



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 210608-0125]

RIN 0648-BG01

Wisconsin Shipwreck Coast National Marine Sanctuary Designation; Final Regulations

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

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) issues final regulations to implement the designation of the Wisconsin Shipwreck Coast National Marine Sanctuary (WSCNMS). The approximately 962 square-mile area encompasses a portion of the waters and submerged lands of Lake Michigan adjacent to Ozaukee, Sheboygan, Manitowoc, and Kewaunee Counties. The area includes a nationally significant collection of underwater cultural resources, including 36 known shipwrecks and about 59 suspected shipwrecks. Well preserved by Lake Michigan's cold, fresh water, the shipwrecks in the WSCNMS possess exceptional historical, archaeological and recreational value. NOAA and the State of Wisconsin will co-manage WSCNMS.

DATES: *Effective Date:* Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress, beginning on the date on which this federal rulemaking is published, unless the Governor of the State of Wisconsin certifies to the Secretary of Commerce during that

same review period that the designation or any of its terms is unacceptable, in which case the designation or any unacceptable term shall not take effect. The public can track days on Congressional session at the following website: <https://www.congress.gov/days-in-session>. NOAA will publish an announcement of the effective date of the final regulations in the **Federal Register**.

NOAA is staying the effective date of §922.213(a)(2), which prohibits grappling into or anchoring on shipwreck sites, until October 1, 2023. The purpose of this stay is detailed in Section II of this final rule.

ADDRESSES: Copies of the final environmental impact statement and final management plan (FEIS/FMP) described in this rule and the record of decision (ROD) are available upon request to Wisconsin Shipwreck Coast National Marine Sanctuary, One University Drive, Sheboygan, WI, 53081, Attn: Russ Green, Regional Coordinator. The FEIS/FMP and Record of Decision may be viewed and downloaded at <https://sanctuaries.noaa.gov/wisconsin/>.

FOR FURTHER INFORMATION CONTACT: Russ Green, Regional Coordinator, Office of National Marine Sanctuaries at 920-459-4425, russ.green@noaa.gov, or Wisconsin Shipwreck Coast National Marine Sanctuary, One University Drive, Sheboygan, WI, 53081, Attn: Russ Green, Regional Coordinator.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce (Secretary) to designate and protect as national marine sanctuaries areas of the marine or Great Lakes 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 has been delegated by the Secretary to the

Office of National Marine Sanctuaries (ONMS) within the National Oceanic and Atmospheric Administration (NOAA). The primary objective of the NMSA is to protect the sanctuary system's biological and cultural resources, such as marine ecosystem, marine animals, historic shipwrecks, and archaeological sites.

A. Wisconsin Shipwreck Coast National Marine Sanctuary

The approximately 962 square-mile area designated as the Wisconsin Shipwreck Coast National Marine Sanctuary (WSCNMS) encompasses a portion of the waters and submerged lands of Lake Michigan adjacent to Ozaukee, Sheboygan, Manitowoc, and Kewaunee Counties. Principal cities in this area include Port Washington, Sheboygan, Manitowoc, and Two Rivers. The boundary includes approximately 82 miles of shoreline and extends approximately 7 to 16 miles from the shoreline, and is entirely located within Wisconsin state waters.

The area includes a nationally significant collection of underwater cultural resources, including 36 known shipwrecks and approximately 59 suspected shipwrecks. The historic shipwrecks in the sanctuary are representative of the vessels that sailed and steamed on Lake Michigan during the nineteenth and twentieth centuries, carrying grain and raw materials east and coal, manufactured goods, and people west. During this period entrepreneurs and shipbuilders on the Great Lakes launched tens of thousands of ships of many different designs. Sailing schooners, grand palace steamers, revolutionary propeller-driven passenger ships, and industrial bulk carriers transported materials that were essential to America's business and industry. In the process they brought hundreds of thousands of people to the Midwest and made possible the dramatic growth of the region's farms, cities, and industries. The Midwest, and indeed the American Nation, could not have developed with such speed and with such vast economic and social consequences without the Great Lakes. Twenty-one of the 36 shipwreck sites in the sanctuary are listed on the National Register of Historic Places. Many of the shipwrecks

retain an unusual degree of archeological and architectural integrity, with several vessels nearly intact. Well preserved by Lake Michigan's cold, fresh water, the shipwrecks in the WSCNMS possess exceptional historical, archaeological and recreational value.

Additional underwater cultural resources, such as submerged aircraft, docks, piers, and isolated artifacts also exist, as does the potential for prehistoric (pre-contact) sites and artifacts.

B. Need for Action

Establishing a national marine sanctuary in Wisconsin waters will complement and supplement existing state-led preservation efforts, research programs, and public outreach initiatives. Threats to the nationally significant underwater cultural resources in the area include both natural processes and human activities. In some cases human activities can threaten the long term sustainability of historic shipwrecks and other underwater cultural resources, and negatively impact their recreational and archaeological value. These negative impacts include anchor damage from visiting dive boats, damage from poorly attached mooring lines, looting of artifacts, movement of artifacts within a shipwreck site, entanglements of remotely-operated vehicle tethers, and entanglements of fishing gear. Additional threats to the national marine sanctuary's resources include human-introduced invasive mussels and the human disturbance and natural deterioration also threaten known and undiscovered sanctuary resources. Future discoveries may include newly uncovered shipwrecks in shallow, sandy lake bottom, as well as yet-to-be-discovered intact shipwrecks the lie in deeper areas.

Consistent with the community-based sanctuary nomination (described below), the national marine sanctuary will also: (a) build on the 30-year investment the citizens of Wisconsin have made in the identification, interpretation, and preservation of shipwrecks and other maritime resources; (b) build on state and local tourism initiatives within the many communities that have embraced their centuries-long maritime

relationship with Lake Michigan, the Great Lakes region, and the nation; (c) enhance the existing state management program; and (d) provide access to NOAA's extended network of scientific expertise and technological resources, increase research efforts, and provide an umbrella for the coordination of these activities. The national marine sanctuary will also enhance existing educational initiatives and provide additional programming and technology for K-12, post-graduate, and the general public across the state.

C. Procedural History

1. Sanctuary Nomination and Public Scoping

On December 2, 2014, pursuant to section 304 of the NMSA and the Sanctuary Nomination Process (SNP; 79 FR 33851), Wisconsin Governor Scott Walker, on behalf of the State of Wisconsin; the cities of Two Rivers, Manitowoc, Sheboygan, and Port Washington; and the counties of Ozaukee, Sheboygan, and Manitowoc, submitted a nomination asking NOAA to consider designating this area of Wisconsin's Lake Michigan waters as a national marine sanctuary. The State of Wisconsin's selection of this geographic area for the nomination drew heavily from a 2008 report conducted by the Wisconsin History Society and funded by the Wisconsin Coastal Management Program (Wisconsin's Historic Shipwrecks: An Overview and Analysis of Locations for a State/Federal Partnership with the National Marine Sanctuary Program, 2008,

<https://www.wisconsinshipwrecks.org/Files/Wisconsins%20Historic%20Shipwrecks.pdf>)

The nomination also identified opportunities for NOAA to strengthen and expand on resource protection, education, and research programs by State of Wisconsin agencies and in the four communities along the Lake Michigan coast. NOAA completed its review of the nomination, and on February 5, 2015, added the area to the inventory of nominations that are eligible for designation. All nominations submitted to NOAA can be found at <http://www.nominate.noaa.gov/nominations/>.

On October 7, 2015, NOAA initiated the public scoping process with the publication of the Notice of Intent (NOI) in the Federal Register (80 FR 60631), soliciting public input on the proposed designation and informing the public of the Agency's intention to prepare a draft environmental impact statement (DEIS) to evaluate alternatives related to the proposed designation of WSCNMS under the NMSA. That announcement initiated a 90-day public comment period during which NOAA solicited additional input related to the scale and scope of the proposed sanctuary, including ideas presented in the community nomination. The NOI also announced NOAA's intent to fulfill its responsibilities under the requirements of the National Historic Preservation Act (NHPA).

In November 2015, NOAA hosted three public meetings and provided additional opportunities for public comments through the *www.regulations.gov* web portal and by traditional mail. The comment period closed January 15, 2016. All comments received, through any of these formats, were publicly posted on the *www.regulations.gov* web portal (see: <https://www.regulations.gov/docket?D=NOAA-NOS-2015-0112>). The public comments submitted during the scoping process were used by NOAA in preparing the proposed sanctuary regulations and the draft environmental impact statement and draft management plan (DEIS/DMP) associated with the proposed sanctuary designation.

2. Designation Process

On January 9, 2017, NOAA published a notice in the Federal Register announcing the proposed designation of approximately 1,075 square miles of waters and submerged lands of Lake Michigan adjacent to Manitowoc, Sheboygan, and Ozaukee counties in the State of Wisconsin. (82 FR 2269). NOAA also provided public notice of the availability of the related DEIS/DMP (82 FR 2269; 82 FR 1733). All three documents (proposed rule, DEIS, and DMP) were prepared in close consultation with the State of

Wisconsin. NOAA opened an 81-day comment period on the proposed rule and the DEIS/DMP, which closed on March 31, 2017. During the public comment period, NOAA held four public meetings in the Wisconsin cities of Algoma, Manitowoc, Sheboygan, and Port Washington.

All public comments on the proposed designation are available at <https://www.regulations.gov/docket?D=NOAA-NOS-2016-0150>. NOAA's response to the public comments are included in Appendix B of the FEIS, which was made available on June 5, 2020 (85 FR 34625) and in this document (Section IV).

II. CHANGES FROM PROPOSED TO FINAL REGULATIONS

Based on public comments received between January and March 2017, internal deliberations, interagency consultations, meetings with constituent groups, and evaluation of this input with the State of Wisconsin, NOAA has made the following changes to the proposed rule. NOAA has also made conforming changes to the FEIS/FMP.

A. Sanctuary Boundary

In response to public comments and discussions with the state, NOAA chose to modify the sanctuary boundary area from 1,075 square miles, as originally proposed, to 962 square miles. This new boundary includes 36 known shipwrecks and the potential for approximately 59 new sites to be discovered. Specific changes include: 1) in response to comments raised by the commercial shipping industry, excluding all federally authorized areas (navigation channels) from the sanctuary; 2) in response to comments raised by shoreline property owners and certain industry groups and in consultation with the State of Wisconsin, using the Low Water Datum rather than the Ordinary High Water Mark as the sanctuary's western/shoreline boundary; 3) in consultation with the State of Wisconsin, moving the southern sanctuary boundary northward to approximately 650 feet south of the shipwreck *Northerner*, putting the boundary closer to the nominating

community of Port Washington and using a known shipwreck site to demarcate the sanctuary boundary, rather than a political boundary (i.e. a county or city line); and 4) in response to public comments, moving the northern boundary approximately 1.7 miles northward to include the shipwreck *America* (in Kewaunee County). A detailed description of these boundary modifications can be found in Chapter 3 of the FEIS. NOAA's response to these and other public comments can be found in Appendix B of the FEIS and in this document (Section IV).

B. Sanctuary Name

In the proposed rule, NOAA referred to the proposed sanctuary as the “Wisconsin-Lake Michigan National Marine Sanctuary (WLMNMS).” However, based on comments received from the public and community partners, NOAA changes the sanctuary name with this final rule to Wisconsin Shipwreck Coast National Marine Sanctuary (WSCNMS), which better describes the purpose of the sanctuary, and, as indicated by local communities, provides stronger opportunities for marketing and branding.

C. Definition of “Sanctuary resource” and “Shipwreck site”

In response to public comments, NOAA revises the definitions of “sanctuary resource” and “shipwreck site” for clarity. In the proposed rule, NOAA defined “sanctuary resource” as “prehistoric, historic, archaeological, and cultural sites and artifacts within the sanctuary boundary, including but not limited to, all shipwrecks and related components.” With this final rule, NOAA deletes “including but not limited to, all shipwrecks and related components” and replaces it with “including all shipwreck sites,” thus revising the site-specific definition of “sanctuary resources,” located in section 922.211(a)(1), to now mean “all prehistoric, historic, archaeological, and cultural sites and artifacts within the sanctuary boundary, including all shipwreck sites.” NOAA

made this revision to clarify this sanctuary's emphasis on the protection of shipwrecks and shipwreck sites, and to better align with state definitions.

