



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 230926-0232]

RIN 0648-BG01

Designation of Wisconsin Shipwreck Coast National Marine Sanctuary; Delay of Effectiveness

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

ACTION: Final rule; delay of effectiveness.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) designated the Wisconsin Shipwreck Coast National Marine Sanctuary (WSCNMS) on June 23, 2021, and the final rule became effective on August 16, 2021. However, as discussed in the final rule, the provision that prohibits grappling into or anchoring on shipwreck sites (grappling and anchoring provision) was to go into effect on October 1, 2023. This action delays the effectiveness of the grappling and anchoring provision of the final rule until October 1, 2024.

DATES: As of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the stay of § 922.213(a)(2), which published at 86 FR 32757, June 23, 2021, is extended until October 1, 2024.

FOR FURTHER INFORMATION CONTACT: Russ Green, Superintendent, 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, Superintendent.

SUPPLEMENTARY INFORMATION: On June 23, 2021, NOAA published a final rule to implement the designation of the WSCNMS (86 FR 32737). The designation and regulations became effective on August 16, 2021 (86 FR 45860; August 17, 2023), although the effectiveness of the provision at 15 CFR 922.213(a)(2) was stayed until October 1, 2023. As discussed in the final rule (86 FR 32737; June 23, 2021), the effectiveness of § 922.213(a)(2), which prohibits grappling into or anchoring on shipwreck sites, was stayed until October 1, 2023, to provide NOAA with adequate time to develop a shipwreck mooring program and plan, begin installing mooring buoys, and develop best practices for accessing shipwrecks when mooring buoys are not present. With this final rule, NOAA is further delaying the effectiveness for the prohibition of grappling into or anchoring on shipwreck sites for one year, to October 1, 2024.

Section 922.213(a)(2) prohibits grappling into or anchoring on shipwreck sites to protect fragile shipwrecks within the sanctuary from damage. The initial two-year delay, and also this thirteen-month extension of the effectiveness, is necessary to provide additional time for NOAA to develop a shipwreck mooring program, which will include the installation of mooring buoy systems and public outreach and education.

While the prohibition on grappling into or anchoring on shipwreck sites is essential to protect shipwrecks from damage, NOAA believes this interest should be balanced with the interest of promoting public access to the sanctuary. It is important to have permanent mooring buoys installed at priority shipwreck sites before the grappling and anchoring provision comes into effect, and NOAA needs additional time to install buoys.

NOAA established the initial two-year stay to delay the date of effectiveness for § 922.213(a)(2) when it issued the final rule to designate and implement regulations for the WSCNMS (86 FR 32737; June 23, 2021) in response to public comments expressing concerns that the prohibition would negatively affect commercial vessels that may need

to anchor in the sanctuary, and also would limit public access to shipwrecks when alternatives to anchoring (i.e. buoys) are not available (86 FR 32737, at 42144). NOAA delayed the date of effectiveness to allow NOAA time to install buoys and provide education on the location of shipwrecks and on how to access shipwrecks using other methods.

Since designation of the sanctuary in August 2021, NOAA has identified 19 shipwreck sites for installation of mooring buoys and engaged with the Lake Carriers Association to ensure the moorings do not impact commercial shipping. NOAA worked with State and Federal authorities to obtain required permits, and has awarded contracts to purchase various mooring components. NOAA intended to begin installing buoys during the summer months of 2023, but was ultimately unable to secure ship time from its partners. Buoy installation must occur during the summer months on Lake Michigan. Therefore, NOAA must wait until the summer season of 2024 to perform this work. This action extends the stay to delay the date of effectiveness until October 1, 2024, thus giving NOAA the necessary additional time to install buoys. During the continuing delay, NOAA will minimize risks to shipwrecks by continuing its educational outreach efforts.

NOAA will continue its educational outreach to provide the public notice of shipwreck locations and best practices for accessing shipwrecks when mooring buoys are not present. All other regulatory provisions will remain in effect, including the prohibition on altering, destroying, or otherwise injuring any sanctuary resource (including shipwrecks) (§ 922.213(a)(1)). It also continues to be a violation of State law to damage shipwrecks, including damage from anchoring.

Classification

A. National Marine Sanctuaries Act

This action is issued pursuant to the National Marine Sanctuaries Act (NMSA), 16 USC 1431 *et seq.*, the NMSA implementing regulations at 15 CFR part 922, and the

WSCNMS implementing regulations at 15 CFR part 922, subpart T. The provision at 15 CFR 922.213(a)(2) prohibits grappling into or anchoring on shipwreck sites.

