



Billing Code 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Docket No. 200330-0093

RIN 0648-BA21

Proposed Expansion of Flower Garden Banks National Marine Sanctuary

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

ACTION: Proposed rule; request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes to expand the boundaries of Flower Garden Banks National Marine Sanctuary (FGBNMS) and revise the sanctuary's terms of designation. The purpose of this action is to expand the sanctuary to include portions of 14 additional reefs and banks in the northwestern Gulf of Mexico, representing a 104 square mile increase in area. The existing FGBNMS regulations would be applied to the expanded locations. NOAA is soliciting public comment on the proposed rule.

DATES: NOAA will consider all comments received by July 3, 2020. Flower Garden Banks National Marine Sanctuary will hold three virtual public hearings on the following dates and times: June 8, 2020 1:00 pm - 3:00 pm CDT and 6:00 pm - 8:00 pm CDT and June 11, 2020 6:00 pm - 8:00 pm CDT.

ADDRESSES: You may submit comments on this document, identified by NOAA-NOS-2019-0033, by:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2019-0033>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Written comments may also be mailed to: George P. Schmahl, Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, Texas 77551.

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 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), 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).

To participate in the public hearings, online registration is requested in advance via the following links. If you are unable to participate online, you can also connect to the public hearings using the phone numbers provided below.

1) June 8, 2020, 1:00 pm - 3:00 pm CDT

Registration: <https://attendee.gotowebinar.com/register/9162740973626770700>

Phone: +1 (213) 929-4232 PIN: 704-409-034

2) June 8, 2020, 6:00 pm - 8:00 pm CDT

Registration: <https://attendee.gotowebinar.com/register/1668176149101021196>

Phone: +1 (213) 929-4232 PIN: 682-728-246

3) June 11, 2020, 6:00 pm - 8:00 pm CDT

Registration: <https://attendee.gotowebinar.com/register/5569362151706075916>

Phone: +1 (415) 655-0052 PIN: 486-551-096

If you would like to provide comment during the hearings, please sign up in advance. Select “yes” during the online registration. The line-up of speakers will be based on your date and time of registration.

If you will be participating by phone, please send an email to fgbexpansion@noaa.gov to add your name to the speaker list.

For more details on the public hearings, please visit

<https://flowergarden.noaa.gov/management/expansionnpr.html>

Copies of the proposed rule, the DEIS, maps of the proposed expansion areas, and additional background materials can be found on the FGBNMS website at

<https://flowergarden.noaa.gov/management/expansionnpr.html>. The notice of proposed rulemaking (NPRM) can also be downloaded or viewed on the Internet at www.regulations.gov (search for docket # NOAA-NOS-2016-0059 and NOAA-NOS-2019-0033).

FOR FURTHER INFORMATION CONTACT:

George P. Schmahl, Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, Texas, at 409-356-0383, or fgbexpansion@noaa.gov.

SUPPLEMENTAL INFORMATION:

I. Introduction

1. Flower Garden Banks National Marine Sanctuary

Located in the northwestern Gulf of Mexico, 70 to 115 miles off the coasts of Texas and Louisiana, Flower Garden Banks National Marine Sanctuary (FGBNMS or sanctuary) currently encompasses approximately 56 square miles and includes three separate undersea features: East Flower Garden Bank, West Flower Garden Bank, and Stetson Bank. The banks range in depth from 55 feet (17 meters) to nearly 500 feet (152 meters), and are geological formations created by the movement of ancient salt deposits pushed up through overlying sedimentary layers.

The banks provide a wide range of habitat conditions that support several distinct biological communities, including the northernmost coral reefs in the continental United States and mesophotic coral habitats. These and similar formations throughout the northwestern Gulf of Mexico provide the foundation for essential habitat for numerous marine species, including a variety of fish species of commercial and recreational importance, and several endangered or threatened species, including sea turtles and manta rays. The combination of location and geology makes the sanctuary an extremely productive and diverse ecosystem.

NOAA issued a final rule to implement the designation of FGBNMS on December 5, 1991 (56 FR 63634). Congress subsequently passed a law recognizing the designation on January 17, 1992 (Pub. L. 102–251, Title I, Sec. 101). At that time, the sanctuary consisted of two areas known as East and West Flower Garden Banks (56 FR 63634). Among other things, FGBNMS regulated a narrow range of activities, established permit and certification procedures, and exempted certain U.S. Department of Defense (DOD) activities from the sanctuary's prohibitions (56 FR 63634). Those regulations became effective on January 18, 1994 (58 FR 65664). In 1996, Congress added Stetson Bank to the sanctuary (Pub. L. 104–283). The boundaries of Stetson Bank and West Flower Garden Bank were later amended to improve administrative efficiencies and increase the precision of all boundary coordinates based on new positioning

technology (65 FR 81175, Dec. 22, 2000). Current FGBNMS regulations can be found at 15 CFR part 922, subpart L, and the existing sanctuary management plan may be found at <https://flowergarden.noaa.gov/management/2012mgmtplan.html>.

2. Need for Action

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 aesthetic qualities. Day-to-day management of national marine sanctuaries is delegated by the Secretary to ONMS. The primary objective of the NMSA is to protect nationally significant marine resources, including biological features such as coral reefs, and cultural resources, such as historic shipwrecks and archaeological sites. The mission of FGBNMS is to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of the sanctuary and its regional environment for this and future generations.

The proposed action responds to the need to provide additional protection of sensitive underwater features and marine habitats associated with continental shelf-edge reefs and banks in the northwestern Gulf of Mexico. The current jurisdictional regime divides authority among several governmental entities that regulate offshore energy exploration (Bureau of Ocean Energy Management (BOEM)), fishing (Gulf of Mexico Fishery Management Council (GMFMC)), and water quality (Environmental Protection Agency (EPA)). This current jurisdictional regime does not provide comprehensive and effective management for the full range of activities that impact the sensitive reefs and banks in the region. For example, BOEM's prohibitions in the No Activity Zones (NAZs) apply only to anchoring by vessels engaged in development activities and

platform services, while anchoring by other vessels remains unregulated. Further, these anchoring regulations in the NAZs apply only on a lease-by-lease basis. Other vessel ground tackle (including anchors, chains, and cables) and marine salvage activities are currently unregulated and have caused significant injury to sensitive biological communities.

The areas proposed for sanctuary expansion are recognized as hotspots of marine biodiversity that provide vital habitat for many important species in the Gulf of Mexico region. They are home to the most significant examples of coral and algal reefs, mesophotic and deepwater coral communities, and other biological assemblages in the Gulf of Mexico. Furthermore, these areas provide important habitat for notable species such as manta rays, sea turtles, and whale sharks, while serving as nurseries for numerous fish species of commercial and recreational importance. As such, most of these areas have also been identified as nationally significant through their designation as Habitat Areas of Particular Concern (HAPC) by the GMFMC and as NAZs by BOEM. These habitats are vulnerable to a variety of known and potential impacts, including large vessel anchoring, marine salvage operations, fishing techniques that may injure benthic habitat (i.e., trawling, bottom-tending gear), and certain oil and gas exploration and development activities. These impacts can more effectively be addressed within the expanded areas through the comprehensive habitat conservation and management authorities under the NMSA. The protection of these ecologically significant sites would increase the resilience of marine ecosystems, and enhance the sustainability of the region's thriving recreation, tourism, and commercial economies. Ultimately, expanding FGBNMS would help ensure that valuable marine resources remain available for the use and enjoyment of future generations of Americans.

The proposed sanctuary expansion is the logical outcome of decades of scientific research and growing public recognition of the need for coordinated protection of significant offshore

marine places in the northern Gulf of Mexico region. Protecting additional habitat in the northwestern Gulf of Mexico emerged as one of the highest priorities identified during a vigorous public review process of FGBNMS management issues. Subsequently, “Sanctuary Expansion” was incorporated as a discrete action plan in the 2012 revision of the sanctuary’s management plan. The region is heavily utilized for a variety of recreational, commercial, and industrial purposes, and there are ongoing impacts from bottom-disturbing activities, such as large vessel anchoring and marine salvage, on the sensitive biological resources and geological features associated with many reefs and banks in the area. Therefore, pursuant to the NMSA’s purpose to “facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas,” FGBNMS can further resource protection while balancing multiple uses. The proposed action would expand FGBNMS by incorporating portions of selected reefs and banks in the northwestern Gulf of Mexico. In doing so, the proposed action would provide management of and protection for nationally significant areas with biological, ecological, and/or structural links to the existing sanctuary, including vulnerable mesophotic and deep benthic habitat sites, while providing important opportunities for research and recovery of resources from observed impacts. These areas contain the most significant examples of mesophotic coral communities in the Gulf of Mexico, including some of the highest known densities of mesophotic corals (colonies per square meter). Many banks in the proposed expansion are also nationally significant, in part, because they have been historically recognized by BOEM and GMFMC, as stated above.

II. History of the FGBNMS Expansion Process

1. Management Plan Review

NOAA is required by NMSA Section 304(e) to periodically review sanctuary management plans to ensure that sanctuary management continues to effectively conserve, protect, and enhance the nationally significant living and cultural resources at each site. Management plans generally outline regulatory goals, describe boundaries, identify staffing and budget needs, and set priorities and performance measures for resource protection, research, and education programs. Management plans also guide the development of future management activities.

The FGBNMS management plan review process began in 2006 with a series of scoping meetings to obtain information about the public's interests and priorities for FGBNMS management (71 FR 52757; September 7, 2006). Subsequently, NOAA worked with the FGBNMS Advisory Council to prioritize issues and develop appropriate management strategies and activities for the preparation of a draft revised management plan. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review process.

In 2007, the FGBNMS Advisory Council, using information developed by its Boundary Expansion Working Group (BEWG), recommended a range of sanctuary boundary expansion alternatives. Based on this input, and information obtained through a subsequent public process, NOAA prepared a revised management plan (77 FR 25060, April 27, 2012) that contained six action plans, including one that specifically addressed sanctuary expansion. The Sanctuary Expansion Action Plan outlined a strategy to expand the protected areas to include additional reefs and banks in the northwestern Gulf of Mexico, and to develop a DEIS to evaluate appropriate expansion alternatives. The recommended expansion alternative, as identified by the FGBNMS Advisory Council in 2007, was included in the Sanctuary Expansion Action Plan.

This recommendation included nine additional reefs and banks, encompassing approximately 281 square miles.

2. Boundary Expansion Notice of Intent

On February 3, 2015, NOAA published a Notice of Intent to prepare a draft environmental impact statement (DEIS) for expanding FGBNMS boundaries (80 FR 5699). That Notice solicited public input on the range and significance of issues related to sanctuary expansion, including potential boundary configurations, resources to be protected, other issues NOAA should consider, and any information that should be included in the resource analysis. The public scoping period was open through April 6, 2015, during which time ONMS held three public hearings and interested parties submitted both written and oral comments.

NOAA received approximately 200 comments during the scoping period. Most commenters were strongly supportive of the concept of sanctuary expansion. In addition to broad general support, some comments expressed conditional support while raising user concerns primarily relating to the potential impact of sanctuary expansion on the offshore oil and gas industry and historic fishing practices. Other commenters recommended that NOAA consider a broader geographical area than the Sanctuary Expansion Action Plan identified, especially in light of the 2010 BP/Deepwater Horizon oil spill and new information that became available since the 2007 FGBNMS Advisory Council recommendation. This information was considered during the development of the expansion alternatives in the DEIS.