Additionally, the proposed rule broadly defined "shipwreck site" to mean any sunken watercraft, its components, cargo, contents, and associated debris field (section 922.211(a)(2)). However, with this final rule, NOAA revises the definition in section 922.211(a)(2) for "shipwreck site" by adding "historic" to clarify that NOAA is focused on historic shipwrecks (i.e., not all shipwrecks, but those that demonstrate an important role in or relationship with maritime history). This addition is specifically added to respond to concerns about defining recent or contemporary sunken craft or objects as sanctuary resources. For the purposes of this rule, "historic" takes its definition from "historical resource" located in section 922.3 of the National Marine Sanctuary Program regulations.

D. Effective Date of the Regulations on Grappling into or Anchoring on Shipwreck Sites

As explained above in the "DATES" section of this document, NOAA postpones the effective date for the regulation that prohibits grappling into or anchoring on shipwreck sites until October 1, 2023. The purpose of this postponement is to provide NOAA with adequate time to develop a shipwreck mooring program and plan, begin installing mooring buoys, seek input from the dive community about the mooring buoy plan, and develop best practices for accessing shipwrecks when mooring buoys are not present. During this period, NOAA will also work with stakeholders to explore the concept of permitting certain prohibited activities (e.g., allowing divers to attach mooring lines directly to some shipwreck sites).

All other regulations will become effective as described in the "DATES" section above.

III. SUMMARY OF ALL FINAL REGULATIONS FOR WSCNMS

With this final rule, NOAA is implementing the following site-specific regulations for WSCNMS.

A. Add New Subpart T to Existing National Marine Sanctuary Program

Regulations

NOAA amends the National Marine Sanctuary Program regulations at 15 CFR part 922 by adding a new subpart (subpart T) that contains site-specific regulations for the WSCNMS. This subpart includes the boundary description, contains definitions of common terms used in the new subpart, provides a framework for co-management of the sanctuary, identifies prohibited activities and exceptions, and establishes procedures for certification of existing uses, permitting otherwise prohibited activities, and emergency regulation procedures. Several conforming changes are also made to the national sanctuary regulations as described below.

B. Sanctuary Name

The sanctuary name is “Wisconsin Shipwreck Coast National Marine Sanctuary (WSCNMS).”

C. Sanctuary Boundary

NOAA designates a 726 square nautical mile (962 square mile) area of Lake Michigan waters off Ozaukee, Sheboygan, Manitowoc, and Kewaunee counties of Wisconsin as WSCNMS. The sanctuary's western/shoreward boundary is defined by the Low Water Datum as defined by the International Great Lakes Datum, 1985 (IGLD 1985) as an elevation of 577.5 ft above sea level, while the lakeward boundary is drawn to include all known shipwrecks between the shipwreck *America* to the north and shipwreck *Northerner* to the south. The sanctuary extends approximately 16 miles offshore at its greatest extent. Within this boundary are 36 known shipwrecks, including 21 on the National Register of Historic Places. The harbors and marinas of Two Rivers, Manitowoc, Sheboygan, and Port Washington are not included in the sanctuary boundary,

nor are federally authorized areas (channels). These are channels that have been dredged by U.S. Army Corps of Engineers adjacent to the ports and harbors. The detailed legal sanctuary boundary description is included in section 922.210 and the coordinates are located in 15 CFR part 922, subpart T, appendix A.

A map of the area is shown in the FEIS on page 4, and can also be found at <https://sanctuaries.noaa.gov/wisconsin/>.

D. Definitions

NOAA is including a site-specific definition of “sanctuary resources” for the WSCNMS to include only the underwater cultural resources found in this area in accordance with the purpose of this designation. The definition does not include biological and ecological resources of the area. Creating this narrow, site-specific definition requires NOAA to modify the national definition of “sanctuary resource” in the national regulations at section 922.3 to add an additional sentence that defines the site-specific definition for WSCNMS at section 922.211(a). This is similar to the approach taken for other national marine sanctuaries, such as Thunder Bay National Marine Sanctuary, that do not make use of the full national “sanctuary resource” definition. The WSCNMS definition of “sanctuary resources,” located in section 922.211(a)(1), means all prehistoric, historic, archaeological, and cultural sites and artifacts within the sanctuary boundary, including all shipwreck sites. The term “shipwreck site” is further defined as any historic sunken watercraft, its components, cargo, contents, and associated debris field. This rule also incorporates and adopts other common terms defined in the existing national regulations at section 922.3. One of the common terms adopted (without modification) is “National Marine Sanctuary” or “Sanctuary,” which means an area of the marine environment of special national significance due to its resource or human-use values, which is designated as such to ensure its conservation and management.

E. Co-Management of the Sanctuary

To enhance opportunities and build on existing protections, NOAA and the State of Wisconsin will collaboratively manage the sanctuary. NOAA establishes the framework for co-management at section 922.212 and will develop a Memorandum of Agreement (MOA) with the state to provide greater details of co-management. NOAA and the state may develop additional agreements as necessary that would provide details on the execution of sanctuary management, such as activities, programs, and permitting programs that can also be updated to adapt to changing conditions or threats to the sanctuary resources. Any proposed changes to sanctuary regulations or boundaries will be jointly coordinated with the state and will be subject to public review as mandated by the NMSA and other Federal statutes.

F. Prohibited and Regulated Activities

1. INJURING SANCTUARY RESOURCES

The regulations for WSCNMS prohibit any person from moving, removing, recovering, altering, destroying, possessing or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a sanctuary resource. This prohibition supplements existing Wisconsin laws that prohibit damaging shipwrecks. Wisconsin State statute (Wis. Stat. § 44.47), which has been in effect since 1991 and is related to removing or damaging shipwrecks, currently applies to the area and will continue to apply to these resources after sanctuary designation.

2. GRAPPLING INTO OR ANCHORING ON A SHIPWRECK SITE

The regulations for WSCNMS prohibit the use of grappling into or anchoring on shipwreck sites to protect fragile shipwrecks within the sanctuary from damage. To provide the public adequate notice of shipwreck locations, NOAA will prepare and make available sanctuary maps with known and suspected shipwreck sites. Shipwreck sites not listed on maps (i.e., new discoveries as they occur) are considered sanctuary resources and the prohibition on anchoring and grappling still apply. The final management plan

includes activities related to surveying the sanctuary area and locating additional shipwreck sites. As appropriate, NOAA will update the maps as new shipwreck sites are found.

Because NOAA seeks to promote public access, while also ensuring sound resource protection, an initial focus of the sanctuary management plan will be the installation of permanent mooring systems at priority sanctuary shipwreck sites. The moorings will provide a secure, visible, and convenient anchoring point for users, and eliminate the need for grappling. NOAA intends to publish guidelines on best practices for accessing shipwrecks when mooring buoys are not present. An example of a best practice could include instructions on using a weighted line and surface float to mark a wreck for divers to descend and ascend. This weighted line would not be used as an anchoring line; it would need to be continuously tended and removed before the dive boat left the area.

NOAA is postponing the effective date for this prohibition for October 1, 2023. The purpose of this postponement is to provide NOAA with adequate time to develop a shipwreck mooring program and plan, begin installing mooring buoys, seek input from the dive community about the mooring buoy plan, and develop best practices for accessing shipwrecks when mooring buoys are not present. During this period, NOAA will also work with stakeholders to explore the concept of permitting certain prohibited activities (e.g., allowing divers to attach mooring lines directly to some shipwreck sites). All other regulations would remain in effect during this postponement.

3. INTERFERING WITH INVESTIGATIONS

The regulations for WSCNMS prohibit interfering with sanctuary enforcement activities. This regulation will assist in NOAA's enforcement of the sanctuary regulations and strengthen sanctuary management.

4. EXEMPTION FOR EMERGENCIES AND LAW ENFORCEMENT

The regulations for WSCNMS exempt from the three prohibitions described above activities that respond to emergencies that threaten lives, property, or the environment, or are necessary for law enforcement purposes.

G. Emergency Regulations

As part of the designation, NOAA will have the authority to issue emergency regulations for this sanctuary. Emergency regulations will be used in limited cases and under specific conditions when there is an imminent risk to sanctuary resources and a temporary prohibition would prevent the destruction or loss of those resources. NOAA will only issue emergency regulations that address an imminent risk for a fixed amount of time for a maximum of 6 months, which can be extended a single time for not more than an additional six months. Emergency regulations will only be exempted from notice and comment requirements under Administrative Procedures Act when the agency “for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” A full rulemaking process must be undertaken, including a public comment period, to consider making an emergency regulation permanent. NOAA modifies the national regulations at § 922.44 to include WSCNMS in the list of sanctuaries that have site-specific regulations related to emergency regulations, and adds detailed site-specific emergency regulations to the WSCNMS regulations at § 922.214.

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

1. GENERAL PERMITS

The regulations for WSCNMS include the authority for NOAA to issue permits to allow certain activities that would otherwise violate the prohibitions listed and described above. Similar to other national marine sanctuaries, NOAA considers these permits for the purposes of education, research, or management. To address the above additions to the ONMS general permit authority for WSCNMS, NOAA is amending regulatory text in

the program-wide regulations in part 922, subpart E, to add references to subpart T, as appropriate. NOAA would also add a new § 922.215 in subpart T titled “Permit procedures and review criteria” that would address site-specific permit procedures for WSCNMS.

2. CERTIFICATIONS

The regulations for WSCNMS include language at section 922.216 describing the process by which NOAA may certify pre-existing authorizations or rights within the WSCNMS area. Here the term pre-existing authorizations or rights refers to any leases, permits, licenses, or rights of subsistence use or access in existence on the date of sanctuary designation (*see* 16 U.S.C. 1434(c); 15 CFR 922.47). Consistent with this definition, WSCNMS regulations at section 922.216 states that certification is the process by which these pre-existing authorizations that violate sanctuary prohibitions may be allowed to continue, and the sanctuary may regulate the exercise of the pre-existing authorizations consistent with the purposes for which the sanctuary was designated. Applications for certifying pre-existing authorizations must be received by NOAA within 180 days of the Federal Register notice announcing the effective date of the designation.

3. AUTHORIZATIONS

NOAA may also allow an otherwise prohibited activity to occur in the sanctuary, if such activity is specifically authorized by any valid Federal, state, or local lease, permit, license, approval, or other authorization issued after sanctuary designation. Authorization authority is intended to streamline regulatory requirements by reducing the need for multiple permits and would apply to all proposed prohibitions at § 922.213. As such, NOAA is amending the regulatory text at § 922.49 to add reference to subpart T.

4. SPECIAL USE PERMITS

NOAA has the authority under the NMSA to issue special use permits (SUPs) at national marine sanctuaries as established by section 310 of the NMSA. SUPs

can be used to authorize specific activities in a sanctuary if such authorization is necessary to: (1) establish conditions of access to and use of any sanctuary resource; or (2) promote public use and understanding of a sanctuary resource. The activities that qualify for a SUP are set forth in the Federal Register (82 FR 42298; September 7, 2017). Categories of SUPs may be changed or added to through public notice and comment. NOAA would not apply the SUP to activities in place at the time of the WSCNMS designation.

SUP applications are reviewed to ensure that the activity is compatible with the purposes for which the sanctuary is designated and that the activities carried out under the SUP be conducted in a manner that do not destroy, cause the loss of, or injure sanctuary resources. NOAA also requires SUP permittees to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit. The NMSA allows NOAA to assess and collect fees for the conduct of any activity under a SUP. On November 19, 2015, NOAA published public notice (80 FR 72415) of the methods, formulas and rationale for the calculations it will use in order to assess fees associated with SUPs. The fees collected could be used to recover the administrative costs of issuing the permit, the cost of implementing the permit, monitoring costs associated with the conduct of the activity, and the fair market value of the use of sanctuary resources.

I. Other Conforming Amendments

The general regulations in part 922, subpart A, and part 922, subpart E, for regulations of general applicability are amended by this action so that the regulations are accurate and up-to-date. The following 10 sections are updated to reflect the increased number of sanctuaries or to add subpart T to the list of sanctuaries:

- Section 922.1 Applicability of regulations
- Section 922.40 Purpose

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

J. Terms of Designation

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

NOAA is establishing terms of designation that describe the geographic area, resources, and activities as described above. NOAA is adding the terms of designation language as appendix B to the WSCNMS regulations at 15 CFR part 922, subpart T.