B. National Environmental Policy Act

NOAA's Policy and Procedures for Compliance with the National Environmental Policy Act (NEPA) and Related Authorities (NOAA Administrative Order (NAO) 216-6A and Companion Manual for NAO 216-6A) provide that all NOAA major Federal actions be reviewed with respect to environmental consequences on the human environment. In the June 2020 Final Environmental Impact Statement (FEIS) (*see* <https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/docs/2020-wisconsin-shipwreck-coast-national-marine-sanctuary-designation-final-eis.pdf>) for the designation of the WSCNMS, NOAA identified a preferred action, which was to establish a grappling and mooring program and to prohibit the grappling into and anchoring on shipwreck sites throughout the sanctuary. NOAA selected this alternative, as finalized in the June 23, 2021, final rule. The 2020 FEIS specifically stated that the provision prohibiting grappling into or anchoring on shipwreck sites would lead to beneficial impacts for historical resources and water quality resources, and that delaying the effectiveness of the grappling and anchoring provision would not cause adverse impacts to the existing shipwrecks because existing State regulations already prohibit damaging historic shipwrecks sites within the sanctuary area and because all other WSCNMS regulatory prohibitions (including the prohibition on damaging or injuring sanctuary resources at § 922.213(a)(1)) would remain in effect during this postponement. In the FEIS and implementing regulations, NOAA also explained that, to help vessels avoid inadvertently anchoring on known shipwrecks sites, NOAA will publish maps with coordinates of known and estimated shipwreck locations to help vessels avoid inadvertently anchoring on known shipwrecks sites.

Extending the delay of the date of effectiveness an additional year does not change NOAA's 2020 FEIS analysis of the environmental impacts of the delay. Additionally, NOAA will continue its educational outreach to provide the public notice of shipwreck locations and best practices for accessing shipwrecks when mooring buoys are not present. NOAA further believes there has not been a significant change to the environmental conditions, such as changes to the risks to shipwreck sites, that would change the potential environmental effects of continuing the delay analyzed in the FEIS. NOAA has determined that no additional NEPA analysis is required for this action.

Copies of the FEIS, the record of decision and other related materials that are specific to this action are available at <https://sanctuaries.noaa.gov/wisconsin/>, or by contacting NOAA at the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

C. Executive Order 12866: Regulatory Impact

This rule is not to be significant for purposes of Executive Order 12866, as amended by Executive Order 14094.

D. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that the action designating the WSCNMS would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was discussed in the proposed rule issued on January 9, 2017 (82 FR 2269, at 22742275). As noted in the June 23, 2021 final rule (86 FR 32737, at 32752), the changes from the proposed rule would not have an impact on small entities and therefore would not change the conclusion of the certification at the proposed rule stage. In addition, NOAA did not receive any comments on the certification. Therefore, a final regulatory flexibility analysis was not required and was not prepared. This action to extend the delay in the

effectiveness for the provision to prohibit the grappling into or anchoring on shipwreck sites similarly does not change the outcome of the certification.

E. Administrative Procedures Act

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of the National Ocean Service, NOAA, finds good cause to not provide prior notice and opportunity for public comment. This action extends the delay of the date of effectiveness for § 922.213(a)(2), which prohibits grappling into or anchoring on shipwreck sites. NOAA originally established the initial two-year stay to delay the date of effectiveness for § 922.213(a)(2) when it issued the final rule to designate and implement regulations for the WSCNMS (86 FR 32737; June 23, 2021) in response to public comments expressing concerns that the prohibition would negatively affect commercial vessels that may need to anchor in the sanctuary, and also would limit public access to shipwrecks when alternatives to anchoring (i.e. buoys) are not available (86 FR 32737, at 42144). NOAA delayed the date of effectiveness to allow NOAA time to install buoys and provide education on the location of shipwrecks and on how to access shipwrecks using other methods. Buoy installation must occur during the summer months on Lake Michigan. NOAA intended to begin installing buoys during the summer months of 2023, but was ultimately unable to secure ship time from its partners. Therefore, NOAA must wait until the summer season of 2024 to perform this work. This action extends the delay of the date of effectiveness until October 1, 2024, thus giving NOAA the necessary additional time to install buoys. During the continuing delay, NOAA will minimize risks to shipwrecks by continuing its educational outreach efforts. Providing notice and opportunity for public comment under the Administrative Procedure Act for the extension of the delay of the effectiveness would serve no useful purpose because and the continued delay in effectiveness is consistent with the public comments already received. This delay in the date of effectiveness also supports the public interest in accessing

shipwrecks. For these reasons, we find for good cause that notice and public procedure are unnecessary and contrary to the public interest.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Natural resources, Historic preservation, Marine resources, National marine sanctuaries, Recreation and recreation areas, Shipwrecks.

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