3. Draft Environmental Impact Statement

In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.) and the NMSA (NMSA, 16 U.S.C. 1434), NOAA prepared and released a DEIS (81 FR 37576,

June 10, 2016). The DEIS considered alternatives for the proposed expansion of boundaries at FGBNMS and application of the existing sanctuary regulations and management actions to the expanded area. The DEIS evaluated the environmental consequences of the alternatives and provided an in-depth resource assessment. The action alternatives in the DEIS would expand the network of protected areas within FGBNMS by incorporating selected reefs, banks, and other features in the north central Gulf of Mexico.

The DEIS evaluated five alternatives, ranging from “no action” (maintaining the current boundaries) to one that included a total of 45 discrete boundary units and encompassed approximately 935 square miles. The proposed action discussed in this rulemaking falls within the bounds of the DEIS alternatives as discussed below in part II, section 5 of this proposed rule and in the supplemental information report which is available at the FGBMNS website <https://flowergarden.noaa.gov/management/expansionnpr.html>, and the Supporting Documents section of the docket identified in the ADDRESSES section of this document. The 2007 Advisory Council recommendation (Alternative 2) was included in the range of alternatives. All alternatives were consistent with NOAA’s mission to conserve and manage coastal and marine ecosystems and resources, would further the FGBNMS mission to “identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of FGBNMS and its regional environment for this and future generations,” would provide for more comprehensive management and protection of important and vulnerable ecological and cultural resources across the north central Gulf of Mexico, and would provide important opportunities for research and recovery of resources from observed impacts. No significant adverse impacts to the human environment were identified under any alternative considered in the DEIS.

NOAA's preferred alternative in the 2016 DEIS (Alternative 3) sought to expand the existing sanctuary from approximately 56 square miles to approximately 383 square miles, including additional important and sensitive marine habitat areas in the northwestern Gulf of Mexico. This alternative would have applied the existing sanctuary regulations and management actions to the expanded area. The 2016 preferred alternative included 15 reefs and banks (in addition to those contained within the existing 3 sanctuary units) encompassed within 11 discrete boundary polygons.

The 2016 preferred alternative would have also modified the existing Stetson Bank boundary and incorporated the existing East and West Flower Garden Banks in a single new sanctuary unit that included an additional feature known as Horseshoe Bank. The preferred alternative also would have established new discontinuous boundaries encompassing seven individual banks (McGrail, Geyer, Sonnier, Alderdice, MacNeil, Elvers, and Parker) and two additional habitat complexes comprising multiple reefs and banks (the Bright-Rankin-28 Fathom complex and the Bouma-Bryant-Rezak-Sidner complex). NOAA developed this alternative based on similar criteria used by the FGBNMS Sanctuary Advisory Council (SAC) in their 2007 recommendation for boundary expansion, supplemented since that time by information obtained from current research, consultation with other federal and state agencies, and public comment.

The 2016 preferred alternative was also informed by the impacts and restoration plans resulting from the 2010 Deepwater Horizon disaster, and information on biological communities obtained from *in situ* surveys contributed to the analysis. Evaluation criteria were applied for standardization and quality control.

4. Comments Received on the DEIS

a. Public Comments

NOAA accepted public comments on the DEIS from June 2016 to August 2016 through <https://www.Regulations.gov>, by mail, and in person during public hearings in Galveston, TX; Houston, TX; New Orleans, LA; Lafayette, LA; and Mobile, AL. Public comments are available for review at <https://www.regulations.gov>, docket # NOAA-NOS-2016-0059. NOAA received 1,421 separate comments during the public comment period, including three letter campaigns and one petition, each with multiple signatories, for a total of 8,491 comments.

Characterization of public comments

In support of expansion, 4,579 expressed support for Alternative 5 (the most comprehensive alternative), 1,501 for Alternative 3 (Preferred Alternative) and 9 for Alternative 2 (the 2007 SAC Recommendation). The public comments are summarized below, and a comprehensive characterization of public comments will be included in the final environmental impact statement (FEIS).

Public comments identified specific geographic locations of concern within the range of proposed alternatives, and additional areas of concern that were not included in the range of proposed alternatives. Comments raised concerns regarding fish spawning aggregations, open water areas between banks, shipwrecks, mesophotic/deepwater coral ecosystems, artificial reefs, sea turtles, corals, commercial fish, sharks, rays, and whales. Comments supportive of the proposed expansion referred to industrial, environmental, and global impacts. Opposing comments cited existing protections for sensitive resources; restriction to use/access; safety, budget, and management concerns; and socioeconomic consequences.

b. Agency Consultations and Other Coordination

i. BOEM Consultation

Pursuant to NMSA Section 304(a)(2)(B)(ii) and through the Cooperative Agency Agreement dated September 2015, FGBNMS consulted with BOEM during the development of the DEIS to evaluate the impacts to the oil and gas industry. After NOAA released the DEIS and in a report dated November 2, 2016, BOEM provided additional analysis of the Outer Continental Shelf (OCS) areas affected by Alternative 3 (Preferred Alternative) and Alternative 5. In that report, BOEM provided information on: 1) discovered, contingent and undiscovered oil and gas resource potential beneath proposed expansion areas; 2) rough cost estimates for directional drilling from outside the sanctuary; 3) potential economic loss to the Federal government from a reduction in OCS leasing if affected sanctuary blocks are not leased; 4) identification of currently leased OCS blocks in the expansion area; 5) rough cost estimates to route new pipelines around the expanded sanctuary area; and 6) areas within the proposed expansion beyond what BOEM currently protects.

ii. Gulf of Mexico Fishery Management Council Consultation

Pursuant to NMSA Section 304(a)(5), ONMS sent a formal letter, dated June 17, 2016, to initiate consultation with GMFMC. NOAA also provided multiple updates at GMFMC meetings over the course of the development of the DEIS and this proposed rule. Sites in the 2016 DEIS preferred alternative (Alternative 3) were analyzed by GMFMC, and in a communication dated November 9, 2016, GMFMC recommended that NOAA use a “tiered approach” for application of fishing regulations within most banks of the expanded sanctuary (see 2, below). The general concept of this approach is based on utilization of areas previously designated by BOEM as NAZs and that are associated with most of the bank features included in the 2016 DEIS Preferred

Alternative. The NAZs are defined pursuant to a Gulf of Mexico OCS lease stipulation contained in Notice to Lessees (NTL) No. 2009-G39.

The GMFMC recommendations are as follows:

1) Maintain current fishing regulations within existing Habitat Areas of Particular Concern (HAPCs).

East and West Flower Garden, Stetson and McGrail Banks are HAPCs with regulations that prohibit fishing with bottom longline, bottom trawl, buoy gear, dredge, pot or trap, and bottom anchoring by fishing vessels.

2) For other banks in the proposed expansion, establish a “tiered” approach for application of fishing regulations as follows: Tier One – areas within existing BOEM NAZs would be established as “no bottom tending gear” zones, in which only traditional hook and line fishing (including bandit rigs) would be allowed, and anchoring would be prohibited; Tier Two – areas outside the BOEM NAZs but inside FGBNMS boundaries where bottom tending gear and anchoring by fishing vessels with an endorsement (see 3, below) would be allowed, but bottom trawling, traps, and dredges would be prohibited; Tier Three – outside of sanctuary boundaries – no sanctuary restrictions. The GMFMC also recommended establishing a truncated “no bottom tending gear zone” for banks without an NAZ.

3) For those areas of soft sediment outside of the “no bottom tending gear zone,” create an endorsement program to allow anchoring by commercial vessels. This endorsement would require the use of a vessel monitoring system (VMS) and the use of anchor systems equipped with a weak link environmental safeguard. The endorsement would

require an education program for operators of commercial vessels and the use of mooring buoys by recreational vessels.

4) Place mooring buoys within the “no bottom tending gear zones” to allow for public access.

5) Alter boundaries for several specific banks.

iii. NOAA Fisheries Coordination

Existing protections for FGBNMS include a prohibition on the possession and use of fishing gear with the exception of conventional hook and line gear. Pelagic longline gear is used to target yellowfin tuna and swordfish in the Gulf of Mexico and the proposed sanctuary expansion areas. In an August 2016 letter, NOAA’s National Marine Fisheries Service, Atlantic Highly Migratory Species Management Division, requested that an exemption for pelagic longline gear be added to the current exemption for conventional hook and line gear in the expanded sanctuary area.

c. FGBNMS Advisory Council Review

Prior to the release of the DEIS, the FGBNMS Advisory Council re-established the Boundary Expansion Working Group (BEWG) to provide additional review of NOAA’s expansion proposal and make recommendations to the full Advisory Council. The BEWG consisted of 10 Advisory Council members and was co-chaired by representatives of the Oil and Gas Industry and Commercial Fishing constituent groups. Between July 2016 and May 2018, the BEWG met 21 times, and considered a variety of topics, including a range of boundary and regulatory issues.

At the request of FGBNMS and in consultation with the BEWG, beginning in April 2017, NOAA's National Centers for Coastal and Ocean Science (NCCOS) developed an analysis tool to assist the BEWG in their boundary discussions. As part of this analysis, NCCOS synthesized available information on biology, ecology, human use, and management designations for the study area, and created a geodatabase that helped visualize and evaluate various boundary expansion options. The analysis used a geospatial planning software tool known as *Marxan*, which is designed to help decision makers find solutions to conservation planning issues. A variety of geospatial datasets were included in the analysis, including commercial fishing vessel activity, oil and gas infrastructure, known locations of sensitive biological communities, shipping activity, and existing management zones. The various data components were assigned weights, as determined by the BEWG, to give priority and identify potential outcomes. The analysis focused on the locations of the BOEM designated NAZs. NAZs are areas within which no operations, anchoring, or structures are allowed for oil and gas operations. These areas are outlined in BOEM's Western and Central Gulf of Mexico Topographic Features Stipulation Map Package, and further described Notice to Lessees (NTL) No. 2009-G39. The NAZs were developed in the 1970-1980's to protect the shallowest portion of the reefs and banks (i.e., "topographic features") under consideration for oil and gas development. The focus on the NAZs by the BEWG was in response to concerns raised primarily by the oil and gas industry regarding potential impacts to offshore energy operations from FGBNMS expansion in this portion of the Gulf of Mexico. Ultimately, the BEWG considered the NAZs as the primary geographically bound characteristic by which to develop recommendations for revisions to the proposed sanctuary expansion boundaries. In April and May 2019, the BEWG adopted a series of

recommendations for expansion of 14 of the 15 additional banks proposed in the 2016 DEIS preferred alternative.

The BEWG presented its revised FGBNMS expansion boundaries recommendation to the full FGBNMS Advisory Council (SAC) on May 9, 2018, and the recommendation was accepted by the SAC as proposed.

5. NOAA's Revised Preferred Alternative and Supplemental Information Report

Based primarily on the May 2018 recommendation from the FGBNMS Advisory Council, along with input received from public comments, and consultation with the GMFMC and various Federal agencies, NOAA is revising its preferred alternative for sanctuary expansion.

The original 2016 DEIS Preferred Alternative would have added 15 banks, for a total of 18 banks, represented in 11 polygons (including 3 multi-bank complexes). This would have resulted in an increase of the existing sanctuary area from approximately 56 square miles to approximately 383 square miles. NOAA's revised preferred alternative presented in this proposed rule would add 14 banks, for a total of 17 banks, represented in 19 polygons (including 3 banks with multi-polygons). This would increase the current sanctuary area from approximately 56 square miles to approximately 160 square miles. NOAA has reduced the size of the expansion areas proposed in the 2016 DEIS preferred alternative, to promote compatibility with users and reduce potential economic impacts to the offshore energy industry.