Upon further examination, NOAA has decided to remove Article V., Section 2 from the proposed Terms of Designation. NOAA proposed this provision to incorporate the generally prevailing judicial precedent and regulatory practice that, to the

extent two laws appear to conflict (e.g., two laws apply to the same activity), the courts or the agencies will attempt to harmonize them to give effect to both laws if possible. See, e.g., *Swinomish Indian Tribal Cmty. v. BNSF Ry. Co.*, 951 F.3d 1142, 1156 (9th Cir. 2020). NOAA has, however, determined that this proposed provision is not a fundamental component of the Terms of Designation (e.g., the establishment of the sanctuary) or the regulatory scheme finalized herein. In the face of any potential conflicts of federal laws in the waters of the sanctuary, such as where a sanctuary prohibition may interfere with Federal safety laws, NOAA would work with that agency to ensure that the purpose of each law is given fullest effect. The remaining language in that section referencing pre-existing authorizations such as a lease, license or permit is found in section 304(c) of the NMSA, so the removal of the language in the Terms of Designation does not change NOAA's authorities. NOAA will coordinate with the State of Wisconsin regarding any such authorization as specified in § 922.212 of these regulations regarding co-management of the site.

IV. RESPONSE TO COMMENTS

During the January 2017 through March 31, 2017, public review comment period, NOAA received 566 written comments on the DEIS/DMP and proposed rule. Approximately 400 people attended four public meetings during the week of March 13, 2017, in the Wisconsin towns of Algoma, Manitowoc, Sheboygan, and Port Washington, with 75 people providing verbal comments. Four petitions were submitted with public comments: one with 163 signatures of individuals supporting the Wisconsin sanctuary proposal exclusively; one with 128 businesses supporting both the Wisconsin and Maryland (Mallows Bay National Marine Sanctuary) sanctuary proposals; and two petitions with 51 total signatures in opposition to the Wisconsin sanctuary.

For the purposes of managing responses to public comments, NOAA grouped similar comments by theme. These themes align with the content of the draft

proposed rule that identified the purposes and needs for a national marine sanctuary, and the draft management plan that identified the proposed non-regulatory programs and sanctuary operations. The themes are identified below, followed by NOAA's response.

Positive Impact on Communities through Tourism, Economic Development, Education, and Research

1. Comment: NOAA received many comments supporting the opportunity for a new sanctuary to promote tourism to coastal communities. Commenters believe that national exposure and increased cooperation among the communities will result in increased numbers of visitors to the region.

Response: NOAA agrees that Wisconsin Shipwreck Coast National Marine Sanctuary (WSCNMS) would create positive impacts to tourism. The partnerships developed between NOAA, the State of Wisconsin, and the communities during the nomination and designation processes will help in achieving this goal. The WSCNMS final management plan includes a strategy and action plan that supports this goal.

2. Comment: NOAA received many comments supporting educational opportunities for a sanctuary to work with local museums and school districts to engage people in Wisconsin's maritime history and the Great Lakes.

Response: National marine sanctuaries across the system have robust education programs. It is a priority for NOAA to educate and engage people in national marine sanctuaries. The final management plan includes strategies and action plans to develop education programs with state and community partners that will provide a variety of educational experiences. The WSCNMS final management plan includes actions that support this goal.

3. Comment: NOAA received many comments highlighting the opportunity for a new sanctuary to promote Wisconsin's maritime heritage.

Response: The sanctuary designation is an opportunity to partner with the State of Wisconsin and communities to tell the many stories of centuries of exploration, travel, and commerce on the Great Lakes. The sanctuary provides a platform to share Wisconsin's stories with local, regional, and national audiences. The WSCNMS final management plan includes actions that support this goal.

4. Comment: NOAA received several comments by researchers expressing interest in partnering with the sanctuary on both archaeological and multidisciplinary projects.

Response: Across the nation, national marine sanctuaries partner with researchers to explore, document, and better understand sanctuary resources. NOAA expects to attract and partner with a variety of researchers in the sanctuary, and the final management plan includes actions that support this goal.

Proposed Sanctuary Boundary

5. Comment: NOAA received many comments from lakeshore landowners expressing concern about the proposal to use the ordinary high water mark (OHWM) as the sanctuary's western/shoreline boundary. The key concerns were: (1) that this boundary choice would negatively impact riparian rights of lakeshore property owners; (2) that the proposal would allow public access to areas below the OHWM where riparian owners currently have exclusive access; (3) that using the OHWM as the sanctuary's western boundary would impact property values because the land would change from state to federal ownership; and (4) that, more generally, using the OHWM was seen as federal overreach and would result in more "red tape" and permitting.

Response: NOAA's proposal to designate a national marine sanctuary recognizes the state's sovereignty over its waters and submerged lands and does not change state ownership of public bottomlands; that is, no federal ownership of Wisconsin public lands is created by the sanctuary designation. Likewise, NOAA's proposal to designate a national marine sanctuary would not change existing riparian rights of the property

owners of Wisconsin, nor would it change state law regarding public access to the area in which shoreline property owners have exclusive access. NOAA proposed the OHWM in the draft designation because it would be consistent with the state's regulatory boundary. Furthermore, after considering public comments about using the OHWM as the western/shoreline sanctuary boundary, NOAA is now proposing adopting the low water datum (LWD) as that boundary. NOAA is doing so because the LWD is more lakeward than the OHWM, and would move the sanctuary boundary "lower down the beach" than the OHWM, thereby removing much of the beach from NOAA jurisdiction and related riparian rights concerns.

Notably, the LWD is set at an elevation of 577.5 feet. The lowest recorded water level on Lake Michigan is 576.02 feet. This effectively places the sanctuary boundary nearly at the all-time low water level mark for Lake Michigan. Since riparian owners have exclusive use of the beach between the OHWM and the water's edge, using the LWD effectively places the sanctuary boundary at the most lakeward extent of this area as practicable. See Section 3.3.2 in the final environmental impact statement for a detailed discussion of the difference between OHWM and LWD.

NOAA realizes that proposing using the LWD rather than the OHWM differs from its original proposal in that it leaves a portion of the shoreline (the area between the OHWM and LWD) outside of sanctuary management; any cultural resources found in this area would not benefit from sanctuary resource protection. NOAA and the State of Wisconsin are not currently aware of shipwrecks in the sanctuary that come up to the OHWM, but depending on lake levels, it is possible that shipwrecks or parts of shipwrecks that are currently buried can become unburied. The Wisconsin Historical Society has determined that several undiscovered shipwrecks may lie in the surf zone. If a cultural resource was discovered between the OHWM and the LWD that resource

would still be under state jurisdiction because all land from the OHWM lakeward are state bottomlands.

6. Comment: Certain industry stakeholders commented that NOAA should use the low water datum as the shoreward boundary of the sanctuary to ensure that the current beneficial practice of beach nourishment using dredged materials is continued.

Response: NOAA agrees and proposes that the LWD should be used as the sanctuary's landward boundary. In addition, NOAA recognizes in the FEIS several activities important to commercial shipping, including beach nourishment, and has not proposed regulations specifically prohibiting use of dredge spoil within the sanctuary. Beach nourishment using dredge spoil is already regulated by the USACE and the State of Wisconsin. NOAA, through its co-management arrangement with the state and relationship with USACE, intends to coordinate a response if a particular renourishment project has the potential to injure known or suspected cultural resources within the sanctuary.

7. Comment: NOAA received comments from industry stakeholders stating that certain areas important to commercial shipping should be excluded from the sanctuary. NOAA also received suggested clarifying language to be included in the FEIS on the topic of dredging, and questions about the impact of the designation on dredging.

Response: To ensure compatible use with commercial shipping and other activities (such as dredging for commercial ship traffic), NOAA in the DEIS excluded the ports, harbors, and marinas of Two Rivers, Manitowoc, Sheboygan, and Port Washington from the sanctuary boundary. In the FEIS, NOAA has also excluded federally authorized areas (channels) from the sanctuary.

NOAA also included in Section 3.4.3.3 of the FEIS additional language, as suggested by the USACE, that specifies the types of activities important to commercial shipping. Specifically, "...routine operations and maintenance activities such as dredging,

dredge material placement (nearshore/beach nourishment), and breakwater maintenance.” Although NOAA would not regulate these activities per se, the sanctuary prohibition on injuring a sanctuary resource would ensure that these activities would not negatively impact underwater cultural resources.

8. Comment: NOAA received several comments noting that the water’s edge should be used as the sanctuary’s western/shoreline boundary.

Response: NOAA did not consider using the water's edge for a boundary, because it would create a dynamic “moving” sanctuary boundary where cultural resources were variously within or beyond the sanctuary boundary, depending on lake levels at a given time. NOAA proposes using the LWD as the sanctuary’s western/shoreline boundary. See Comment 5 for more information.

9. Comment: NOAA received several comments stating that the sanctuary’s western/shoreline boundary should be consistent with state law.

Response: As indicated in the DEIS, NOAA selected the OHWM as the landward boundary as its preferred alternative because it was consistent with the state’s jurisdiction for managing underwater cultural resources. However, as indicated above in response to Comment 5, NOAA proposes to use the LWD as the sanctuary’s landward boundary. Addressing the public’s concern about riparian interests outweighs the benefit of an identical shoreline boundary.

10. Comment: NOAA received several comments asking how the establishment of the sanctuary would impact the findings of the Wisconsin Supreme Court case regarding property owner rights (*Doemel v. Jantz, 1923*).

Response: Sanctuary designation would not change the interpretation or application of the Wisconsin Supreme Court case (*Doemel v. Jantz, 1923*).

11. Comment: NOAA received a few comments urging use of a different boundary, because no shipwrecks come up to the OHWM.

Response: Refer to Comment 5 above. This comment is addressed by NOAA use of the LWD as the sanctuary's western/shoreline boundary.

12. Comment: NOAA received many comments supporting Boundary Alternative B (1,260 square miles, includes additional waters off Kewaunee County), which was larger than NOAA's preferred alternative in the DEIS.

Response: NOAA's preferred boundary alternative includes one shipwreck in Kewaunee County (schooner *America*), but does not include additional waters off Kewaunee County. *America* is listed on the National Register of Historic Places, supporting its inclusion in the sanctuary and the aim of protecting nationally significant resources.

13. Comment: NOAA received one comment stating that Kewaunee County should not be included because a diverse group of stakeholders has not been involved to ensure there is no negative impact to the county. The commenter noted it would be better to see first how the sanctuary impacts the counties in NOAA's preferred boundary alternative.

Response: Overall, public comments from Kewaunee County were in favor of including Kewaunee County. Additionally, NOAA held one of its public comment meetings in Algoma (located in Kewaunee County), and any member of the public could comment via online or mail. Based on an evaluation of public comments and discussions with the State of Wisconsin, NOAA's preferred boundary includes a small portion of Kewaunee County waters which contains the county's only known shipwreck (schooner *America*).

14. Comment: NOAA received one comment stating that no formal comprehensive remote sensing surveys have been conducted within the proposed boundary, which suggests more shipwrecks will be found in Kewaunee County. Consequently, NOAA should consider adding the entire county to the sanctuary boundary.

Response: Based on historical research by the Wisconsin Historical Society, NOAA agrees that there is high potential for new historic sites to be discovered in the entirety of waters off Kewaunee County. Refer also to Comment 12.

NOAA's draft environmental impact statement published on January 9, 2017, includes a clarification that places the shipwreck *Daniel Lyons* in Door County rather than Kewaunee County, leaving only one known shipwreck in Kewaunee County (schooner *America*). This clarification was made by the Wisconsin Historical Society when more accurate GPS coordinates of the shipwreck became available.

15. Comment: NOAA received several comments supporting the addition of the waters of Door County to the sanctuary, now or in the future.

Response: Because the addition of Door County would have been well beyond the geographic scope of the originally nominated area, NOAA chose not to include it in the final boundary.

