD to a location at Benny Gray Point on the western side of the mouth of Nanjemoy Creek on Tayloe Neck in Maryland. From here the boundary crosses the Potomac River again to the south back to its point of origin east of Choptank Creek on the Virginia side of the river. The boundary encompasses all tidal waters within this boundary from mean high tide in Maryland to mean low tide in Virginia. Excluded from the sanctuary are areas where the Virginia state line is otherwise delineated, the Quantico exclusion zone, and the area around the Quantico marina.

Article III: Special Characteristics of the Area

Mallows Bay – Potomac River National Marine Sanctuary and its surrounding waters contain a diverse collection of nearly 200 known historic shipwreck vessels dating back to the Civil War and potentially dating back to the Revolutionary War as well as archaeological artifacts dating back 12,000 years indicating the presence of some of the region’s earliest American Indian cultures, including the Piscataway Indian Nation and the Piscataway Conoy Tribe of Maryland. The area is most renowned for the remains of over 100 wooden steamships, known as the “Ghost

Fleet,” that were built for the US Emergency Fleet between 1917-1919 as part of US engagement in World War I. Their construction at more than 40 shipyards in 17 states reflects the massive national wartime effort that drove the expansion and economic development of communities and related maritime service industries including the present-day Merchant Marines. The area is contiguous to the Captain John Smith Chesapeake National Historic Trail, the Star Spangled Banner National Historic Trail, the Potomac Heritage National Scenic Trail and the Lower Potomac Water Trail which offer meaningful educational and recreational opportunities centered on the region’s culture, heritage and history. Additionally, the structure provided by the vessels and related infrastructure serve as important habitat to thriving populations of recreational fisheries, bald eagles, and other aquatic species. The area’s listing on the National Historical Register of Places in 2015 codifies the historical, archaeological and recreational significance of the Ghost Fleet and related maritime heritage sites in and around Mallows Bay – Potomac River National Marine Sanctuary.

Article IV: Scope of Regulations

Section 1. Activities Subject to Regulation. The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the historical resources and recreational, research and educational qualities of the area:

- a. Damaging sanctuary resources.
- b. Damaging sanctuary property.

c. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation issued under the Act.

Section 2. Emergencies. Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource; or minimize the imminent risk of such destruction, loss, or injury, any activity, including those not listed in Section 1, is subject to immediate temporary regulation. An emergency regulation shall not take effect without the approval of the Governor of Maryland or her/his designee or designated agency.

Article V: Relation to Other Regulatory Program

Section 1. Fishing Regulations, Licenses, and Permits. Fishing in the Sanctuary shall not be regulated as part of the Sanctuary management regime authorized by the Act. However, fishing in the Sanctuary may be regulated by other Federal, State, Tribal and local authorities of competent jurisdiction, and designation of the Sanctuary shall have no effect on any regulation, permit, or license issued thereunder.

Section 2. Other Regulations, Licenses, and Permits. If any valid regulation issued by any Federal, state, Tribal, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director of the Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration, or designee, in consultation with the State of Maryland, to be more protective of Sanctuary resources and qualities shall govern. Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid

lease, permit, license, approval, or other authorization issued by any Federal, State, Tribal, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or designee, as a result of this designation, or as a result of any Sanctuary regulation, if such lease, permit, license, approval, or other authorization, or right of subsistence use or access was issued or in existence as of the effective date of this designation. However, the Secretary of Commerce or designee, in consultation with the State of Maryland, may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

Section 3. Defense Activities. Department of Defense activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

Article VI. Alteration of This Designation

The terms of designation may be modified only by the same procedures by which the original designation is made, including public meetings, consultation according to the NMSA.

Subpart T – [Added and Reserved]

14. Add and reserve subpart T.

[FR Doc. 2016-31742 Filed: 1/6/2017 8:45 am; Publication Date: 1/9/2017]