The supplemental information report (SIR), which is available at the FGBNMS website <https://flowergarden.noaa.gov/management/expansionnpr.html>, and the Supporting Documents section of the docket identified in the ADDRESSES section of this document, describes NOAA's development of the revised preferred alternative. In summary, through the SIR, NOAA evaluated

changes to the 2016 preferred alternative. As detailed in the SIR, the revised preferred alternative boundaries are more tightly drawn around the shallowest portions of the geological features of interest, and the new polygons include all of the same reefs and banks that were represented in the 2016 preferred alternative, with one exception, Bryant Bank, which is not included in the revised preferred alternative. Bryant Bank is a small area in the Bouma-Bryant-Rezak-Sidner Bank complex. Moreover, the SIR evaluated new circumstances and information related to fishing activity and oil & gas activity. Ultimately, NOAA determined that the changes reflected in the revised preferred alternative are not “substantial changes in the proposed action that are relevant to environmental concerns” (40 CFR 1502.9(c)(1)(i)). NOAA further found that the comments received on the 2016 DEIS do not “constitute significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” (40 CFR 1502.9(c)(1)(ii)). As such, NOAA determined that preparing a supplement to the 2016 DEIS is neither required, nor necessary under NEPA. Pursuant to applicable CEQ guidance, NOAA will document the agency’s rationale for revising the preferred alternative and provide updated information on the affected environment in the Final Environmental Impact Statement (FEIS) and related Record of Decision (ROD).

NOAA submits that the revised preferred alternative, as presented herein, minimizes the impact to offshore energy exploration and production while providing substantial protection to sensitive marine habitats of national significance and meeting the expansion objectives as identified in the 2012 FGBNMS management plan and 2016 DEIS.

a. Additional Consultations

i. Executive Order 13795 - Implementing an America-First Offshore Energy Strategy

On April 28, 2017, President Donald Trump issued Executive Order 13795 - *Implementing an America-First Offshore Energy Strategy*. The proposed action is subject to the criteria contained within Section 4 of that order, which directs the Secretary of Commerce to refrain from designating or expanding any national marine sanctuary unless the proposal includes a full accounting from the Department of the Interior (DOI) of any energy or mineral resource potential (including offshore energy from wind, oil, natural gas, methane hydrates, and any other sources that the Secretary of Commerce deems appropriate) within the proposed area, and the potential impact of the expansion on the energy or mineral resource potential within the area proposed to be designated.

On November 6, 2018, NOAA submitted a letter to BOEM, requesting the analysis required by the Executive Order for the revised preferred alternative boundary developed in response to public comment and a recommendation by the FGBNMS Advisory Council described above in part II, section 5 of this proposed rule.

On February 25, 2019, BOEM responded with a review of offshore energy and mineral resource potential located within the revised proposed expansion areas. BOEM's report is available at the Supporting Document section of the docket identified in the ADDRESSES section of this document. The BOEM analysis indicated that the proposed expansion could impact the development of OCS oil and gas resources leading to a potential reduction in Federal revenue from leasing revenue and royalties. BOEM expressed concern that expansion would potentially: 1) restrict new wells from being drilled in areas that would be inside new sanctuary boundaries, but that are currently outside the existing BOEM-designated NAZs, primarily due to the triggering of the EPA's National Pollutant Discharge Elimination System (NPDES) general permit discharge restriction; 2) incorporate some sandy and muddy seafloor that BOEM

considers to be available for development under current guidelines; 3) make it more difficult and costly for OCS oil- and gas-related activities to occur; and 4) increase costs on leases in an expanded sanctuary, potentially deterring current lease holders from developing oil and gas resources, as well as reducing future leasing within the sanctuary, which could result in an economic loss to the federal government.

BOEM's analysis stated that areas within the proposed expansion boundaries contain approximately 0.11 million barrels of oil equivalent (MMBOE) reserves, 3.86 MMBOE of contingent resources, and 4.50 MMBOE of undiscovered resources. The oil reserves estimated in BOEM's analysis represent approximately 0.002% of known oil and gas reserves, 0.07% of the contingent resources, and 0.008% of undiscovered resources in the OCS Gulf of Mexico. This is well below the impacts expressed in the 2016 FGBNMS DEIS, in which NOAA estimated that the proposed expansion had the potential to overlap with approximately 0.25% of known oil and gas reserves.

BOEM's analysis of the revised preferred alternative found that the expansion of FGBNMS would affect 65 additional whole or partial OCS blocks (by incorporation into the FGBNMS and/or by distancing requirements for bottom disturbing activity), which contain eight active oil and gas leases. Most of this area (73%) is already located within BOEM-designated NAZs. As an indication of the potential value of leases in this area, BOEM reports that the total amount of bonus bids collected for the eight active lease blocks affected by the preferred alternative for sanctuary expansion from 1972 through 2018 was \$97 million. Section 304(c) of the NMSA provides that: "Nothing in this chapter shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary."

This provision is implemented by National Marine Sanctuary Program Regulations at 15 CFR 922.47, which would apply to the expanded area. Accordingly, anyone who has a pre-existing activity that falls within the ambit of section 304(c) of the NMSA may request certification of that activity by filing a formal application to NOAA within 90 days of the effective date of the final rule to expand the boundaries of FGBNMS.

BOEM reports that there are also portions of 57 unleased OCS blocks affected by the preferred alternative for the proposed sanctuary expansion that could experience more restrictive oil and gas activity conditions if they are leased following expansion of FGBNMS. NOAA notes that of this area, less than 27% is included in the proposed sanctuary expansion boundaries, and 61% of that area is already included within BOEM NAZs. Therefore, sanctuary designation will not impact most of the lease block area analyzed by BOEM, and it is unlikely that the affected OCS blocks will be rendered un-leasable in the future. However, in the event that these blocks become unavailable for leasing, or if operators choose not to lease them because of Sanctuary designation (e.g. due to the need for directional drilling or relocation), BOEM estimates that there could be a potential loss of revenue to the Federal Government. Under this scenario and, based on a minimum bid amount for the entire unleased acreage, BOEM calculated a potential future cumulative value of \$12 million in lost bonuses for leases could be associated with FGBNMS expansion. When considered in context, this amount is less than significant. For example, in the previous 10 years prior to this analysis, approximately \$7.7 billion in bonus bids have been collected for offshore oil and gas leases in the Gulf of Mexico.

BOEM reported that if technically and economically feasible, access to the affected oil and gas resources could be obtained through directional drilling technology at a potential total

increase in cost of \$3.24 million to the oil and gas industry for all future wells impacted by Sanctuary designation. Considering that average offshore well costs range from \$10 to \$50 million in water depth between 50 and 500 ft (15.2 - 152 m), with drill depths between 5,000 and 20,000 ft (1524 - 6096 m), the additional cost related to directional drilling for all future wells that could be impacted by sanctuary expansion is not significant.

Finally, BOEM estimates that from \$8.1 million to \$40.5 million in total potential future lease royalties could be forgone related to the recovery of undiscovered resources in the proposed FGBNMS expansion areas. However, NOAA notes that, based on historical records, lease blocks that are partially within or adjacent to East and West Flower Garden Banks have continued to be leased and developed since designation of FGBNMS in 1992.

BOEM's February 2019 analysis further clarifies the extent of potential for oil and gas development within the proposed sanctuary boundaries and supports the assessment that the proposed action would not have a significant negative economic impact on OCS oil and gas development in the Gulf of Mexico.

ii. GMFMC's Response to the Revised Preferred Alternative

In October 2018, NOAA provided the revised preferred alternative boundaries, which is described above in Part II, section 5 of this proposed rule, to the GMFMC for reconsideration. The GMFMC sent revised comments to ONMS in a letter dated November 7, 2018, supporting the revised boundary proposal and indicating that the previously recommended tiered approach was no longer needed. For more information on the revised preferred alternative, please refer to part II, section 5 of this rulemaking and the Supplemental Information Report, which is available at the FGBMNS website <https://flowergarden.noaa.gov/management/expansionnpr.html>, and the

Supporting Documents section of the docket identified in the ADDRESSES section of this document. GMFMC also submitted a request to allow spearfishing in the new expansion areas, as well as encouragement for implementing an endorsement program in order to allow fishing inside the sanctuary, and the installation of additional mooring buoys. The GMFMC suggested also that the FGBNMS investigate the potential impacts that the use of “bandit rig” gear could have on coral. The request to allow the use of spearfishing gear in the expanded areas will be vetted through public comment solicitation in part VI section 2 of this proposed rule.

iii. Ongoing Coordination with NOAA Fisheries

Following its review of the revised preferred alternative, NOAA Fisheries has maintained its request for an exemption to allow the use of pelagic longline gear in the expanded sanctuary areas. ONMS is seeking the public’s view on this request as described in part VI section 2 of this proposed rule.

III. Summary of Regulatory Amendments

1. *Sanctuary Boundary Expansion*

NOAA is proposing to amend the existing sanctuary boundary descriptions at 15 CFR part 922, subpart L, and the terms of designation in order to expand the current boundaries of FGBNMS to include portions of 14 additional reefs and banks in the sanctuary, adding approximately 104 square miles, bringing the total area to 160.4 square miles. The proposed boundary changes were selected through a public process to identify and assess marine areas that could more effectively complement current management authorities or enhance natural and cultural resource values. Collectively, these new areas capture a greater diversity of habitats and biological resources than currently protected by FGBNMS. Inclusion of these areas within the

sanctuary system would provide additional regulatory protection, resources for management, and improved public awareness of their natural resource values. Detailed maps of these proposed changes are available on our website at

<https://flowergarden.noaa.gov/management/expansionnpr.html>.

Under this action NOAA is proposing to expand the boundaries of the sanctuary from 56.2 square miles to 160.4 square miles as follows:

- a. *Stetson Bank* – increase of area by 0.6 square miles from 0.8 square miles to 1.4 square miles
- b. *West Flower Garden Bank* – increase of area by 7.2 square miles from 29.9 square miles to 37.2 square miles
- c. *East Flower Garden Bank* – increase of area by 2.4 square miles from 25.4 square miles to 27.8 square miles
- d. *Horseshoe Bank* – 28.7 square miles
- e. *MacNeil Bank* – 2.7 square miles
- f. *Rankin/28 Fathom Banks* – 5.6 square miles
- g. *Bright Bank* – 7.7 square miles
- h. *Geyer Bank* – 11.5 square miles
- i. *Elvers Bank* – 4.6 square miles
- j. *McGrail Bank* – 4.7 square miles
- k. *Sonnier Bank* – 3.1 square miles
- l. *Bouma Bank* – 7.7 square miles
- m. *Rezak Bank* – 3.7 square miles
- n. *Sidner Bank* – 2.0 square miles

o. Alderdice Bank – 5.0 square miles

p. Parker Bank – 7.0 square miles

2. *Apply the Existing Sanctuary Regulations and Management Action to the Expanded Area.*

NOAA also proposes to apply the existing sanctuary regulations (including regulatory prohibitions set forth in section 922.122) and management action to the expanded sanctuary boundary in order to provide for more comprehensive management and protection of sensitive underwater features and marine habitats associated with continental shelf-edge reefs and banks in the northwestern Gulf of Mexico. Accordingly, 15 CFR 922.122(e) would be updated to reflect the effective date of the sanctuary expansion, and no further amendments of the regulatory text in 15 CFR part 922 would be necessary to implement this action as proposed.

3. *Additional amendments based on comments received.*

As discussed in part VI, NOAA is seeking comment on the proposed boundaries and on the requests for exemption of spearfishing and pelagic longlining and may revise the final rule as appropriate.

IV. Summary of Proposed Changes to the Sanctuary Terms of Designation

Amending Subpart L

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area of 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.