16. Comment: NOAA received several comments asking for clarification on why a large geographic area was required for the protection of 37 shipwreck sites. In particular, one commenter asked why NOAA did not propose creating a regulatory area around each individual shipwreck.

Response: Research by the Wisconsin Historical Society suggests that as many as 59 shipwrecks are yet to be discovered in the sanctuary. Consequently, NOAA, in consultation with the State of Wisconsin, chose to propose a management area that would include these potential historic sites and facilitate resource management as these new sites are discovered. This would ensure that newly discovered sites are protected and managed under sanctuary regulations at the time of discovery. Thunder Bay National Marine Sanctuary has used this management approach successfully. The sanctuary area also reflects what the State of Wisconsin put forth in its nomination to NOAA.

17. Comment: NOAA received a few comments expressing concern that it would expand the boundaries at a later time without public input. One comment suggested that the boundary could be expanded inland via Lake Michigan watershed tributaries.

Response: If NOAA expanded the sanctuary's boundary in the future, including via Lake Michigan watershed tributaries, that would constitute a change in the sanctuary's terms of designation. Under the National Marine Sanctuaries Act, a change in the terms of designation, including a boundary change, would require the same process that was undertaken for designation, including public notice and comment, public hearings, preparation of an environmental impact statement, and review periods for the governor and Congress. These statutory requirements also include Section 304(b)(1), which provides the governor of Wisconsin authority to certify that a term of a designation, including a proposed boundary expansion, is unacceptable, and the expansion of the boundary will not take effect in state waters. The State of Wisconsin, as a co-manager, would be involved in all discussions about proposed changes. Additionally, NOAA would follow the procedures of the Administrative Procedure Act, requiring that adequate public notice and opportunity for public comment be given for new regulations, including boundary changes.

18. Comment: NOAA received a few comments stating that the agency did not explain why the preferred boundary alternative was selected. One comment asked if cost was a factor in choosing the smaller of the two boundary alternatives.

Response: Chapter 3 of the DEIS and FEIS provide details regarding NOAA's analysis of boundary alternatives. Cost is not a primary factor in NOAA's selection of a boundary alternative.

Commercial Shipping (Non-Boundary) and Fishing

19. Comment: NOAA received several comments that the prohibition on anchoring could be problematic for commercial vessels, and that NOAA should publish both the known and potential locations of shipwreck sites. A related comment noted that if the no-anchoring prohibition extends to undiscovered shipwrecks, shippers might not be able to avoid anchoring on a shipwreck if they do not know where it is, and as such, all locations,

known or approximated, should be published by NOAA in a format accessible and useful to all mariners.

Response: Under the proposed regulations, anchoring within the sanctuary is not prohibited. However, grappling into or anchoring on a shipwreck site (sanctuary resource) is prohibited. This regulation is narrowly worded to protect historic shipwreck sites from anchor damage, while still allowing anchoring inside the sanctuary outside of these discrete areas. The prohibition does not apply to any activity necessary to respond to an emergency threatening life or the environment.

Existing state regulations already prohibit damaging historic shipwrecks sites within the area proposed as a sanctuary. To help vessels avoid inadvertently anchoring on known shipwrecks sites, NOAA will publish maps with coordinates of known and estimated shipwreck locations. It should be noted that historical research on shipwrecks yet to be found (potential/estimated shipwrecks) only approximates a potential shipwreck location. This information is currently available via the UW Sea Grant and Wisconsin Historical Society maintained website www.wisconsinshipwrecks.org. NOAA will work with the state to update and publish this information and share directly with stakeholders such as the Lake Carriers' Association. Additionally, NOAA will prioritize its sonar-based cultural resource surveys in areas where commercial shipping vessels are likely to anchor, such as off Manitowoc. This will help locate cultural resources and provide information useful to both the sanctuary and commercial shippers.

20. Comment: NOAA received a comment requesting that language be added to Section 922.213(b) that not only considers emergency situations but adds: "...or anchoring to prevent unsafe conditions, as determined by the vessel's master and recorded in the vessel's official log book."

Response: The proposed regulations provide for an exemption from the prohibitions in unsafe conditions. The proposed regulations specify, at 15 CFR 922.213 (b): “The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to any activity necessary to respond to an emergency threatening life, property or the environment...” As such, NOAA believes that anchoring to prevent unsafe conditions is covered under current sanctuary regulations.

21. Comment: NOAA received one comment expressing concern that if NOAA broadens the scope of the Wisconsin sanctuary beyond maritime heritage resources, this would negatively impact the ability of shippers to conduct ballast water exchange.

Response: NOAA is committed to ensuring that the creation of the sanctuary would support businesses and organizations that use the lake and surrounding ports. NOAA has not proposed any regulations prohibiting ballast water exchange in the sanctuary. Also, the Coast Guard Authorization Act of 2015 (Public Law 114-120) prevents the Coast Guard and U.S. Environmental Protection Agency from prohibiting ballast water exchange in national marine sanctuaries in the Great Lakes that protect maritime heritage resources. Ballast water operations would continue as currently conducted. In terms of future changes to the sanctuary's scope beyond underwater cultural resources, such a change would require a public process similar to the original designation, thereby affording commercial interests and the public an opportunity to comment on how any change in the scope might affect ballast water exchange.

22. Comment: NOAA received several comments stating that the sanctuary would have a negative impact on shipping and could result in businesses being closed. The comments indicated that the proposed sanctuary, as a cultural asset, should not encumber critical commercial activity related to maritime transportation into Wisconsin ports and through Wisconsin waters. Current legal navigational practices should continue to be allowed.

Response: NOAA’s proposal does not include restrictions to shipping. The proposal excludes the ports, marinas, and harbors of Two Rivers, Manitowoc, Sheboygan, and Port Washington from the sanctuary boundaries to avoid any unintended consequences of sanctuary designation on those operations. In addition, NOAA is proposing to eliminate the federally authorized areas (channels) from the sanctuary.

23. Comment: Several commenters asked if the sanctuary designation gives NOAA the right to regulate commercial and recreational fishing. One comment indicated that federal regulations as a result of sanctuary designation should not affect the ability of commercial fishermen to conduct their fishing operations (particularly in “Zone 3”).

Response: Sanctuary regulations and terms of designation are narrowly defined to protect underwater cultural resources, and under the current terms of designation for WSCNMS, NOAA does not regulate commercial or recreational fishing activities. There are no restrictions on where fishing activities can occur or what gear fishermen can use, as long as the fishing activities do not injure underwater cultural resources. NOAA would need to amend the terms of designation through a public process in order to regulate commercial and recreational fishing. Through its ongoing lakebed mapping surveys, the sanctuary will work with commercial fishermen to identify and share shipwreck locations to help avoid net entanglements.

Definitions, Fines, Enforcement, and Scope of Regulations

24. Comment: NOAA received a comment indicating that the definition of sanctuary resource is too broad and could mean any “debris” (e.g., beach glass, etc.) along the beach and below the ordinary high water mark. This could lead to people being fined for gathering such items along the beach.

Response: NOAA is proposing the LWD as the sanctuary’s landward boundary. Consequently, the area between the OHWM and the LWD (i.e., most of the beach area) is not included in the preferred alternative for the sanctuary. Under the preferred alternative,

cultural resources found along the beach between the OHWM and the LWD are not subject to the sanctuary regulations, but will remain subject to state regulation.

25. Comment: One commenter asked whether NOAA could impose legally enforceable restrictions on lake activities that are currently permissible by state authorities.

Response: No current state laws would be superseded by the proposed national marine sanctuary. The NMSA gives NOAA the authority to manage national marine sanctuaries in a manner that complements existing regulatory authority (16 U.S.C. § 1431 (b)(2)).

Prior to designation, Section 304(6)(1) of the NMSA provides the governor with authority to certify that the designation or terms thereof are unacceptable, and preclude the designation or terms thereof from taking effect in state waters (16 U.S.C. 1434(6)(1)). This feature of the NMSA ensures the harmony of federal and state regulations, as well as provides the states with final approval of the designation and its regulations.

For example, one of the proposed Wisconsin sanctuary regulations, developed in consultation with the State of Wisconsin, is to prohibit anchoring at shipwreck sites. While there is no state prohibition on this activity, it is a violation of state law to damage shipwrecks, including damage from anchoring. To facilitate public access to shipwrecks and to eliminate the need for anchoring at these often fragile sites, NOAA would install moorings at these sites. In this way, the sanctuary strengthens and complements state regulations and facilitates public access through a combination of regulation and proactive resource protection measures.

26. Comment: NOAA received questions on who enforces sanctuary regulations, fines associated with violations of sanctuary regulations (including how the fines are calculated), examples of fines, and what happens to the funds NOAA receives from violations.

Response: NOAA views law enforcement as just one aspect of a sanctuary's comprehensive resource management strategy. Developing a plan to facilitate voluntary

compliance with sanctuary regulations is another element of proactive enforcement included in the proposed sanctuary's draft management plan.

NOAA's Office of Law Enforcement enforces all of NOAA's natural and cultural resource laws, while also working with the U.S. Coast Guard (USCG) to enforce sanctuary regulations in the Great Lakes.

Violations of federal sanctuary regulations are violations of the NMSA, a federal statute. Civil violations are governed under NOAA's civil procedure regulations found at 15 CFR part 904. NOAA's Office of General Counsel assesses civil penalties in accordance with the nature, gravity, and circumstances of a violation. NOAA assesses civil penalties through the issuance of a notice of violation and assessment of civil penalty (NOVA). NOAA General Counsel publishes its penalty policy online to provide notice to the public about how it calculates penalties in any given case and to provide information about a typical penalty for a given type of violation. That information can be found at <https://www.gc.noaa.gov/documents/Penalty-Policy-CLEAN-June242019.pdf>.

Persons charged with civil violations are entitled to an opportunity for an administrative hearing before an administrative law judge (ALJ), and may seek reconsideration of the ALJ's ruling and appeal of the ALJ decision to the NOAA administrator. Persons may seek judicial review of the administrator's decision before a federal district court. Criminal violations are referred to the U.S. Department of Justice for prosecution.

NOAA's Office of General Counsel does not produce an annual report detailing violations and fines levied. However, administrative decisions regarding NOAA violations that are decided by an ALJ and/or decided on appeal to the NOAA administrator are published at <http://www.gc.noaa.gov/enforce-office6.html>.

Under the NMSA (16 U.S.C. 1437(f)), amounts received from civil penalties must be used by NOAA in the following priority order: first, to manage and

improve the sanctuary with respect to which the violation occurred that resulted in the penalty (e.g., used to restore any damage to a vessel caused by violating the anchoring restrictions); second, to pay a reward to a person who furnishes information leading to the civil penalty; or, third, to manage and improve any other national marine sanctuary.

27. Comment: NOAA received a comment asking about the definition of “interfering with” federal investigations and how NOAA would determine if an action constitutes interference.

Response: The NOAA Office of Law Enforcement, along with state officers where authorized under cooperative enforcement agreements, monitor compliance and investigates potential violations of the NMSA and its regulations. The NMSA specifies the authorities of those officers and agents, which includes general authorities to investigate violations of the statute, regulations, or a permit issued pursuant to the NMSA; seize evidence of violations or sanctuary resources taken in violation of the NMSA; and exercise other lawful authorities as sworn federal law enforcement authorities. Sanctuary regulations would prohibit interfering with these investigations.

Violations of the NMSA are primarily handled as civil administrative matters, pursuant to the Administrative Procedure Act. NOAA assesses civil penalties through the issuance of a NOVA. NOAA’s Office of General Counsel assesses civil penalties in accordance with the nature, gravity, and circumstances of a violation. NOAA General Counsel publishes its penalty policy on its website to provide notice to the public as to how it calculates penalties in any given case and to provide information as to a typical penalty for a given type of violation. That information can be found at <https://www.gc.noaa.gov/documents/Penalty-Policy-CLEAN-June242019.pdf>.

28. Comment: Several comments indicated that because NOAA has the authority to regulate a wide variety of resources through the National Marine Sanctuaries Act, there is

concern that in the future NOAA will expand its authority beyond protecting maritime heritage resources.

Response: Refer to comment 21 above.

29. Comment: NOAA received a comment asking what happens if a modern vessel sinks or wrecks in the sanctuary boundaries. Does the owner of the sunken property get to salvage his/her vessel or does this become a sanctuary resource?

Response: Current salvage rules and regulations would continue to apply within WSCNMS. A recently sunken vessel would not be included in the definition of “sanctuary resources” which means “all prehistoric, historic, archaeological, and cultural sites and artifacts within the sanctuary boundary, including all shipwreck sites.” Additionally, “shipwreck site” means “any historic sunken watercraft, its components, cargo, contents, and associated debris field.”

NOAA revised the definition in § 922.211(a)(2) for “shipwreck site” by adding “historic” to clarify its focus on historic shipwrecks (i.e., not all shipwrecks, but those that demonstrate an important role in or relationship with maritime history). This addition specifically responded to concerns about defining recent or contemporary sunken craft or objects as sanctuary resources. For the purposes of the final rule, “historic” takes its definition from “historical resource” located in § 922.3 of the generally applicable sanctuaries regulations.

30. Comment: Several commenters indicated that shipwrecks are not mentioned in the 1972 Marine Protection, Research, and Sanctuaries Act, so NOAA does not have the authority to designate a “shipwreck” sanctuary.

Response: The NMSA expressly provides that “the Secretary may designate any discrete area of the marine environment as a national marine sanctuary...(if) the area is of special national significance due to its conservation, recreational, ecological, historical,

scientific, cultural, archaeological, educational, or esthetic qualities” (16 U.S.C.

1431(a)(2)).

31. Comment: One commenter requested to know what NOAA means by the term “lakebottom associated with underwater cultural resources.”

Response: NOAA did not propose any regulation containing the language cited by the commenter.

32. Comment: A few commenters suggested that NOAA should not take away the public’s right to use metal detectors.

Response: NOAA is not proposing to prohibit metal detecting in the sanctuary. In addition, the area between the OHWM and the LWD (where metal detecting on the beach would likely take place) is not included in the sanctuary boundary.

33. Comment: One commenter raised concerns that NOAA would prohibit exploration for and development of minerals or other natural resources in the proposed sanctuary.

Response: NOAA is not proposing to prohibit natural resources exploration and development in the sanctuary. The regulations are narrowly defined to protect underwater cultural resources. There are no restrictions to natural resources exploration and development as long as these activities do not injure underwater cultural resources or otherwise conflict with regulations specific to WSCNMS.

34. Comment: One commenter asked if the proposed sanctuary could ever be abandoned or decommissioned.

Response: Although the NMSA does not contemplate de-designation of a national marine sanctuary, NOAA engages closely with the state and public to review and revise its sanctuary management plan every five years. The management plan prioritizes resource management goals and describes actions by NOAA and its partners to accomplish them. The plan encompasses all non-regulatory programming—research, resource protection, education, outreach, volunteers, operations—that protects the

cultural resources of the sanctuary while supporting responsible uses and enjoyment. A full management review process may take two to three years and involve several opportunities for public participation through scoping and review and comment on a draft and final plan. The Sanctuary Advisory Council would have a key role in the management plan review process.

35. Comment: A few commenters requested that sanctuary regulations protect natural and biological resources in the Great Lakes ecosystem. Comments suggested regulations to prevent wastewater discharges, discharge of mercury and other toxic materials, risks from aging infrastructure, spread of invasive species, and other risks to wildlife and habitat.

Response: This is beyond the scope of NOAA's stated need for action, which focused on the protection and interpretation of nationally significant underwater cultural resources.

36. Comment: NOAA received comments asking whether the sanctuary would create any additional restrictions or regulatory requirements related to dredging, pier structure maintenance, or extension of pier structures, and if local entities would require NOAA permission to install a new water intake line into Lake Michigan or to continue grooming beaches, including areas below the OHWM. A related comment requested that all necessary maintenance activities regarding Lake Michigan water intakes should be allowed to proceed uninhibited within the sanctuary boundaries.

Response: WSCNMS regulations are narrowly focused on protecting underwater cultural resources. If an activity does not injure these sanctuary resources, it is not restricted or prohibited, and does not require a sanctuary permit. Dredging, pier construction and maintenance, and other construction activities are not expressly prohibited activities under the proposed regulations. However, should these types of activities violate the sanctuary prohibition on "moving, removing, recovering, altering, destroying, possessing, or otherwise injuring" a resource, they would be prohibited.

Activities mentioned in this comment are already regulated by state and other federal entities. Section 106 of the National Historic Preservation Act requires the State of Wisconsin to identify known and potential historic resources that may be impacted by dredging and other activities that affect the lakebed. NOAA, through its co-management arrangement with the state and through the consultation requirement for federal agencies under the NMSA Section 304(d), would coordinate its response, including potential permitting and Section 106 consultation, when historic/cultural resources may be impacted.

As for grooming beaches, NOAA proposes to adopt a boundary of the LWD, which will effectively exclude beaches from the boundaries of the sanctuary.

37. Comment: NOAA received a comment requesting that it refrain from depicting the national marine sanctuary on Federal Aviation Administration's aeronautical charts to avoid confusion and misinterpretation of the area by general aviation pilots.

Response: NOAA is not proposing including overflight restrictions as part of the sanctuary prohibitions, and not proposing that the sanctuary be depicted on aeronautical charts.

38. Comment: NOAA received one comment that the proposed sanctuary overlaps the boundaries of a restricted area (R-6903) used by the Volk Field Combat Readiness Training Center. In the unlikely event that the Wisconsin Air National Guard or users of R-6903 would need to conduct some sort of unconventional and/or kinetic operation in R-6903, close coordination with NOAA and the Federal Aviation Administration would be a necessity.

Response: NOAA agrees and will coordinate with the Air National Guard to ensure compatible use of the sanctuary.

39. Comment: NOAA received a comment asking if the sanctuary would impact municipal lakebed grants.

Response: No. The sanctuary proposal recognizes the state's sovereignty over its waters and submerged lands, including any state lakebed leases.

Public Review Process, State Legislature Involvement, State Role/Authority

40. Comment: NOAA received a comment stating that it did not provide enough time for the public to comment and did not provide the public with enough information about the proposed sanctuary. NOAA also received one comment asking NOAA to hold a public session to help the public understand the sanctuary proposal.

Response: NOAA held an 81-day public comment period, which exceeds the comment period generally recommended under Executive Order 12866 and the 45-day required comment period for a DEIS under NEPA, to allow the public time to review the proposal and provide comments. NOAA also held four public meetings to discuss the proposal and gather public comments. These meetings were held in four cities along the coastal area to ensure public access. NOAA also published a Federal Register notice and a website (<http://sanctuaries.noaa.gov/wisconsin/>) with the proposed sanctuary information for the public, meeting NMSA notification requirements. Additionally, NOAA issued a press release and received coverage in the local, regional, and national press. NOAA staff presented at city council meetings in Two Rivers, Sheboygan, Port Washington, and Mequon, and at county council meetings in Sheboygan and Ozaukee counties. A timeline of the sanctuary designation process can be found in the FAQ section at <https://sanctuaries.noaa.gov/wisconsin/>.

41. Comment: NOAA received several comments asking how the state government is involved in the sanctuary designation and how a sanctuary designation can be done without the state legislature's involvement.

Response: Throughout the sanctuary designation process, NOAA worked closely with the Wisconsin Historical Society, Wisconsin Department of Natural Resources, Wisconsin Coastal Management Program, Wisconsin Department of Transportation,

Wisconsin Department of Tourism, Wisconsin Public Service Commission, and the Wisconsin Public Lands Commission. Should NOAA and the Wisconsin governor ultimately concur on the designation, both NOAA and the state would co-manage WSCNMS.

Furthermore, in national marine sanctuaries that include state waters, the NMSA provides the governor of the state with the opportunity to certify to the Secretary of Commerce that the designation or any of its terms is unacceptable (i.e., objects), in which case the designation or the unacceptable term shall not take effect.

42. Comment: Many commenters suggested that a federal government program or involvement in Wisconsin is an intrusion into sovereign state waters. Designation of the sanctuary will result in the loss of state control of Lake Michigan, and a takeover of both management and regulation of the Wisconsin waters by the federal government.

Response: Wisconsin Shipwreck Coast National Marine Sanctuary will not change the ownership or control of state lands or waters; that is, no loss of state sovereignty will occur as a result of designation of a national marine sanctuary. The state's jurisdiction and rights will be maintained and NOAA will not intrude upon or change existing state or local authorities. All existing state laws, regulations, and authorities will remain in effect. The state will maintain ownership of the shipwrecks within the sanctuary.

43. Comment: NOAA received several comments stating that while the proposal highlights co-management with the State of Wisconsin, the governor only gains power through Section 922.214, Emergency Regulations. NOAA should consider allowing the governor to hold form of a veto, or check and balanced action, or at least part of the leasing or licenses action.

Response: The co-management of the sanctuary provides a number of opportunities for the State of Wisconsin, either through the governor or by state agencies, to participate in the management of the sanctuary. For sanctuaries in state waters, pursuant to the National

Marine Sanctuaries Act 304(b)(1), whenever a sanctuary is proposed to be designated, or the terms of designation changed, the governor has the opportunity to certify to the Secretary of Commerce that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect.

The memorandum of agreement between NOAA and the State of Wisconsin will describe the details of co-management. The governor and state agencies will have considerable latitude in shaping the future of the state's co-management framework with NOAA, including the type of regulations that would apply to WSCNMS.

44. Comment: NOAA received a comment asking if NOAA does not ultimately establish a sanctuary, where the factors affecting this decision will be published. Will these factors be made a part of public record for future awareness and decision-making?

Response: Should NOAA decide not to designate a sanctuary, it would publish a notice in the Federal Register to withdraw the proposed rule. The Federal Register notice would describe the reasons for NOAA's decision.

45. Comment: NOAA received a comment asking if it would ever have any accountability to existing state government lake regulations or laws, specifically those of the Wisconsin Department of Natural Resources.

Response: The NMSA gives NOAA the authority to manage national marine sanctuaries in a manner that complements existing regulatory authority (16 U.S.C. § 1431(b)(2)). In a co-management framework with a respective state government, NOAA and the state would work collaboratively on the proposed sanctuary. A memorandum of agreement between NOAA and the state would ensure that state and federal authorities are harmonized and coordinated. In addition, during the designation process and any future changes to the terms of designation, the governor has the authority to certify as unacceptable all or parts of the designation, which prevents the unacceptable terms from taking effect in state waters (16 U.S.C. § 1434(b)(1)).

Diver Access, Recreational Anchoring, Mooring Buoys, and Resource Management

46. Comment: NOAA received one comment about the importance of NOAA defining what it means to not be able to anchor in areas “associated with a shipwreck.”

Response: The definition of “shipwreck site” in the WSCNMS regulations at 15 CFR 922.211(a)(2) means “any historic sunken watercraft, its components, cargo, contents, and associated debris field.” Debris fields associated with shipwrecks sites can have significant archaeological value, including the existence of fragile ship structure and artifacts. By “associated debris field,” NOAA means all cultural material adjacent to a shipwreck site, but not necessarily contiguous with it. Each shipwreck site is unique, and the resultant debris field forms through a variety of site-specific factors including depth, circumstances of sinking, and other factors. As more data are gathered (e.g., through sonar surveys) on individual shipwrecks sites and associated debris fields, NOAA will publish information that helps visitors anchor outside of areas that could be damaged.

47. Comment: NOAA received several comments indicating that divers are a small percentage of the population, and questioned why a sanctuary should be established to serve such a small group.

Response: As demonstrated in many sanctuaries, much of the public often benefits from the sanctuary through diving, kayaking, and snorkeling, as well as through museums, interpretive displays, websites, formal and informal educational programs, enhanced tourism opportunities, multidisciplinary research opportunities, and other unique sanctuary-related partnerships and activities. The sanctuary’s final management plan outlines priorities in these areas for the first five years of the sanctuary's operation. These priorities substantially expand the public benefit of the sanctuary beyond that of divers.

48. Comment: NOAA received one comment that if NOAA does not install mooring buoys on all shipwrecks, the prohibition on anchoring will be detrimental to public access.

Response: NOAA promotes public access to shipwrecks, and believes this is a fundamental way to increase their cultural and recreational value. Permanent moorings are an important resource protection measure that eliminates the need to grapple or anchor into the often fragile sites. This priority is described in the final management plan as Strategy RP-3.