The terms of designation for FGBNMS was first published in 1991 (56 FR 63637), and became effective in 1994 (58 FR 65664). The terms of designation were not incorporated into the Code of Federal Regulations, and, whenever there was a proposed regulatory change, NOAA and the general public had to search the preamble of the 1991 final rule to understand the nature and scope of the terms of designation. With this action, NOAA is proposing to make the terms of designation more readily available to the general public by amending the FGBNMS regulations at 15 CFR part 922, subpart L, to incorporate the terms of designation as a new Appendix B to the FGBNMS regulations, and update Article II. Description of the Area to include Stetson Bank (added by Congress in 1996 pursuant to Pub. L. 104–283) and the additional reefs and banks proposed for expansion, add a new section relating to the U.S. Department of Defense (DoD) exemption, and (as described below) revise the “Consistency with International Law” section of the terms of designation. To read the entire terms of designation, please refer to Appendix A to Subpart L of Part 922 in the draft regulatory text. This action does not propose to change the scope of the activities subject to regulation or change the DoD exemption as set forth in the terms of designation.

NOAA has consulted with the State Department on the development of NMSA regulations for more than 40 years. For example, in 1979 NOAA responded to a commentator who “felt that NOAA should specify the manner in which recognized principles of international law would be applied where sanctuaries include areas outside the territorial sea,” by stating: “Following consultation with the State Department, NOAA has determined that such application must be made on a case-by-case basis to ensure conformance with the evolving principles

involved.” 44 Fed. Reg. 44831, 44833 (July 31, 1979) (Designation and Management of Marine Sanctuaries: Final Rule). Pursuant to State Department advice, NOAA is revising Article IV, Section 2 of the FGBNMS terms of designation to reflect NOAA’s long-standing interpretation of 16 U.S.C. 1435(a). Accordingly, NOAA proposes to add language to the FGBNMS terms of designation indicating that, based on the legislative history of the NMSA, NOAA has long interpreted the text of 16 U.S.C. 1435(a) as encompassing international law, including customary international law.

V. Classification

A. National Marine Sanctuaries Act

Section 301(b) of the NMSA (16 U.S.C. 1431) provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other resource management authorities. Section 304(a)(4) of the NMSA (16 U.S.C. 1434) requires that the procedures specified in Section 304 for designating a national marine sanctuary be followed for modifying any term of designation. This action is revising the terms of designation (e.g., scope of regulations) for the FGBNMS. In accordance with Section 304, the documents relevant to the proposed expansion of Flower Garden Banks are being submitted to the House Resources Committee and the Senate Committee on Commerce, Science, and Transportation. Section 304(a)(5) of the NMSA also requires that NOAA consult with the appropriate Federal fishery management council on any action proposing to regulate fishing in federal waters. Consultation with the Gulf of Mexico Fishery Management Council (GMFMC) is discussed above in part II sections 4 and 5, and NOAA is soliciting comments on potential exemptions for pelagic longline and spearfishing in the expanded area.

B. National Environmental Policy Act

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of NEPA (42 U.S.C. 4321–4370), NOAA has prepared a DEIS to evaluate the impacts of this proposed action. For more information on the DEIS and steps leading to the revised preferred alternative, please refer above to part II, section 5 of this rulemaking and the Supplemental Information Report, which is available at the FGBMNS website <https://flowergarden.noaa.gov/management/expansionnpr.html>, and the Supporting Documents section of the docket identified in the ADDRESSES section of this document. The DEIS contains a statement of the purpose and need for the project, description of proposed alternatives, including the no action alternative, description of the affected environment, and evaluation and comparison of environmental consequences including cumulative impacts. Upon review, NOAA finds that no significant adverse impacts to resources and the human environment are anticipated. Rather, long-term beneficial impacts are anticipated if the proposed action is implemented. Copies of the DEIS are available at the address and website listed in the ADDRESSES section of this proposed rule and on [regulations.gov](https://www.regulations.gov).

After review of the comments received on the 2016 DEIS, NOAA is revising the 2016 preferred alternative (See part II, section 5 for more information on this revision). Compared to the 2016 Preferred Alternative (Alt. 3), the revised preferred alternative would reduce the total size of the proposed sanctuary expansion by 223 square miles (from approximately 383 mi² to 160 mi²), reduce the number of additional banks from 15 to 14, and increase the number of new polygons from 8 larger areas (several of which encompassed multiple features) to 16 smaller areas more closely bounding the shallowest portions of the geological features of interest. This action would increase the total number of banks to 17, and increase the total number of polygons to 19. The boundaries of the revised preferred alternative include no new reefs and banks from

the original preferred alternative (Alt. 3) in the 2016 DEIS. The smaller bounded areas established under the revised preferred alternative were developed from the recommendations of the FGBNMS Advisory Council (with minor corrections to the Stetson Bank Boundary consistent with Pub. L. 104-283 (Oct. 11, 1996)).

Applying applicable NEPA regulations and guidance, NOAA finds that these revisions are within the range of the alternatives already analyzed in the 2016 DEIS, the changes reflected in the revised preferred alternative are not “substantial changes in the proposed action that are relevant to environmental concerns” (40 CFR 1502.9(c)(1)(i)), and that this revision does not constitute “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” (40 CFR 1502.9(c)(1)(ii)). Therefore, these revisions do not require that NOAA prepare a Supplemental DEIS. NOAA will document the rationale for revising the preferred alternative in the FEIS and related Record of Decision. To further document this, NOAA prepared a Supplemental Information Report, which is summarized above in part II section 5 of this rulemaking.

C. Executive Order 12866: Regulatory Impact

The Office of Management and Budget has determined this rule is significant under Executive Order 12866. This rule is also regulatory under Executive Order 13771. NOAA anticipates the associated costs with this proposed rule will be *de minimis* as explained more fully in the Regulatory Flexibility Act certification.

D. Executive Order 13132: Federalism Assessment

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

area that is the subject of the proposed rule is located entirely within federal waters outside of state or local jurisdiction. This proposed rule will not have a substantial or direct effect on states or local governments.

E. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This Executive Order reaffirms the Federal government's commitment to tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all Executive departments and agencies consult with Indian tribes and respect tribal sovereignty as they develop policies on issues that impact Indian communities. This proposed action is not anticipated to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibility between the Federal government and Indian tribes.

F. Executive Order 13795: Implementing an America-First Offshore Energy Strategy

Executive Order 13795 directs the Secretary of Commerce to refrain from designating or expanding any national marine sanctuary unless the proposal includes a full accounting from the Department of the Interior (DOI) of any energy or mineral resource potential (including offshore energy from wind, oil, natural gas, methane hydrates, and any other sources that the Secretary of Commerce deems appropriate) within the proposed area, and the potential impact of the expansion on energy or mineral resource potential within the designated area. Information pursuant to this directive is included in part II section 5 of this proposed rule.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act requires Federal agencies to prepare an analysis of a rule's

impact on small entities whenever the agency is required to publish a notice of proposed rulemaking, unless the agency can certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities.

This proposed rule announces that NOAA's ONMS seeks to expand the boundary of FGBNMS, and apply the existing sanctuary regulations and management actions to the expanded area. The types of small organizations that may be impacted by this proposed rule include consumptive and non-consumptive recreational charter businesses, commercial fishing businesses, sightseeing businesses, and diving businesses operating within the waters approximately 70 to 120 miles offshore of Texas and Louisiana in the northwestern Gulf of Mexico.

The Small Business Administration designates a scenic, sightseeing, sports, or recreational (NAICS code 487210) business as a small business if it has annual receipts of less than \$8 million (13 CFR 121.201). A finfish business (NAICS code 114111) is also designated as a small business if it has annual receipts of less than \$22 million (13 CFR 121.201). Oil and gas businesses (NAICS codes 21311 and 213112) are designated as small businesses if they hire less than 1000 employees and have annual receipts less than \$41.5 million. NOAA has not identified any small entities that are in the oil and gas sector.

Methodology. Due to the lack of quantitative data on the number of businesses directly affected by the proposed regulations and their levels of revenues, costs, and profits from their activities in the FGBNMS expansion area, the assessment here is qualitative. As described in the 2016 DEIS and in Leeworthy et al. (2016), using Vessel Monitoring System (VMS) data, NOAA identified 76 unique commercial fishing vessels in the northern Gulf of Mexico representing 40

fishing operators from Texas to Florida. These commercial fishing operators were surveyed (Leeworthy et al. 2016), and survey results of these operators revealed that six firms were using fishing areas in the vicinity of the banks in the 2016 DEIS, and those interests were considered as close to a census as practical of all commercial fishing operations targeting the banks in the proposed expansion areas. Therefore, NOAA determined that fishing occurred with low frequency within the proposed expansion areas of the sanctuary.

In this analysis, NOAA concluded that impacts to the small business entities that were analyzed would be no effect or negligible. No effect means that the proposed action would have no impact on small businesses, and negligible means that the proposed action would cause less than 1% change to small businesses and no likely impact to revenue, costs, and profits.

The 2016 DEIS analyzed five spatial alternatives (identified as Alternatives 1-5) for the proposed expansion of FGBNMS. Existing sanctuary regulations would apply in the newly expanded area regardless of which spatial alternative is adopted. Oil and gas regulations and other related regulations addressed in the 2016 DEIS are not discussed since the oil and gas industry operating within the northern Gulf of Mexico would not be deemed a small business under applicable SBA regulations. This analysis focuses on the application of existing sanctuary regulations to new areas that would impose fishing gear restrictions, prohibit anchoring and mooring of certain vessels in the sanctuary, and protect sanctuary resources. The proposed action is expected to have negligible impact on small entities due to the low level of fishing effort observed in the proposed expansion areas.

Fishing Gear Regulations in the Expanded Sanctuary Boundaries. Under the existing sanctuary regulations, which would be applied in the expanded area if the proposed rule is

adopted, only conventional hook and line gear may be used in the expanded sanctuary boundaries. The term “conventional hook and line gear” means any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand- or electronically operated, hand-held or mounted; and this term does not include bottom longlines (15 CFR 922.3). Applying these regulations, fishing with bottom-tending gear, nets, trawls, and speargun would be prohibited in the expanded sanctuary boundaries. NOAA determined that the proposed regulations would not have a significant economic impact on a substantial number of recreational or commercial fishing entities. According to Leeworthy et al. (2016), six commercial fishing and eight for-hire recreational entities use reefs and banks in or near the proposed expansion area for some portion of their operations. Each of these firms were shown to operate in an area considerably larger than the proposed expansion area; therefore, in none of the cases studied, were the amounts of impacts a significant portion of the business of any of the firms potentially affected. This analysis is also explained in the 2016 DEIS, and the economic effects of the revised preferred alternative are bounded within the results of the DEIS alternatives.

Moreover, fishers would likely be able to harvest from similar areas near the proposed expansion area through spatial substitution. In the DEIS, NOAA used hardbottom substrate as a proxy for habitat areas targeted by the commercial fishing industry, and estimated that for the DEIS alternatives, between 0.59% and 7.15% of hardbottom habitat in the study area (north central Gulf of Mexico) would be subject to additional fishing restrictions, and the DEIS preferred alternative overlapped with 4.01% of the hardbottom substrate in the study area. Additionally, the area of the proposed expansion, under the revised preferred alternative, is

considerably smaller than the 2016 preferred alternative. As such, fishers could use areas within the same reefs and banks adjacent to the sanctuary expansion areas.

For recreational fisheries, the prohibition on spearfishing in the expanded area might be similarly offset by spatial substitution. This is especially true given the fact that the banks studied showed very little spearfishing activity in the proposed action area.

Increased visitation to the sanctuary for recreation and tourism could result in positive long-term regional economic impacts as a result of increased visitor spending in coastal communities from which the sanctuary is accessed.

Anchoring and Mooring Regulations in the Expanded Sanctuary Boundaries. The existing sanctuary regulations, which would be applied in the expanded area if the proposed rule is adopted, prohibit anchoring any vessel within the sanctuary. Mooring any vessel that is greater than 100 feet in registered length to a mooring buoy in the sanctuary is also prohibited. NOAA anticipates that the prohibition on bottom disturbing activities (such as anchoring) would reduce or eliminate opportunities to engage in some activities by commercial and recreational fishing vessels. However, the installation of mooring buoys for small vessels, measuring less than 100 feet in registered length, would potentially reduce the associated impacts. The impact of the anchoring prohibition and mooring restriction would also be none to negligible on commercial vessels (regardless of the vessel length) because commercial vessels are very unlikely to anchor or moor in the expansion area. Recreational vessels would not be significantly impacted by these restrictions because they would be allowed to use moorings, due to the infrequency with which they use these areas, and mitigating factors, which are described below. Additionally, a portion (14%) of the proposed expanded area, including the modified boundaries of East and West

Flower Garden and Stetson Banks, and the entire area of McGrail Bank, fall within existing coral Habitat Areas of Particular Concern (HAPC), which already prohibit anchoring by fishing vessels and use of bottom tending gear. Sanctuary expansion and the extension of the sanctuary regulations to the expanded area could also benefit small business diving and recreational fishing entities by enhancing the access to these areas through mooring buoy installation.

The prohibition on the use of bottom disturbing gear (such as anchoring) would also have a negligible impact, and potential impacts may be offset by spatial substitution (i.e., fishers could operate in similar areas nearby, which is also referred to as displacement) (Leeworthy et al. 2016). Please refer to the above analysis regarding spatial substitution. This negligible impact would be further reduced by mitigating factors (i.e., potential for gear substitution, mooring buoy installations made possible by sanctuary designation). For example, though fishing for reef fish using bandit rigs would be allowed, prohibitions on anchoring may make this activity more difficult due to the need to anchor in specific locations to better target fish aggregations. Although anchoring prohibitions would make such fishing activities more difficult, NOAA concludes that the impact to relevant business is negligible because of the low intensity of fishing in the proposed expansion areas and because these areas make up a small portion of these businesses' overall area of use. Moreover, the fishing operators surveyed in Leeworthy et al. (2016) did not identify the expansion area as a primary or principle fishing area. Fishing from mooring buoys would also continue to be allowed provided the vessel does not exceed the prohibited length.

Regulations Protecting Sanctuary Resources. Existing regulations applied to the expanded sanctuary area would prohibit injury, removal (or attempt to remove), or possession (regardless of where collected, caught, harvested or removed) of any coral or other bottom

formation, coralline algae or other plant, marine invertebrate, brine-seep biota or carbonate rock, or fish (except for fish caught by use of conventional hook and line gear) within the sanctuary. Recreational diving businesses may be impacted negligibly by these existing regulations if applied to the expanded sanctuary area as proposed. Spearfishing, collection of souvenirs (shells, rocks, etc.), and fish feeding by scuba or breath-hold divers may be very minimally impacted. The extent of this type of activity is unknown but thought to be extremely limited due to the fact that only 0.013% of the proposed expansion area is within typical recreational diving depth ranges (depths of 130 feet or less) and the significant distance (more than 50 miles offshore) to the expansion areas. Divers prefer to visit shallower areas where manmade structures such as oil rigs and sunken ships are present (e.g., Ditton et al. 2002). Therefore, the extent of this impact would be mitigated by spatial substitution (artificial reefs) and through the promotion of best practices for divers within the sanctuary.

Based on the analysis presented above, the Chief Counsel for Regulations for the Department of Commerce has certified to the Office of Advocacy of the Small Business Administration that the modifications of the regulations at 15 CFR part 922 will not have a significant economic impact on a substantial number of small entities. This proposed rule also does not establish any new reporting, recordkeeping, or other compliance requirements.

H. Paperwork Reduction Act

The existing FGBNMS regulations contain a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), approved by The Office of Management and Budget (OMB), under control number 0648-0141, for collection-of-information for reporting and

recordkeeping requirements under 15 CFR part 922. This proposed rule would not increase or otherwise revise the existing paperwork burdens.

The public reporting burden for national marine sanctuary general permit applications is estimated to average 1 hour 30 minutes per application, including the time for reviewing the application instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. For special use permits, a collection-of information requirement is necessary to determine whether the proposed activities are consistent with the terms and conditions of special use permits prescribed by the NMSA. The public reporting burden for this collection of information is estimated to average twenty four (24) hours per response (application, annual report, and financial report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This estimate does not include additional time that may be required should the applicant be required to provide information to NOAA for the preparation of documentation that may be required under NEPA (16 U.S.C. 1431 et seq.).

NOAA does not expect that this proposed rule would appreciably change the average annual number of respondents or the reporting burden for the information requirements supporting special use or research permits because few activities requiring new permits are expected for the proposed areas. Much of the research is expected to be conducted by the sanctuary, and other uses that require permits are anticipated with very low intensity in the proposed expansion areas. NOAA believes that the proposed regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act. However, an increase in the number of ONMS permit

requests would require a change to the reporting burden certified for OMB control number 0648-0141. While not expected, if such permit requests do increase, an update to this control number for the processing of ONMS permits would be requested.

Comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, may be sent to NOAA (see **ADDRESSES** above) and to the Office of Management and Budget (OMB) by email to OIRA_submission@omb.eop.gov or fax to (202) 395-7285. Before an agency submits a collection of information to OMB for approval, the agency shall provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

I. 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 the 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](#)).

In coordinating its responsibilities under the NHPA, NOAA has solicited for and identified consulting parties, 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. By this notice, NOAA seeks to solicit public input, particularly regarding 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. Responses to comments received on this proposed rule and results of Section 106 consultations will be published in the Final Environmental Impact Statement and in the final rule.

J. 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. Copies of the Draft Environmental Impact Statement were provided to the Gulf Coast States, soliciting feedback on reasonably foreseeable effects on coastal resources and uses. Responses were received from Mississippi Department of Marine Resources and the

Texas General Land Office indicating no objection to the proposed boundary changes or the DEIS. The information received from these states will be used by NOAA to prepare determinations, as appropriate, in compliance with the CZMA.

VI. Request for Comments

Comments are welcome on any and all aspects of the proposed rule, and we request any data that may further inform impacts of the proposed action. We specifically solicit information on the following elements for consideration.

1. Changes to the Proposed Boundaries in the revised preferred alternative

Based on the Sanctuary Advisory Council recommendations in response to the DEIS, NOAA has made a number of changes to the boundaries of the polygons surrounding the banks and submerged features. NOAA is soliciting public comment on the revised boundaries.

2. Pelagic Longline Exemption Request

Existing protections for FGBNMS include a prohibition on the possession and use of fishing gear with the exception of conventional hook and line gear. Pelagic longline gear is used to target yellowfin tuna and swordfish in the Gulf of Mexico, including in the proposed sanctuary expansion areas. NOAA's National Marine Fisheries Service, Atlantic Highly Migratory Species Management Division, has submitted a request for an exemption for pelagic longline gear to be added to the current exemption for conventional hook and line gear in the sanctuary. NOAA is soliciting public input on this request.

3. Spearfishing Exemption Request

Existing protections for FGBNMS include a prohibition on the possession and use of spearfishing equipment. During the public comment period for the DEIS, NOAA received several requests for an exemption to this prohibition for new expansion areas. Additionally, the Sanctuary Advisory Council's 2018 recommendation for sanctuary expansion also included a recommendation to allow free-diving spearfishing at all new banks, but not within the 3 banks of the existing sanctuary. Additionally, the SAC requested an exemption for the possession of spearguns (stowed and not available for immediate use) on board a vessel within the boundaries of the current FGBNMS, but the vessel may not be in possession of any reef fish species (with the exception of bait fish). Finally, the GMFMC also recommended that NOAA consider an exemption for the possession and use of spearfishing equipment in the sanctuary. NOAA is soliciting public input on this request.

Accordingly, for the reasons set forth above, NOAA is proposing to amend Part 922, title 15 of the Code of Federal Regulations as follows:

List of Subjects in 15 CFR Part 922

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

Nicole R. LeBoeuf,
Acting Assistant Administrator
for Ocean Services and Coastal Zone Management,
National Ocean Service.

PART 922 - NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

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

Subpart L - Flower Garden Banks National Marine Sanctuary

2. Revise §922.120 to read as follows:

§922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 121 square nautical miles (160.35 square miles) of offshore ocean waters, and submerged lands thereunder, along the continental shelf and shelf edge in the northwestern Gulf of Mexico. The entire sanctuary boundary is comprised of 19 unique polygons. The precise boundary coordinates for each polygon are listed in Appendix A to this subpart.

* * * * *

3. In §922.121 revise the term “No Activity Zone” to read as follows:

§922.121 Definitions.

* * * * *

No Activity Zone (applicable only to oil and gas industry activities) means the geographic areas delineated by the Department of the Interior in Topographic Features Stipulations for Outer Continental Shelf (OCS) lease sales as defined by a bathymetric contour (isobath) ranging from

55-85m in depth, with the exception of Stetson Bank (52m) and East and West Flower Garden Banks (100m). The Notice to Lessees (NTL) No. 2009-039 provides and consolidates guidance for the avoidance and protection of biologically sensitive features and areas (i.e. topographic features, pinnacles, live bottoms (low relief features)) and other potentially sensitive biological features (PSBFs) when conducting operations in water depths shallower than 980 feet (300 meters) in the Gulf of Mexico. NTL 2009-039 remains in effect pursuant to NTL No. 2015-N02. The no-activity zones are based on depth contours as noted for the following Banks: Stetson Bank (52 meters), MacNeil Bank (82 meters), Rankin Banks (including 28 Fathom Bank) (85 meters), Bright Bank (85 meters), Geyer Bank (85 meters), Elvers Bank (85 meters), McGrail Bank (85 meters), Bouma Bank (85 meters), Rezak Bank (85 meters), Sidner Bank (85 meters), Sonnier Bank (55 meters), Alderdice Bank (80 meters), and Parker Bank (85 meters). For East and West Flower Garden Banks, the no-activity zones are based on the “¼ ¼ ¼” aliquot system formerly used by the Department of the Interior, a method that delineates a specific portion of a block rather than the actual underlying isobath. The precise aliquot part description of these areas around East and West Flower Garden Banks are provided in Appendix A of this subpart.

* * * * *

4. Revise §922.122 paragraph (e)(1) to read as follows:

§922.122 Prohibited or otherwise regulated activities.

* * * * *

(e)(1) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to activities being carried out by the Department of Defense as of the effective date of Sanctuary designation (EFFECTIVE DATE OF REGULATIONS). Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources or qualities. The prohibitions

in paragraphs (a)(2) through (11) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impact on Sanctuary resources or qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources or qualities. New activities with the potential for significant adverse impact on Sanctuary resources or qualities may be exempted from the prohibitions in paragraphs (a)(2) through (11) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources or qualities.

* * * * *

5. Revise Appendix A to Subpart L of Part 922 to read as follows:

Appendix A to Subpart L of Part 922-Flower Garden Banks National Marine Sanctuary

Boundary Coordinates

Flower Garden Banks National Marine Sanctuary

Coordinates listed in this appendix are unprojected (Geographic Coordinate System) and based on the North American Datum of 1983 (NAD83).