NOAA recognizes that it will take time to install moorings at all shipwrecks sites, and that some sites (particularly deep sites) create challenges for ideal mooring systems. Consequently, NOAA is proposing a two-year delay in the implementation of the no-anchoring prohibition. During this period, the sanctuary will work with the state, Sanctuary Advisory Council, a diver working group, and other relevant stakeholders to develop a moorings implementation plan and best practices document. During the two-year delay, NOAA will also consider guidelines for allowing divers to tie moorings directly on certain shipwrecks sites via a no-fee sanctuary permit.

49. Comment: NOAA received one comment that anchoring outside the shipwreck with the “shot line” method is not practical and it increases the dangers of diving.

Response: NOAA recognizes that anchoring outside the wreck and using a shot line (a weighted line with surface buoy dropped onto a shipwreck site to mark its location and provide reference for divers) may be a new practice for some users and not possible for all users. NOAA recognizes, too, that it will take time to install sanctuary-maintained moorings (see previous comment). Consequently, NOAA is considering allowing users to apply for a sanctuary permit to tie a suitable long-term mooring line directly into some shipwreck sites, which is a common and more familiar practice. Among other resource protection benefits, a no-fee permit would allow the sanctuary to work directly with users to determine which shipwrecks are most popular, and thereby prioritize future sanctuary-maintained permanent moorings located adjacent to the shipwreck.

50. Comment: NOAA received a few comments about who would be in charge of placing mooring buoys, how early in the season buoys would be placed, if there would be online resources outlining the status of shipwrecks as marked or unmarked, and how members of a local community could be involved in buoy management.

Response: As indicated in the final management plan at Strategy RP-3 (Activity 3.1), NOAA will develop a five-year plan to develop and begin implementation of a plan for design, implementation, and maintenance of mooring buoy system, including priorities for which shipwrecks to buoy. Activity 3.1 includes an item to “work with local dive charters to monitor moorings throughout the dive season.” Overall, while NOAA will have the lead responsibility for the mooring buoys in the sanctuary, it will work in close cooperation with the state and with local partners. With regard to online status, in time WSCNMS will have a GIS-based map similar to that of Thunder Bay National Marine Sanctuary (https://thunderbay.noaa.gov/shipwrecks/mooring_program.html). The online tool shows the seasonal status of mooring buoys at shipwreck sites. As indicated in Comment 47, the sanctuary will convene a working group to explore how best to implement the mooring buoy plan, which includes the potential use of volunteers.

51. Comment: NOAA received several comments about the importance of NOAA providing additional protection to shipwrecks.

Response: Protecting shipwrecks and other underwater cultural resources will be a priority of Wisconsin Shipwreck Coast National Marine Sanctuary. As described in the final management plan, there are several ways to accomplish the resource protection goal, including enhanced regulations, installing mooring buoys, engaging with divers about best practices for diving, providing general education regarding the significance of these resources, and enforcing federal and state regulations to address protecting shipwrecks.

52. Comment: NOAA received a few comments that people should not be restricted from searching for shipwrecks.

Response: NOAA is not restricting the ability of the public to search for shipwrecks, or proposing requiring a sanctuary permit for this activity.

53. Comment: NOAA received several comments stating that there should not be any restrictions on access to shipwrecks.

Response: NOAA is not proposing regulation of, or restrictions on, recreational diving activities within the sanctuary, as long as the activities do not injure sanctuary resources or result in anchoring on or grappling onto a shipwreck site. NOAA is not proposing requiring a permit to dive in the sanctuary.

54. Comment: NOAA received a few comments asking how locations of newly discovered shipwrecks would be made public.

Response: While it is the intention of the sanctuary to release coordinates of known shipwrecks, NOAA may decide to withhold the release of coordinates of a newly discovered, historically significant shipwreck for a period of time so that NOAA and the state can document the site and its artifacts. Under this scenario, NOAA will use agency and partner resources (and possibly volunteers) to document the site. A newly discovered site may be particularly fragile or possess a large number of artifacts, and specific management or monitoring measures would need to be put into place before site coordinates are published on the sanctuary's website.

55. Comment: NOAA received several comments asking how the sanctuary would actually protect shipwrecks, including whether there is sufficient enforcement to protect shipwrecks.

Response: The goal of WSCNMS is to comprehensively manage the underwater cultural resources of Lake Michigan. Enforcement is one aspect of the resource protection strategy as indicated in Strategy RP-5 of the final management plan, which states "Develop a plan to increase awareness of sanctuary regulations and state law and to enhance law enforcement efforts." Since NOAA does not currently have enforcement

officers in the Great Lakes, NOAA works with the U.S. Coast Guard to enforce sanctuary regulations. NOAA would also work with state partners to explore options for assistance in the enforcement of sanctuary regulations. Developing a plan to facilitate voluntary compliance with sanctuary regulations is another element of proactive enforcement included in the sanctuary's management plan.

56. Comment: NOAA received one comment asking if future maritime archaeological research in the sanctuary would be restricted.

Response: NOAA encourages research and documentation of underwater cultural resources, and in many cases can facilitate and act as a partner in these activities. NOAA is not restricting archaeological research, including Phase 1 (searching for shipwrecks) and Phase 2 (documenting shipwrecks) archaeology. However, given the sanctuary's proposed prohibition on injuring/damaging shipwreck sites, NOAA encourages researchers to obtain a Phase I archaeology permit from the State of Wisconsin, and consult with the sanctuary superintendent ahead of conducting research. For archaeological projects that will alter a site, or seek to remove artifacts, both a state and sanctuary permit would be required. Through a programmatic agreement, NOAA and the state will seek to simplify this process.

57. Comment: NOAA received several comments stating that the threat to shipwrecks will increase with increased tourism. The commenters asked who would monitor the shipwrecks, how the shipwrecks would be protected, and who would pay for these costs.

Response: NOAA believes that increasing public access and tourism to shipwrecks sites is an important way to foster awareness, appreciation, and ultimately protection of these special places. While NOAA encourages public access to shipwrecks, we are aware that increased use can result in additional pressure to these resources. The final management plan takes a broad approach to ensuring that the shipwrecks are protected to the greatest

extent possible through the resource protection, education, and research. Monitoring is captured Strategy RP-2 of the final management plan.

Other elements of the final management plan that address increased use of sanctuary resources are the installation of additional mooring buoys, and public outreach programs on the value and fragility of shipwrecks. Appendix 1 of the final management plan addresses potential sanctuary operating budgets and partner contributions.

58. Comment: NOAA received many comments stating that the State of Wisconsin already protects shipwrecks, and that this effort should not be duplicated by the federal government.

Response: NOAA and the state will be co-managers of the sanctuary and work together to ensure that their efforts are complementary and not duplicative. Importantly, this co-management arrangement affords opportunities that neither NOAA nor the state could realize on its own. As detailed in the FEIS (see Chapter 2), designation as a national marine sanctuary would provide increased resources to carry out the research, education, and law enforcement activities necessary to more comprehensively manage, protect, and increase the public benefit of these resources. For example, the sanctuary would bring national attention, interest, resources, and partners to the area. The sanctuary nomination put forth in 2014 by the State of Wisconsin on behalf of several lakeshore communities states the reasons the state wanted to partner with NOAA to protect the shipwrecks. The sanctuary nomination can be found at

https://nominate.noaa.gov/media/documents/nomination_lake_michigan_wisconsin.pdf.

An example of the types of research programs and activities that a national marine sanctuary could provide in Wisconsin can be found in Thunder Bay National Marine Sanctuary's 2013 condition report

(<https://sanctuaries.noaa.gov/science/condition/tbnms/>).

59. Comment: NOAA received a few comments suggesting that shipwrecks are not threatened to the degree that necessitates NOAA involvement, and that shipwrecks are already preserved by the fresh water of the Great Lakes.

Response: While it is true that the cold, fresh water of the Great Lakes preserves shipwrecks better than a saltwater environment, this alone does not negate negative impacts to Wisconsin's shipwrecks. These threats, as described in the FEIS (see Chapter 2), include both natural processes and human activities. Human threats to underwater cultural resources include looting and altering shipwreck sites and damaging shipwreck sites by anchoring. The proposed final rule for WSCNMS includes a prohibition on the use of grappling hooks and anchors at shipwreck sites. This prohibition will more directly address damage to shipwrecks than the state is able to address. Additionally, as steward of these nationally significant cultural resources, NOAA believes that creating public awareness and engagement in the sanctuary through research, education, and community engagement is an essential means of resource protection and increasing public benefit.

60. Comment: NOAA received a comment asking whether NOAA could charge new fees (for a permit or otherwise) on citizens for lake activities that are currently free.

Response: NOAA is not proposing to charge any fees on any activity within the proposed Wisconsin sanctuary.

Funding

61. Comment: NOAA received several comments related to the cost of designating a national marine sanctuary. The comments included a concern about higher taxes as a result of the designation; a concern that the federal government does not have sufficient funds to manage the area; a statement that federal funds would be better used to protect natural resources; a concern that NOAA has not provided a cost or budget analysis; a comment about financial accountability; and two questions asking about the sources of funding for the sanctuary.

Response: The National Marine Sanctuaries Act (16 U.S.C Chapter 32) directs NOAA to protect these nationally significant ecological and historical resources. As a federal agency, appropriations for NOAA programs are enacted by Congress, and signed into law by the president. An annual allocation for the management of all the national marine sanctuaries is included in each annual appropriation. NOAA makes funding decisions for each sanctuary based on the funding level, program priorities, and site needs. As a result, funding for a given site can vary with fluctuations in annual appropriations, which may impact the level of activities completed in the management plan each year. As part of the final management plan for this sanctuary, NOAA included a summary of the sanctuary activities that are possible at several funding levels. NOAA also anticipates that a varying level of in-kind contributions from co-managers and partners, as well as grants and other outside funding, will contribute to the overall sanctuary goals. Additionally, ONMS has received roughly \$2 million in donations and in-kind contributions and 120,000 volunteer hours per year at its sites nationwide.

62. Comment: One commenter asked what would happen if Congress chose to not appropriate sufficient funds for the proposed sanctuary's operations in any given fiscal year?

Response: The NMSA (16 U.S.C. § 1431 et seq.) directs NOAA to protect these nationally significant areas and their ecological and historical resources. A program allocation in NOAA's annual appropriations typically provides funding for the management of all of the national marine sanctuaries. While NOAA makes funding decisions for each sanctuary based on the ONMS funding level, program priorities, and site needs, it executes the ONMS budget to ensure basic operating costs at all national marine sanctuaries are met.

Economic Impact

63. Comment: NOAA received several comments that the economic impact of the sanctuary would be limited because not many people dive, and local museums already do the outreach that NOAA is proposing. Similarly, NOAA received several comments stating that the socioeconomic impact study on Thunder Bay National Marine Sanctuary by the University of Michigan does not demonstrate positive impacts. The commenters asked why NOAA expects positive economic impacts in Wisconsin.

Response: As demonstrated at other national marine sanctuaries, NOAA believes that broader public outreach and education are also important resource protection activities, because they increase awareness, appreciation, and value of our nation's maritime heritage and nationally significant historic sites. That sanctuary activities aimed at the non-diving public could benefit the region was recognized in the 2014 sanctuary nomination, which indicated that a chief goal for the state and communities was to leverage the sanctuary to "Build and expand on state and local tourism initiatives and enhance opportunities for job creation." Letters of support from many area museums accompanied the sanctuary nomination

(https://nominate.noaa.gov/media/documents/nomination_lake_michigan_wisconsin.pdf).

Consequently, education and outreach activities constitute a significant part of the sanctuary's final management plan.

Initiatives at NOAA's Thunder Bay National Marine Sanctuary in Alpena, Michigan, provide an example of a wide range of education, outreach, interpretation, tourism, and partnerships aimed at benefitting the general public. NOAA disagrees with the comment on the 2013 economic study for Thunder Bay National Marine Sanctuary.

Draft Management Plan, Sanctuary Name, Operations

64. Comment: NOAA received one comment that NOAA should consider modifying the goal statement in the education and outreach plan to include education and dissemination

of the maritime cultural landscape perspective as well as the shipwrecks to be protected by the proposed sanctuary, and that all of the strategies should address the maritime cultural landscape.