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	1	Stetson Bank	28.15673	-94.29673
2	1	Stetson Bank	28.15661	-94.30312
3	1	Stetson Bank	28.15862	-94.30888
4	1	Stetson Bank	28.16950	-94.30839
5	1	Stetson Bank	28.17386	-94.30257
6	1	Stetson Bank	28.17583	-94.29445
7	1	Stetson Bank	28.17543	-94.29327

8	1	Stetson Bank	28.17284	-94.28952
9	1	Stetson Bank	28.16924	-94.28677
10	1	Stetson Bank	28.16428	-94.28681
11	1	Stetson Bank	28.16274	-94.28756
12	1	Stetson Bank	28.15796	-94.29047
13	1	Stetson Bank	28.15673	-94.29673

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	2	West Flower Garden Bank	27.84363	-93.78549
2	2	West Flower Garden Bank	27.81750	-93.81056
3	2	West Flower Garden Bank	27.81752	-93.84752
4	2	West Flower Garden Bank	27.83069	-93.86271
5	2	West Flower Garden Bank	27.81735	-93.87490
6	2	West Flower Garden Bank	27.83220	-93.89185
7	2	West Flower Garden Bank	27.85854	-93.89369
8	2	West Flower Garden Bank	27.87925	-93.87853
9	2	West Flower Garden Bank	27.92626	-93.82011
10	2	West Flower Garden Bank	27.92620	-93.81759
11	2	West Flower Garden Bank	27.91801	-93.80801
12	2	West Flower Garden Bank	27.90969	-93.77939
13	2	West Flower Garden Bank	27.88644	-93.77939
14	2	West Flower Garden Bank	27.84363	-93.78549

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	3	Horseshoe Bank	27.82317	-93.62789
2	3	Horseshoe Bank	27.80927	-93.63578
3	3	Horseshoe Bank	27.80568	-93.65541
4	3	Horseshoe Bank	27.79429	-93.66555
5	3	Horseshoe Bank	27.78357	-93.68846
6	3	Horseshoe Bank	27.79640	-93.70534
7	3	Horseshoe Bank	27.81855	-93.75198
8	3	Horseshoe Bank	27.82742	-93.74743
9	3	Horseshoe Bank	27.81868	-93.68868
10	3	Horseshoe Bank	27.83143	-93.68941
11	3	Horseshoe Bank	27.84699	-93.70079
12	3	Horseshoe Bank	27.87165	-93.73947
13	3	Horseshoe Bank	27.88602	-93.73294
14	3	Horseshoe Bank	27.87252	-93.64648
15	3	Horseshoe Bank	27.85861	-93.63908
16	3	Horseshoe Bank	27.82317	-93.62789

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	4	East Flower Garden Bank	27.89455	-93.57040
2	4	East Flower Garden Bank	27.87999	-93.61309
3	4	East Flower Garden Bank	27.88003	-93.62961
4	4	East Flower Garden Bank	27.89330	-93.64172
5	4	East Flower Garden Bank	27.92101	-93.64747
6	4	East Flower Garden Bank	27.95899	-93.64490
7	4	East Flower Garden Bank	27.97485	-93.63086
8	4	East Flower Garden Bank	27.98177	-93.60996
9	4	East Flower Garden Bank	27.98554	-93.58188
10	4	East Flower Garden Bank	27.95206	-93.57810
11	4	East Flower Garden Bank	27.92151	-93.56880
12	4	East Flower Garden Bank	27.89455	-93.57040

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	5	MacNeil Bank	28.00226	-93.51550
2	5	MacNeil Bank	27.99707	-93.52669
3	5	MacNeil Bank	28.00136	-93.52423
4	5	MacNeil Bank	28.00518	-93.52425
5	5	MacNeil Bank	28.01694	-93.52233
6	5	MacNeil Bank	28.01883	-93.51264
7	5	MacNeil Bank	28.03670	-93.50300
8	5	MacNeil Bank	28.03724	-93.49844
9	5	MacNeil Bank	28.03113	-93.49199
10	5	MacNeil Bank	28.01300	-93.49624
11	5	MacNeil Bank	28.00331	-93.50725
12	5	MacNeil Bank	28.00226	-93.51550

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	6	Rankin Bank & 28-Fathom Bank	27.92554	-93.40593
2	6	Rankin Bank & 28-Fathom Bank	27.92039	-93.41021
3	6	Rankin Bank & 28-Fathom Bank	27.92035	-93.42474
4	6	Rankin Bank & 28-Fathom Bank	27.91387	-93.43165
5	6	Rankin Bank & 28-Fathom Bank	27.90829	-93.42234

6	6	Rankin Bank & 28-Fathom Bank	27.90641	-93.42535
7	6	Rankin Bank & 28-Fathom Bank	27.90489	-93.44219
8	6	Rankin Bank & 28-Fathom Bank	27.89549	-93.44396
9	6	Rankin Bank & 28-Fathom Bank	27.88892	-93.43403
10	6	Rankin Bank & 28-Fathom Bank	27.88072	-93.42805
11	6	Rankin Bank & 28-Fathom Bank	27.87676	-93.42787
12	6	Rankin Bank & 28-Fathom Bank	27.88449	-93.44458
13	6	Rankin Bank & 28-Fathom Bank	27.88803	-93.45159
14	6	Rankin Bank & 28-Fathom Bank	27.88794	-93.45905
15	6	Rankin Bank & 28-Fathom Bank	27.89234	-93.46410
16	6	Rankin Bank & 28-Fathom Bank	27.89971	-93.45571
17	6	Rankin Bank & 28-Fathom Bank	27.90910	-93.45343
18	6	Rankin Bank & 28-Fathom Bank	27.92847	-93.45335
19	6	Rankin Bank & 28-Fathom Bank	27.93407	-93.44743
20	6	Rankin Bank & 28-Fathom Bank	27.93599	-93.44215
21	6	Rankin Bank & 28-Fathom Bank	27.92554	-93.40593

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	7	Bright Bank	27.87310	-93.27056
2	7	Bright Bank	27.86549	-93.29462
3	7	Bright Bank	27.87300	-93.31055
4	7	Bright Bank	27.89058	-93.32193
5	7	Bright Bank	27.89839	-93.31987
6	7	Bright Bank	27.90336	-93.30953
7	7	Bright Bank	27.91010	-93.30562
8	7	Bright Bank	27.91634	-93.29292
9	7	Bright Bank	27.91263	-93.28816
10	7	Bright Bank	27.90354	-93.28386

11	7	Bright Bank	27.90253	-93.27238
12	7	Bright Bank	27.89927	-93.26729
13	7	Bright Bank	27.87310	-93.27056

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	8	Geyer Bank	27.78848	-93.07794
2	8	Geyer Bank	27.79458	-93.08448
3	8	Geyer Bank	27.83313	-93.07913
4	8	Geyer Bank	27.85306	-93.08279
5	8	Geyer Bank	27.86328	-93.07885
6	8	Geyer Bank	27.86908	-93.06974
7	8	Geyer Bank	27.86556	-93.05944
8	8	Geyer Bank	27.85211	-93.05391
9	8	Geyer Bank	27.83713	-93.05725
10	8	Geyer Bank	27.82540	-93.04312
11	8	Geyer Bank	27.82490	-93.04276
12	8	Geyer Bank	27.80846	-93.03412
13	8	Geyer Bank	27.78997	-93.04096
14	8	Geyer Bank	27.78602	-93.05384
15	8	Geyer Bank	27.78848	-93.07794

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	9A	Elvers Bank -A	27.82285	-92.88605
2	9A	Elvers Bank -A	27.82087	-92.88600
3	9A	Elvers Bank -A	27.82009	-92.88670
4	9A	Elvers Bank -A	27.81869	-92.89235
5	9A	Elvers Bank -A	27.81690	-92.89404
6	9A	Elvers Bank -A	27.81615	-92.89653
7	9A	Elvers Bank -A	27.80645	-92.90884
8	9A	Elvers Bank -A	27.81221	-92.92082
9	9A	Elvers Bank -A	27.81599	-92.93908
10	9A	Elvers Bank -A	27.81934	-92.93940
11	9A	Elvers Bank -A	27.82250	-92.92465
12	9A	Elvers Bank -A	27.82809	-92.91359
13	9A	Elvers Bank -A	27.83973	-92.89876
14	9A	Elvers Bank -A	27.83972	-92.88038
15	9A	Elvers Bank -A	27.83003	-92.86983
16	9A	Elvers Bank -A	27.82285	-92.88605

Point ID	Polygon ID	Bank(s)	Latitude	Longitude
----------	------------	---------	----------	-----------

No.	No.			
1	9B	Elvers Bank -B	27.85645	-92.92310
2	9B	Elvers Bank -B	27.85662	-92.91922
3	9B	Elvers Bank -B	27.85334	-92.91631
4	9B	Elvers Bank -B	27.85076	-92.91727
5	9B	Elvers Bank -B	27.84903	-92.92097
6	9B	Elvers Bank -B	27.85145	-92.92524
7	9B	Elvers Bank -B	27.85645	-92.92310

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	10A	McGrail Bank -A	27.97684	-92.58489
2	10A	McGrail Bank -A	27.97749	-92.57716
3	10A	McGrail Bank -A	27.97475	-92.56753
4	10A	McGrail Bank -A	27.97304	-92.56191
5	10A	McGrail Bank -A	27.95173	-92.53902
6	10A	McGrail Bank -A	27.94849	-92.54254
7	10A	McGrail Bank -A	27.96632	-92.56116
8	10A	McGrail Bank -A	27.96792	-92.58152
9	10A	McGrail Bank -A	27.95989	-92.58187
10	10A	McGrail Bank -A	27.95409	-92.57057
11	10A	McGrail Bank -A	27.94951	-92.57135
12	10A	McGrail Bank -A	27.94920	-92.57994
13	10A	McGrail Bank -A	27.95846	-92.60274
14	10A	McGrail Bank -A	27.97286	-92.61901
15	10A	McGrail Bank -A	27.98096	-92.60158
16	10A	McGrail Bank -A	27.97684	-92.58489

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	10B	McGrail Bank -B	27.94116	-92.54750
2	10B	McGrail Bank -B	27.94180	-92.54543
3	10B	McGrail Bank -B	27.94010	-92.54202
4	10B	McGrail Bank -B	27.93616	-92.54151
5	10B	McGrail Bank -B	27.93481	-92.54398
6	10B	McGrail Bank -B	27.93529	-92.54803
7	10B	McGrail Bank -B	27.93859	-92.54901
8	10B	McGrail Bank -B	27.94116	-92.54750

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	11	Bouma Bank	28.07909	-92.47305

2	11	Bouma Bank	28.07370	-92.44900
3	11	Bouma Bank	28.07370	-92.44891
4	11	Bouma Bank	28.06544	-92.43518
5	11	Bouma Bank	28.05162	-92.43380
6	11	Bouma Bank	28.03846	-92.44065
7	11	Bouma Bank	28.03463	-92.45289
8	11	Bouma Bank	28.03114	-92.45537
9	11	Bouma Bank	28.02915	-92.46338
10	11	Bouma Bank	28.03154	-92.47259
11	11	Bouma Bank	28.04166	-92.47229
12	11	Bouma Bank	28.04525	-92.46717
13	11	Bouma Bank	28.04751	-92.47310
14	11	Bouma Bank	28.04676	-92.48308
15	11	Bouma Bank	28.04866	-92.48462
16	11	Bouma Bank	28.05687	-92.48145
17	11	Bouma Bank	28.06388	-92.49262
18	11	Bouma Bank	28.07018	-92.49141
19	11	Bouma Bank	28.06974	-92.48613
20	11	Bouma Bank	28.06594	-92.48098
21	11	Bouma Bank	28.07109	-92.47708
22	11	Bouma Bank	28.07683	-92.48071
23	11	Bouma Bank	28.07909	-92.47305