Response: NOAA believes the maritime cultural landscape is an essential component of interpreting, understanding, and appreciating historic shipwrecks. The final management plan contains a strategy and two activities aimed at characterizing the sanctuary's maritime cultural landscape. NOAA added a reference to maritime cultural landscapes in the "Objectives" section of the education management plan. As described by the National Park Service, a cultural landscape is a geographic area including cultural and natural resources, coastal environments, human communities, and related scenery that is associated with historic events, activities, or persons, or exhibits other cultural or aesthetic value.

65. Comment: NOAA received one comment stating that NOAA should fund the sanctuary at the \$700,000 level (as indicated in a summary of potential funding scenarios in Appendix 1 of the final management plan), as this would include enough resources to hire an education coordinator and implement an education program.

Response: NOAA agrees it is important to implement elements of the Education and Outreach Action Plan. NOAA makes funding decisions based on annual appropriations to the program, which drive decisions for each sanctuary based on the funding level, program priorities, and site needs. As a result, site level funding can vary from year to year, which may impact the level of activities completed in the management plan each year.

66. Comment: NOAA received one comment stating that NOAA needs to have a presence in each community working on this designation process. Rather than having a new visitor center created post-designation, NOAA should capitalize on the existing

informal learning institutions and allied organizations already working to educate and inspire public appreciation of – and involvement in – the Great Lakes.

Response: One of the strengths of the WSCNMS designation is the many opportunities to partner with, leverage, and complement assets in each of the sanctuary communities. Per final management plan Strategy SO-1, the sanctuary will “Develop a ‘NOAA presence’ within sanctuary communities that supports the sanctuary’s mission and infrastructure needs, and that recognizes, leverages, and complements individual assets in sanctuary communities.” NOAA will develop the strategic plan supporting Strategy SO-1 after designation in cooperation with local communities, other appropriate partners, and the Sanctuary Advisory Council to ensure that NOAA is capitalizing on existing efforts and institutions in the region.

67. Comment: NOAA received one comment stating that the proposal should provide more specificity about educational programming and technology for K-12.

Response: NOAA’s final management plan is the initial management plan for this site, and as such describes general objectives for education and outreach activities. As sanctuary staff are hired and as NOAA engages with its education partners after designation, more specificity will emerge for the sanctuary’s education and outreach activities.

68. Comment: NOAA received one comment suggesting that the sanctuary should be named “Wisconsin Marine Protection Area” as the name is shorter and easier to say, it would result in less clutter on a map, and people could identify the name easier.

Response: Community and partner discussions during a sanctuary branding workshop sponsored by the Wisconsin Department of Tourism produced the name Wisconsin Shipwreck Coast National Marine Sanctuary, which NOAA proposes as the sanctuary’s official name. The new name reflects the sanctuary’s cultural heritage focus, is responsive to community input, and is conducive to marketing and branding efforts.

69. Comment: NOAA received one comment stating that Sheboygan would be the ideal location for a sanctuary office because it is centrally located, has the most developed riverfront, has Blue Harbor Resort and charter fishing fleets, and is the largest of the cities in the proposed sanctuary. NOAA also received other comments identifying specific communities in a similar way, such as Port Washington.

Response: One of the strengths of the WSCNMS designation is the many opportunities to partner with, leverage, and complement assets in each of the sanctuary communities. Per final management plan Strategy SO-1, the sanctuary will “Develop a ‘NOAA presence’ within sanctuary communities that supports the sanctuary’s mission and infrastructure needs, and that recognizes, leverages, and complements individual assets in sanctuary communities.” NOAA has not made any decisions about sanctuary office locations.

70. Comment: NOAA received one comment from the U.S. Environmental Protection Agency stating that NOAA should address green building practices and climate change and greenhouse gases in the FEIS. EPA recommended that the FEIS explain the geographic and policy definitions of the term “coastline” as it applies to this proposed designation.

Response: The FEIS does not include a plan for facility construction or operation as part of the proposed action. However, should NOAA propose any of these activities in the future, it will consider environmentally responsible practices suggested in EPA’s recommendations. In using the term “coastline,” NOAA does not define it as a legal term; instead it is used generally to refer to the land-water interface. The shore side boundary is defined as the LWD.

V. Classification

1. National Marine Sanctuaries Act

NOAA has determined that the designation of the Wisconsin Shipwreck Coast National Marine Sanctuary will not have a negative impact on the National Marine Sanctuary System and that sufficient resources exist to effectively implement sanctuary management plans. The final finding for NMSA section 304(f) is published on the ONMS web site for Wisconsin Shipwreck Coast designation at <http://sanctuaries.noaa.gov/wisconsin/>.

2. National Environmental Policy Act

NOAA has prepared a final environmental impact statement to evaluate the environmental effects of the rulemaking and alternatives as required by NEPA (42 U.S.C. 4321 et seq.) and the NMSA. The Notice of Availability is available at 85 FR 34625. NOAA has also prepared a Record of Decision (ROD). Copies of the ROD and the FEIS are available at the address and website listed in the ADDRESSES section of this rule.

3. 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 activities that have reasonably foreseeable effects on any coastal use or resource. Such activities must be consistent with approved state coastal policies to the maximum extent possible. Because WSCNMS encompasses a portion of the Wisconsin state waters, NOAA submitted a copy of the proposed rule and supporting documents to the State of Wisconsin Coastal Zone Management Program for evaluation of Federal consistency under the CZMA. NOAA has presumed the state's concurrence pursuant to 15 CFR 930.41(a), whereby a federal agency may presume concurrence if a response is not received within 60 days.

4. Executive Order 12866: Regulatory Impact

This rule has been determined to be significant for purposes of Executive Order 12866.

5. Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. These sanctuary regulations are intended only to supplement and complement existing state and local laws under the NMSA.

6. National Historic Preservation Act

The National Historic Preservation Act (NHPA; 16 U.S.C. 470 et seq.) is intended to preserve historical and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and State Historic Preservation Offices. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP (36 CFR part 800 et seq.). In fulfilling its responsibilities under the NHPA, NOAA identified interested parties in addition to the State Historic Preservation Officer (SHPO), and has completed the identification of historic properties and the assessment of the effects of the undertaking on such properties in scheduled consultations with those identified parties and the SHPO. NOAA received a response from the SHPO, dated May 5, 2017, agreeing that the proposed undertaking will have no adverse effect to one or more historic properties located within the project Area of Potential Effect.

7. Regulatory Flexibility Act

This analysis seeks to fulfill the requirements of Executive Order 12866 and the Regulatory Flexibility Act. Small businesses that could potentially be impacted

from the proposed prohibition on damaging a sanctuary resource include commercial fishing, recreational fishing and diving, scenic and sightseeing industries. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) at the proposed rule stage that this rule would not have a significant impact on a substantial number of small entities. Although NOAA has made a few changes to the regulations from the proposed rule to the final rule, none of the changes alter the initial determination that this rule will not have an impact on small businesses included in the original analysis. NOAA also did not receive any comments on the certification or conclusions. Therefore, the determination that this rule will not have a significant economic impact on a substantial number of small entities remains unchanged. As a result, a final regulatory flexibility analysis is not required and has not been prepared.

8. Paperwork Reduction Act

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

Nationwide, NOAA issues approximately 500 national marine sanctuary permits each year. WSCNMS is expected to issue an additional 4 to 5 permit requests per

year. The public reporting burden for national marine sanctuaries permits is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments on this determination were solicited in the proposed rule but no public comments were received. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

9. Sunken Military Craft Act

The Sunken Military Craft Act of 2004 (SMCA; Pub. L. 108-375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note) preserves and protects from unauthorized disturbance all sunken military craft that are owned by the United States government, as well as foreign sunken military craft that lie within United States waters, as defined in the SMCA, and other vessels owned or operated by a government on military non-commercial service when it sank. Thousands of U.S. sunken military craft lie in waters around the world, many accessible to looters, treasure hunters, and others who may cause damage to them. These craft, and their associated contents, represent a collection of non-renewable and significant historical resources that often serve as war graves, carry unexploded ordnance, and contain oil and other hazardous materials. By protecting sunken military craft, the SMCA helps reduce the potential for irreversible harm to these nationally important historical and cultural resources. Regulations regarding permits for activities directed at sunken military craft under the jurisdiction of the Department of Navy can be found at 32 CFR Part 767.

List of Subjects in 15 CFR Part 922

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

Nicole LeBoeuf,

Acting Assistant Administrator

for Ocean Services

and Coastal Zone Management.

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

PART 922–NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

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

2. Revise § 922.1 to read as follows:

§ 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D, and E of this part apply to all National Marine Sanctuaries and related site-specific regulations set forth in this part.

Subparts B and C of this part apply to the sanctuary nomination process and to the designation of future Sanctuaries.

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

§ 922.3 Definitions.

* * * * *

Sanctuary resource means any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource means an underwater cultural resource as defined at § 922.191. For Mallows Bay-Potomac River National Marine Sanctuary, Sanctuary resource is defined at § 922.201(a). For Wisconsin Shipwreck Coast National Marine Sanctuary, sanctuary resource is defined at § 922.211.

* * * * *

4. Revise § 922.44 to read as follows:

§ 922.44 Emergency regulations.

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

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

(1) Cordell Bank National Marine Sanctuary, § 922.112(e).

(2) Florida Keys National Marine Sanctuary, § 922.165.

(3) Hawaiian Islands Humpback Whale National Marine Sanctuary, § 922.185.

(4) Thunder Bay National Marine Sanctuary, § 922.196.

(5) Mallows Bay-Potomac River National Marine Sanctuary, § 922.204.

(6) Wisconsin Shipwreck Coast National Marine Sanctuary, § 922.214.

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

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

* * * * *

(b) The prohibitions listed in subparts F through P and R through T of this part do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation, or in the case of Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary

designation, or in the case of Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the Director deems necessary to achieve the purposes for which the Sanctuary was designated.

6. Revise § 922.48 to read as follows:

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

(a) A person may conduct an activity prohibited by subparts F through O and S and T of this part, if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O and S and T, as appropriate.

For Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by subpart P of this part if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.166. For Thunder Bay National Marine Sanctuary and Underwater Preserve, a person may conduct an activity prohibited by subpart R of this part in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.195.

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

- (1) A detailed description of the proposed activity including a timetable for completion;

- (2) The equipment, personnel and methodology to be employed;
 - (3) The qualifications and experience of all personnel;
 - (4) The potential effects of the activity, if any, on Sanctuary resources and qualities;
- and
- (5) Copies of all other required licenses, permits, approvals or other authorizations.
- (c) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.
- (d) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct a prohibited activity, in accordance with the criteria found in subparts F through O of this part, or subparts R through T of this part, as appropriate. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.
- (e) A permit granted pursuant to this section is nontransferable.
- (f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or subparts F through O of this part, or subparts R through T of this part or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

7. Revise § 922.49 to read as follows:

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

(a) A person may conduct an activity prohibited by subparts L through P of this part, or subparts R through T of this part, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of Florida Keys National Marine Sanctuary after the effective date of the regulations in subpart P, provided that:

- (1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or the effective date of Sanctuary designation, or in the case of Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, whichever is later;
- (2) The applicant complies with the other provisions of this section;
- (3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and
- (4) The applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

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

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

(d) The Director may request additional information from the applicant as he or she deems reasonably necessary to determine whether to object to issuance of an authorization described in paragraph (a) of this section, or what terms and conditions are reasonably necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the application.

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

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

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

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

8. Revise § 922.50 to read as follows:

§ 922.50 Appeals of administrative action.

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit issued pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit,

license or right of subsistence use or access under § 922.47; or, for those Sanctuaries described in subparts L through P and R through T of this part, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

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

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

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

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

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director. Appeals should be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910.

(c)(1) The Assistant Administrator may request the appellant to submit such information as the Assistant Administrator deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request. The Assistant Administrator may seek

the views of any other persons. For Monitor National Marine Sanctuary, if the appellant has requested a hearing, the Assistant Administrator shall grant an informal hearing. For all other National Marine Sanctuaries, the Assistant Administrator may determine whether to hold an informal hearing on the appeal. If the Assistant Administrator determines that an informal hearing should be held, the Assistant Administrator may designate an officer before whom the hearing shall be held.