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	12	Sonnier Bank	28.32652	-92.45356
2	12	Sonnier Bank	28.32495	-92.45647
3	12	Sonnier Bank	28.32501	-92.45965
4	12	Sonnier Bank	28.32796	-92.46626
5	12	Sonnier Bank	28.33523	-92.47536
6	12	Sonnier Bank	28.34453	-92.47511
7	12	Sonnier Bank	28.34840	-92.47439
8	12	Sonnier Bank	28.35256	-92.47181
9	12	Sonnier Bank	28.35416	-92.46784
10	12	Sonnier Bank	28.35456	-92.46135
11	12	Sonnier Bank	28.35351	-92.45729
12	12	Sonnier Bank	28.35174	-92.45107
13	12	Sonnier Bank	28.34852	-92.44564
14	12	Sonnier Bank	28.34303	-92.44045
15	12	Sonnier Bank	28.34048	-92.44024
16	12	Sonnier Bank	28.33584	-92.44669
17	12	Sonnier Bank	28.33068	-92.44985

18	12	Sonnier Bank	28.32652	-92.45356
----	----	--------------	----------	-----------

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	13	Rezak Bank	27.95420	-92.36641
2	13	Rezak Bank	27.95847	-92.37739
3	13	Rezak Bank	27.95629	-92.38599
4	13	Rezak Bank	27.97297	-92.39248
5	13	Rezak Bank	27.97892	-92.39845
6	13	Rezak Bank	27.98869	-92.39964
7	13	Rezak Bank	27.99372	-92.38244
8	13	Rezak Bank	27.98603	-92.36697
9	13	Rezak Bank	27.98022	-92.36429
10	13	Rezak Bank	27.97442	-92.36996
11	13	Rezak Bank	27.96006	-92.36854
12	13	Rezak Bank	27.95420	-92.36641

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	14	Sidner Bank	27.93046	-92.36762
2	14	Sidner Bank	27.91368	-92.37398
3	14	Sidner Bank	27.91462	-92.38530
4	14	Sidner Bank	27.91976	-92.39427
5	14	Sidner Bank	27.92306	-92.38792
6	14	Sidner Bank	27.94525	-92.38305
7	14	Sidner Bank	27.94166	-92.37565
8	14	Sidner Bank	27.94231	-92.37189
9	14	Sidner Bank	27.93046	-92.36762

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	15A	Parker Bank -A	27.95067	-92.00294
2	15A	Parker Bank -A	27.94177	-91.99762
3	15A	Parker Bank -A	27.93547	-91.99568
4	15A	Parker Bank -A	27.92937	-91.99981
5	15A	Parker Bank -A	27.93224	-92.02999
6	15A	Parker Bank -A	27.93401	-92.03946
7	15A	Parker Bank -A	27.93958	-92.05015
8	15A	Parker Bank -A	27.95012	-92.05050
9	15A	Parker Bank -A	27.96214	-92.05407
10	15A	Parker Bank -A	27.96630	-92.04745
11	15A	Parker Bank -A	27.96869	-92.04120

12	15A	Parker Bank -A	27.96925	-92.02758
13	15A	Parker Bank -A	27.96678	-92.02175
14	15A	Parker Bank -A	27.95067	-92.00294

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	15B	Parker Bank -B	27.96082	-91.99450
2	15B	Parker Bank -B	27.96432	-91.99285
3	15B	Parker Bank -B	27.96566	-91.99014
4	15B	Parker Bank -B	27.96385	-91.98600
5	15B	Parker Bank -B	27.96149	-91.98639
6	15B	Parker Bank -B	27.95931	-91.98760
7	15B	Parker Bank -B	27.95824	-91.99183
8	15B	Parker Bank -B	27.96082	-91.99450

Point ID No.	Polygon ID No.	Bank(s)	Latitude	Longitude
1	16	Alderdice Bank	28.09726	-91.99328
2	16	Alderdice Bank	28.09474	-91.98619
3	16	Alderdice Bank	28.09569	-91.97526
4	16	Alderdice Bank	28.09184	-91.97361
5	16	Alderdice Bank	28.08410	-91.97273
6	16	Alderdice Bank	28.07506	-91.97457
7	16	Alderdice Bank	28.07053	-91.98465
8	16	Alderdice Bank	28.06959	-91.99347
9	16	Alderdice Bank	28.06819	-92.00512
10	16	Alderdice Bank	28.07026	-92.01321
11	16	Alderdice Bank	28.07562	-92.02032
12	16	Alderdice Bank	28.08058	-92.02436
13	16	Alderdice Bank	28.08463	-92.02577
14	16	Alderdice Bank	28.09024	-92.02296
15	16	Alderdice Bank	28.09487	-92.01231
16	16	Alderdice Bank	28.09627	-92.00735
17	16	Alderdice Bank	28.09507	-92.00008
18	16	Alderdice Bank	28.09726	-91.99328

6. Revise Appendix B to Subpart L of Part 922 to read as follows:

Appendix B to Subpart L of Part 922 Flower Garden Banks National Marine Sanctuary – Terms of Designation

Preamble

Under the authority of title III of the Marine Protection, Research, and Sanctuaries Act, as amended (“the Act”), 16 U.S.C. 1431 *et seq.*, 19 separate unique polygon areas of ocean waters and the submerged lands thereunder, along the continental shelf and shelf edge in the northwestern Gulf of Mexico, as described in Article II, are hereby designated as Flower Garden Banks National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreation, research, education, historic and aesthetic resources and qualities of these areas.

Article I – EFFECT OF DESIGNATION

The Act authorizes the Secretary of Commerce to issue such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and esthetic resources and qualities of a sanctuary. Section 1 of Article IV of this Designation Document lists those activities that may be regulated on the effective date of designation or at some later date in order to protect Sanctuary resources and qualities. Thus, the act of designation empowers the Secretary of Commerce to regulate the activities listed in Section 1. Listing does not necessarily mean that an activity 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 designation was made.

Article II – DESCRIPTION OF THE AREA

The Flower Garden Banks National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 121 square nautical miles (160 square miles) of offshore ocean waters, and submerged lands thereunder, along the continental shelf and shelf edge in the northwestern Gulf of Mexico. The entire sanctuary boundary is composed of 19 unique polygons. The precise boundary coordinates for each polygon are listed in Appendix A to this subpart.

The sanctuary boundary for Polygon 1 begins at Point 1 and continues in numerical order to Point 13 and contains the submerged feature of Stetson Bank with an area of approximately 1.1 square nautical miles (1.5 square miles), located approximately 71 nautical miles (82 miles) south-southeast of Galveston, Texas. The sanctuary boundary for Polygon 2 begins at Point 1 and continues in numerical order to Point 14 and contains the submerged feature of West Flower Garden Bank with an area of approximately 28.0 square nautical miles (37.1 square miles), located approximately 97 nautical miles (111 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 3 begins at Point 1 and continues in numerical order to Point 16 and contains the submerged feature of Horseshoe Bank with an area of approximately 21.7 square nautical miles (28.7 square miles), located approximately 102 nautical miles (117 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 4 begins at Point 1 and continues in numerical order to Point 12 and contains the submerged feature of East Flower Garden Bank with an area of approximately 21.0 square nautical miles (27.8 square miles), located approximately 101 nautical miles (116 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 5 begins at Point 1 and continues in numerical order to Point 12 and contains the submerged feature of MacNeil Bank with an area of approximately 2.1 square nautical miles (2.7 square miles), located approximately 103 nautical miles (118 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 6 begins at Point 1 and continues in

numerical order to Point 21 and contains the submerged features of Rankin Bank and 28 Fathom Bank with an area of approximately 4.2 square nautical miles (5.6 square miles), located approximately 109 nautical miles (126 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 7 begins at Point 1 and continues in numerical order to Point 13 and contains the submerged features of Bright Bank with an area of approximately 5.8 square nautical miles (7.6 square miles), located approximately 115 nautical miles (133 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 8 begins at Point 1 and continues in numerical order to Point 15 and contains the submerged feature of Geyer Bank within an area of approximately 8.7 square nautical miles (11.5 square miles), located approximately 126 nautical miles (145 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 9A begins at Point 1 and continues in numerical order to Point 16 and contains part of the submerged feature of Elvers Bank within an area of approximately 3.3 square nautical miles (4.4 square miles), located approximately 134 nautical miles (154 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 9B begins at Point 1 and continues in numerical order to Point 7 and also contains part of the submerged feature of Elvers Bank within an area of approximately 0.1 square nautical miles (0.2 square miles), located approximately 133 nautical miles (153 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 10A begins at Point 1 and continues in numerical order to Point 16 and contains part of the submerged feature of McGrail Bank with an area of approximately 3.4 square nautical miles (4.5 square miles), located approximately 142 nautical miles (163 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 10B begins at Point 1 and continues in numerical order to Point 8 and also contains part of the submerged feature of McGrail Bank with an area of approximately 0.1 square nautical miles (0.2 square miles), located approximately 146 nautical miles (168

miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 11 begins at Point 1 and continues in numerical order to Point 23 and contains the submerged feature of Bouma Bank with an area of approximately 5.8 square nautical miles (7.7 square miles), located approximately 145 nautical miles (167 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 12 begins at Point 1 and continues in numerical order to Point 18 and contains the submerged feature of Sonnier Bank with an area of approximately 2.3 square nautical miles (3.1 square miles), located approximately 138 nautical miles (159 miles) east-southeast of Galveston, Texas. The sanctuary boundary for Polygon 13 begins at Point 1 and continues in numerical order to Point 12 and contains the submerged feature of Rezak Bank with an area of approximately 2.8 square nautical miles (3.7 square miles), located approximately 151 nautical miles (174 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 14 begins at Point 1 and continues in numerical order to Point 9 and contains the submerged feature of Sidner Bank with an area of approximately 1.5 square nautical miles (2.0 square miles), located approximately 153 nautical miles (177 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 15A begins at Point 1 and continues in numerical order to Point 14 and contains part of the submerged feature of Parker Bank within an area of approximately 5.2 square nautical miles (6.8 square miles), located approximately 168 nautical miles (194 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 15B begins at Point 1 and continues in numerical order to Point 8 and also contains part of the submerged feature of Parker Bank within an area of approximately 0.1 square nautical miles (0.2 square miles), located approximately 171 nautical miles (197 miles) southeast of Galveston, Texas. The sanctuary boundary for Polygon 16 begins at Point 1 and continues in numerical order to Point 18 and contains the submerged feature of Alderdice Bank within an area of approximately 3.8

square nautical miles (5.0 square miles), located approximately 166 nautical miles (191 miles) east-southeast of Galveston, Texas.

Article III - CHARACTERISTICS OF AREA THAT GIVE IT PARTICULAR VALUE

The Sanctuary contains a series of underwater features located along the edge of the continental shelf in the northwestern Gulf of Mexico. These features are of interest from both a geological and biological perspective. Formed as the result of the movement of underlying salt deposits (also called salt domes or salt diapirs), and bathed by waters of tropical origin, they contain important geological features, biological habitats and other marine resources of national significance. They contain highly productive marine ecosystems that support a variety of fish and invertebrate communities of biological and economic importance.

The reefs and banks of the northwestern Gulf of Mexico are structurally complex and contain a range of marine habitats, including coral reefs, coralline algal reefs, algal nodule beds, mesophotic and deepwater reefs, and softbottom communities. The composition, diversity and vertical distribution of benthic communities on the banks are strongly influenced by the physical environment, including water temperature, turbidity and current regime. Geological features of interest include brine seeps, exposed basalt, methane seeps, and mud volcanoes. East and West Flower Garden Banks, the most well-known of the features, sustain the northernmost living coral reefs on the U.S. continental shelf, considered among the healthiest coral reefs in the Caribbean and Western Atlantic region. A deeper water coral reef also exists at McGrail Bank, consisting primarily of large heads of blushing star coral (*Stephanocoenia intersepta*) at depths between 140 and 160 feet. These coral reefs are isolated from other reef systems by over 300 nautical miles (342 miles) and exist under hydrographic conditions generally near the northern limit for tropical reef formation. Several other banks, including Stetson, Sonnier, Geyer, and Bright

Banks, contain various combinations of non-reef building coral species known collectively as coral communities, comprised of sponges, stony corals, fire coral, leafy algae and coralline algae. The deeper portions of the banks host thriving mid-depth (or “mesophotic”) coral habitats characterized by the presence of both light-dependent and deepwater corals, including black corals, gorgonian corals, and associated organisms. Biological communities are distributed among several interrelated biotic zones, including a coralline algae zone, deep reef rocky outcrops, and soft bottom communities. The complex and biologically productive ecological communities of the banks offer a combination of aesthetic appeal and recreational and research opportunity matched in few other ocean areas.