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

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

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

9. Add subpart T to read as follows:

**SUBPART T - WISCONSIN SHIPWRECK COAST NATIONAL MARINE
SANCTUARY**

Sec.

922.210 Boundary.

922.211 Definitions.

922.212 Co-management.

922.213 Prohibited or otherwise regulated activities.

922.214 Emergency regulations.

922.215 Permit procedures and review criteria.

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

Appendix A to Subpart T of Part 922—Wisconsin Shipwreck Coast National Marine Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas

Appendix B to Subpart T of Part 922—Wisconsin Shipwreck Coast Marine Sanctuary Terms of Designation

§ 922.210 Boundary.

Wisconsin Shipwreck Coast National Marine Sanctuary consists of an area of approximately 726 square nautical miles (962 square miles) of Lake Michigan waters within the State of Wisconsin and the submerged lands thereunder, over, around, and under the submerged underwater cultural resources in Lake Michigan. The precise boundary coordinates are listed in Appendix A to this subpart. The eastern boundary of the sanctuary begins approximately 9.3 miles east of the Wisconsin shoreline (as defined by the low water datum) in Lake Michigan at Point 1 north of the border between Manitowoc and Kewaunee County. From Point 1 the boundary continues SSW in a straight line to Point 2 and then SW to Point 3 which is located in Lake Michigan approximately 16.3 miles east of a point on the shoreline roughly equidistant between the borders of northern Mequon, WI and southern Port Washington, WI. From Point 3 the boundary continues west towards Point 4 until it intersects the shoreline at the low water datum approximately 2.5 miles north of the northern border of Mequon, WI. From this

intersection the boundary continues north following the shoreline at the low water datum, cutting across the mouths of creeks and streams until it intersects the line segment formed between Point 5 and Point 6 at the end of the southern breakwater at the mouth of Sauk Creek at Port Washington. From this intersection the boundary continues to Point 6 through Point 9 in numerical order. From Point 9 the boundary continues towards Point 10 until it intersects the shoreline at the low water datum at the end of the northern breakwater at the mouth of Sauk Creek. From this intersection the boundary continues north following the shoreline at the low water datum cutting across the mouths of creeks and streams until it intersects the line segment formed between Point 11 and Point 12 at the end of the southern breakwater at the mouth of the Sheboygan River. From this intersection the boundary continues to Point 12 through Point 17 in numerical order. From Point 17 the boundary continues towards Point 18 until it intersects the shoreline at the low water datum at the end of the northern breakwater at the mouth of the Sheboygan River. From this intersection the boundary continues north along the shoreline at the low water datum cutting across the mouths of creeks and streams until it intersects the line segment formed between Point 19 and Point 20 at the end of the southern breakwater at the mouth of Manitowoc Harbor. From this intersection the boundary continues to Point 20 through Point 23 in numerical order. From Point 23 the boundary continues towards Point 24 until it intersects the shoreline at the low water datum at the end of the northern breakwater at the mouth of the Sheboygan River. From this intersection the boundary continues north following the shoreline at the low water datum cutting across the mouths of creeks and streams until it intersects the line segment formed between Point 25 and Point 26 at the end of the western breakwater at the mouth of East Twin River. From this intersection the boundary continues to Point 27 through Point 31 in numerical order. From Point 31 the boundary continues towards Point 32 until it intersects the shoreline at the low water datum at the end of the eastern breakwater at the mouth of East Twin

River. From this intersection the boundary continues NE following the shoreline at the low water datum cutting across the mouths of creeks and streams around Rawley Point and then continues NNW past the county border between Manitowoc and Kewaunee County until it intersects the line segment formed between Point 33 and Point 34 along the shoreline at the low water datum just south of the mouth of the unnamed stream near the intersection of Sandy Bar Road and Lakeview Road near Carlton, WI. Finally, from this intersection at the shoreline at the low water datum the boundary moves east across Lake Michigan to Point 34.

§ 922.211 Definitions.

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

(1) *Sanctuary resource* means all prehistoric, historic, archaeological, and cultural sites and artifacts within the sanctuary boundary, including all shipwreck sites.

(2) *Shipwreck site* means any historic sunken watercraft, its components, cargo, contents, and associated debris field.

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

§ 922.212 Co-management.

NOAA has primary responsibility for the management of the Sanctuary pursuant to the Act. However, as the Sanctuary is in state waters, NOAA will co-manage the Sanctuary in collaboration with the State of Wisconsin. The Director may enter into a Memorandum of Agreement regarding this collaboration that may address, but not be limited to, such aspects as areas of mutual concern, including Sanctuary resource protection, programs, permitting, activities, development, and threats to Sanctuary resources.

§ 922.213 Prohibited or otherwise regulated activities.

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

(1) Moving, removing, recovering, altering, destroying, possessing, or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a sanctuary resource.

(2) Grappling into or anchoring on shipwreck sites.

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

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

§ 922.214 Emergency regulations.

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

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

§ 922.215 Permit procedures and review criteria.

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

(1) The provisions of subpart E of this part; and

(2) The relevant site specific regulations appearing in this subpart.

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

(1) Research - activities that constitute scientific research on or scientific monitoring of national marine sanctuary resources or qualities;

(2) Education - activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resources or qualities; or

(3) Management - activities that assist in managing a national marine sanctuary.

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

(1) The proposed activity will be conducted in a manner compatible with the primary objective of protection of national marine sanctuary resources and qualities, taking into account the following factors:

(i) The extent to which the conduct of the activity may diminish or enhance national marine sanctuary resources and qualities; and

(ii) Any indirect, secondary or cumulative effects of the activity.

(2) It is necessary to conduct the proposed activity within the national marine sanctuary to achieve its stated purpose.

(3) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's stated purpose and eliminate, minimize, or mitigate adverse effects on sanctuary resources and qualities as much as possible.

(4) The duration of the proposed activity and its effects are no longer than necessary to achieve the activity's stated purpose.

(5) The expected end value of the activity to the furtherance of national marine sanctuary goals and purposes outweighs any potential adverse impacts on sanctuary resources and qualities from the conduct of the activity.

(6) The applicant is professionally qualified to conduct and complete the proposed activity.

(7) The applicant has adequate financial resources available to conduct and complete the proposed activity and terms and conditions of the permit.

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

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

(a) A person may conduct an activity prohibited by § 922.213(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the effective date of sanctuary designation and within the sanctuary designated area and complies with § 922.47 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

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

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

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

(e) For an activity described in paragraph (a) of this section, the holder of the authorization or right may conduct the activity prohibited by § 922.213(a)(1) through (3) provided that:

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

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

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(f) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by § 922.213 may conduct the activity without being in violation of applicable provisions of § 922.213, pending final agency action on his or her certification request, provided the holder is otherwise in compliance with this section.

(g) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated.

The Director must receive the information requested within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(h) The Director may amend any certification made under this section whenever additional information becomes available that he/she determines justifies such an amendment.

(i) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.50.

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

**Appendix A to Subpart T of Part 922—Wisconsin Shipwreck Coast Sanctuary
Boundary Description and Coordinates of the Lateral Boundary Closures and
Excluded Areas**

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

Table A1- Coordinates for sanctuary boundary

Point_ID	Latitude	Longitude
1	44.35279	-87.34387
2	43.45716	-87.48817
3	43.31519	-87.56312
4*	43.31519	-87.88828

5*	43.38447	-87.86079
6	43.38455	-87.86062
7	43.38353	-87.85936
8	43.38588	-87.85801
9	43.38510	-87.85950
10*	43.38523	-87.85963
11*	43.74858	-87.69479
12	43.74858	-87.69457
13	43.74840	-87.69457
14	43.74778	-87.69191
15	43.74949	-87.69161
16	43.74977	-87.69196
17	43.74935	-87.69251
18*	43.74946	-87.69265
19*	44.09135	-87.64377
20	44.09147	-87.64366
21	44.09081	-87.64206
22	44.09319	-87.64202
23	44.09254	-87.64365
24*	44.09262	-87.64373
25*	44.14226	-87.56161

26	44.14214	-87.56151
27	44.14199	-87.56181
28	44.13946	-87.55955
29	44.14021	-87.55795
30	44.14274	-87.56023
31	44.14256	-87.56059
32*	44.14267	-87.56069
33*	44.35279	-87.53255
34	44.35279	-87.34387

Note:

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

Appendix B to Subpart T of Part 922—Wisconsin Shipwreck Coast National Marine Sanctuary Terms of Designation

Terms of Designation for Wisconsin Shipwreck Coast National Marine Sanctuary Under the authority of the National Marine Sanctuaries Act, as amended (the “Act” or “NMSA”), 16 U.S.C. 1431 *et seq.*, 962 square miles of Lake Michigan off the coast of Wisconsin's coastal counties of Ozaukee, Sheboygan, Manitowoc, and Kewaunee are hereby designated as a National Marine Sanctuary for the purpose of providing long-term protection and management of the historical resources and recreational, research, educational, and aesthetic qualities of the area.

Article I: Effect of Designation

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

Article II: Description of the Area

Wisconsin Shipwreck Coast National Marine Sanctuary consists of an area of approximately 726 square nautical miles (962 square miles) of Lake Michigan waters within the State of Wisconsin and the submerged lands thereunder, over, around, and under the underwater cultural resources in Lake Michigan. The eastern boundary of the sanctuary begins approximately 9.3 miles east of the Wisconsin shoreline in Lake Michigan north of the border between Manitowoc and Kewaunee County. From this point the boundary continues in Lake Michigan roughly to the SSW until it intersects a point in Lake Michigan approximately 16.3 miles east of a point along the shoreline that is approximately equidistant between the borders of Mequon, WI and Port Washington, WI. The southern boundary continues west until it intersects the shoreline at the Low Water Datum at this point between Mequon, WI and Port Washington, WI. The western boundary continues north following the shoreline at the Low Water Datum for approximately 82 miles cutting across the mouths of rivers, creeks, and streams and excluding federally authorized shipping channels; specifically those of Sauk Creek at Port Washington, Sheboygan River at Sheboygan, Manitowoc Harbor as Manitowoc, and

East Twin River at Two Rivers. The western boundary ends just north of the border between Manitowoc and Kewaunee County along the shoreline near Carlton, WI. The northern boundary continues from the shoreline at the Low Water Datum at this point east across Lake Michigan just north of the border between these same two counties back to its point of origin approximately 9.3 miles offshore.

Article III: Special Characteristics of the Area

The area includes a nationally significant collection of maritime heritage resources, including 36 known shipwrecks, about 59 suspected shipwrecks, and other underwater cultural sites. The historic shipwrecks are representative of the vessels that sailed and steamed on Lake Michigan during the nineteenth and twentieth centuries, carrying grain and raw materials east and carrying coal, manufactured goods, and people west. During this period entrepreneurs and shipbuilders on the Great Lakes launched tens of thousands of ships of many different designs. Sailing schooners, grand palace steamers, revolutionary propeller-driven passenger ships, and industrial bulk carriers transported America's business and industry. In the process they brought hundreds of thousands of people to the Midwest and made possible the dramatic growth of the region's farms, cities, and industries. The Midwest, and indeed the American nation, could not have developed with such speed and with such vast economic and social consequences without the Great Lakes. Twenty-one of the 36 shipwreck sites in the sanctuary are listed on the National Register of Historic Places. Many of the shipwrecks retain an unusual degree of architectural integrity, with several vessels nearly intact. Well preserved by Lake Michigan's cold, fresh water, the shipwrecks and related maritime heritage sites in Wisconsin Shipwreck Coast National Marine Sanctuary possess exceptional historical, archaeological and recreational value. Additional underwater cultural resources, such as submerged aircraft, docks, piers, and isolated artifacts also exist, as do the potential for prehistoric sites and artifacts.

Article IV: Scope of Regulations

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

- a. Injuring sanctuary resources.
- b. Grappling into or anchoring on a shipwreck sites.
- c. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation issued under the Act.

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

Article V: Relation to Other Regulatory Programs

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

Article VI. Alteration of This Designation

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

§ 922.213 [Amended]

10. Stay § 922.213(a)(2) until October 1, 2023

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