The following are qualitative descriptions of the individual reefs and banks within the Sanctuary; specific boundary coordinates can be found in Appendix A.

a. Stetson Bank, depth range 56ft – 194ft

Boundaries encompass a claystone/siltstone ring feature of mesophotic coral habitat revealed by high resolution multibeam bathymetric surveys, and subsequently ground-truthed by remotely operated vehicle surveys. These features are surface expressions of the salt dome associated with the feature, and provide habitat for sponges, gorgonians, stony branching corals, black corals, and associated fish and mobile invertebrates.

b. West Flower Garden Bank, depth range 59ft – 545ft

Boundaries encompass mesophotic coral patch reefs to the north, southwest, and east of the existing sanctuary. These reefs provide coralline algae reef habitat for black corals, gorgonians, stony branching corals, and associated fish and mobile invertebrates.

c. East Flower Garden Bank, depth range 52ft – 446ft

Boundaries to encompass mesophotic coral patch reefs to the north and southeast of the existing sanctuary. These reefs provide deep coral habitat for dense populations of black corals, gorgonians, stony branching corals, and associated fish and mobile invertebrates.

d. Horseshoe Bank, depth range 243ft – 614ft

Extensive deepwater habitat and coralline algae reefs in the form of hundreds of patchy outcroppings covering an area of approximately 1.9miles (3km) wide and having 16.4-49.2ft (5-15m) of relief above the seafloor, with dense assemblages of mesophotic black coral, gorgonians, stony branching corals, sponges, algae invertebrates, and fish; several conical-shaped mud volcanoes clustered near the center of the feature, with one rising 328ft (100m) above the sea floor.

e. MacNeil Bank, depth range 210ft – 315ft

Deep reef bedrock outcrops and coralline algae patch reefs harboring populations of black corals and gorgonians, sponges, fish, and mobile invertebrates.

f. Rankin/28 Fathom Banks, depth range 164ft – 571ft

Rankin Bank is just north of 28 Fathom Bank, and separated from it by a long trough, approximately 1,640-foot (500 m) wide, approximately 6,070-foot (1,850 m) which extends to a depth of approximately 570ft (174 m). The boundaries encompass the shallowest portions of Rankin and 28 Fathom Banks, which harbor coral algae reefs and deep coral reefs with populations of gorgonians, black corals, sponges, and associated fish and mobile invertebrates.

g. Bright Bank, depth range 112ft – 384ft

Bright Bank previously harbored a coral reef on the very shallowest portions of the bank, which sustained extensive damage from salvage and mining activities employing dynamite for excavation activities. The cap is now considered a coral community, and in spite of these impacts, nine species of shallow water scleractinian corals survive, along with two deeper water species. The feature also harbors extensive coralline algae reefs, providing habitat for populations of gorgonians, black corals, sponges, and associated fish and mobile invertebrates.

h. Geyer Bank, depth range 128ft – 722ft

Geyer Bank is a broad, relatively flat fault-bounded structure situated on an active salt diapir. This feature supports a coral community, as well as extensive coralline algae reefs and fields of algal nodules including dense fields of macro-algae, black corals, gorgonians, sponges, and associated fish and mobile invertebrates. Seasonal spawning aggregations of fish are associated with this bank, including enormous numbers of reef butterflyfish.

i. Elvers Bank, depth range 213ft - 686ft

Two discreet polygons have been developed to protect portions of Elvers Bank: a larger polygon encompassing 4.43 square miles on the south side of the feature, and a small polygon, encompassing 0.19 square miles on the north side of the feature. The shallow areas of the bank feature coralline algae reefs and algal nodule fields, and the deeper areas in the southern polygon harbor large deep reef outcroppings, both providing habitat for black corals, gorgonians, sponges, and associated fish and mobile invertebrates. The deep reefs also harbor glass sponge fields, a feature not documented in any other areas of the sanctuary, as well as a previously undescribed species of black coral.

j. *McGrail Bank, depth range 144ft - 512ft*

Two discreet polygons have been developed to protect portions of McGrail Bank: a larger claw shaped polygon reaching from northwest to southeast, encompassing 4.54 square miles, and a smaller polygon, encompassing 0.17 square miles, situated on the southeast of the feature that wraps around a conical shaped mound. This bank features unique areas of coral reefs dominated by large colonies of the blushing star coral, *Stephanocoenia intersepta*, with 28% live coral cover in discrete areas (no other known coral reef is dominated by this species). Pinnacles varying in diameter from ~80 to 395 feet (24-120 m) and as tall as ~25 feet (8 m) are found on the southwest rim of the main feature, along east- and southeast-trending scarps leading away from the bank and in concentric fields to the south and southeast of the bank. A significant portion of the depth zone between 145 and 170 feet is dominated by coral colonies up to 5 feet tall, covering an area of approximately 37 acres. At least 14 species of stony corals have been recorded. Deeper portions of this site harbor mesophotic coral habitat for deep coral, coralline algae reefs, and fields of algal nodules. Dense populations of black corals, gorgonians, macro-algae fields, and associated fish and mobile invertebrates are present.

k. *Sonnier Bank, depth range 62ft – 210ft*

Sonnier Bank consists of a series of isolated clusters of pinnacles comprised of uplifted siltstone and claystone, that rise mostly around the perimeter of a single, roughly circular ring 1.9miles (3.2km) in diameter. Two peaks are accessible and popular with recreational scuba divers. The peaks are dominated by coral communities featuring fire coral, sponges, and algae. The deeper portions of the feature are fairly heavily silted, but provide habitat for black corals, gorgonians, and associated fish and mobile invertebrates.

l. Bouma Bank, depth range 187ft – 322ft

Bouma Bank is dominated by coralline algae reefs and algal nodule fields, providing habitat for populations of black corals, gorgonians, algae, branching stony coral, clusters of cup coral, and associated fish and mobile invertebrates.

m. Rezak Bank, depth range 197ft – 430ft

Rezak Bank is dominated by coralline algae reefs and extensive algal nodule fields, providing habitat for populations of black corals, gorgonians, algae, and associated fish and mobile invertebrates.

n. Sidner Bank, depth range 190ft – 420ft

Dominated by coralline algae reefs and extensive algal nodule fields providing habitat for populations of black corals, gorgonians, algae, sponges, and associated fish and mobile invertebrates.

o. Alderdice Bank, depth range 200ft – 322ft

This feature includes spectacular basalt outcrops of Late Cretaceous origin (approximately 77 million years old) representing the oldest rock exposed on the continental shelf offshore of Louisiana and Texas. The outcrops at Alderdice Bank bear diverse, extremely dense assemblages of gorgonians and black corals, sponges, and swarms of reef fish. Mesophotic coralline algae reef habitats below the spires, silted over in areas, provide habitat for dense populations of black corals, gorgonians, sponges, branching stony corals, fields of macro-algae, and associated fish and mobile invertebrates.

p. Parker Bank, depth range 187ft – 387ft

Two discreet polygons have been developed to protect portions of Parker Bank. A larger polygon bounding the central portion of the features, encompassing 6.82 square miles, and a smaller polygon to the east, encompassing 0.14 square miles. These boundaries protect the shallowest portions of the bank, which harbor coralline algae reefs and algal nodule fields and support populations of plating stony corals, black corals, gorgonians, sponges, macro-algae, and associated fish and mobile invertebrates.

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 conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the area:

- a. Anchoring or otherwise mooring within the Sanctuary;
- b. Discharging or depositing, from within the boundaries of the Sanctuary, any material or other matter;
- c. Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other matter;
- d. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary;
- e. Exploring for, developing or producing oil, gas or minerals within the Sanctuary;

- f. Taking, removing, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, catch, collect, harvest, feed, injure, destroy or cause the loss of, a Sanctuary resource;
- g. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, caught, collected or harvested, that, if it had been found within the Sanctuary, would be a Sanctuary resource.
- h. Possessing or using within the Sanctuary any fishing gear, device, equipment or other apparatus.
- i. Possessing or using airguns or explosives or releasing electrical charges within the Sanctuary.
- j. 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 permit issued under the Act.

Section 2. Consistency with International Law

Any regulation of activities listed in Section 1 of this Article will be applied and enforced as mandated by 16 USC 1435(a).¹

Section 3. Emergency Regulations

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

¹ Based on the legislative history of the NMSA, NOAA has long interpreted the text of 16 USC 1435(a) as encompassing international law, including customary international law.

activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

ARTICLE V- EFFECT ON OTHER REGULATIONS, LEASES, PERMITS, LICENSES, AND RIGHTS

Section 1. Fishing Regulations, Licenses, and Permits

The regulation of fishing is authorized under Article IV. All regulatory programs pertaining to fishing, including fishery management plans promulgated under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, shall remain in effect. Where a valid regulation promulgated under these programs conflicts with a Sanctuary regulation, the regulation deemed by the Secretary of Commerce or designee as more protective of Sanctuary resources and qualities shall govern.

Section 2. Other Licenses, Regulations, and Permits

If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Secretary of Commerce or designee as 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 authority of competent jurisdiction, or any valid 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 authorization or right was in existence on the effective date of this designation. However, the Secretary of Commerce or designee may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

Accordingly, the prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by any valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with Sanctuary regulations regarding the certification of such authorizations and rights (*e.g.*, notifies the Secretary or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Secretary or designee as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

Pending final agency action on the certification request, such holder may exercise such authorization or right without being in violation of any prohibitions set forth in the Sanctuary regulations, provided the holder is in compliance with Sanctuary regulations regarding certifications.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity conducted in accordance with the scope, purpose, terms, and conditions of the National Marine Sanctuary permit issued by the Secretary or designee in accordance with the Sanctuary regulations. Such permits may only be issued if the Secretary or designee finds that the activity for which the permit is applied will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary.

The prohibitions set forth in the sanctuary regulations shall not apply to any activity conducted in accordance with the scope, purpose, terms, and conditions of a Special Use permit issued by the Secretary or designee in accordance with section 310 of the Act. However, in areas where sanctuary regulations prohibit oil, gas, or mineral exploration, development or production, the Secretary or designee may in no event, permit or otherwise, approve such activities in that area. Any leases, licenses, permits, approvals, or other authorizations issued after [EFFECTIVE DATE SANCTUARY DESIGNATION] authorizing the exploration or production of oil, gas, or minerals in that area shall be invalid.

Section 3. Department of Defense Activities

The prohibitions in § 922.122(a)(2) through (11) do not apply to activities being carried out by the Department of Defense as of the effective date of Sanctuary designation [insert effective date of Sanctuary expansion]. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impact on Sanctuary resources and qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. New activities with the potential for significant adverse impact on Sanctuary resources and qualities may be exempted from the prohibitions in paragraphs (a)(2) through (11) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to

spills and groundings, caused by a component of the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

Article VI – ALTERATIONS TO THIS DESIGNATION

The terms of designation may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with any appropriate Federal, State, regional and local agencies, review by the appropriate Congressional committees and approval by the Secretary of Commerce or designee.

[FR Doc. 2020-08128 Filed: 4/30/2020 8:45 am; Publication Date: 5/1/2020]