

“1260.38” and adding “1260.40” in its place.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 031001243-3243-01]

RIN 0648-AQ41

#### Gray's Reef National Marine Sanctuary Regulations

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule; notice of public availability of draft management plan/draft environmental impact statement.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is proposing a draft revised management plan and revised regulations for the Gray's Reef National Marine Sanctuary (GRNMS or Sanctuary). The revised regulations would prohibit anchoring in the Sanctuary and would restrict all fishing except that conducted by rod and reel and handline gear. NOAA is issuing this proposed rule to provide notice to the public and invite advice, recommendations, information, and other comments from interested parties on the proposed rule and Draft Management Plan/Draft Environmental Impact Statement (DMP/DEIS). Public hearings will be held as detailed below:

(1) Monday, November 17, 2003, 6:30 p.m. in Charleston, SC.

(2) Tuesday, November 18, 2003, 6:30 p.m. in Savannah, GA.

(3) Wednesday, November 19, 2003, 6:30 p.m. in Savannah, GA.

(4) Thursday, November 20, 2003, 6:30 p.m. in Statesboro, GA.

(5) Monday, December 1, 2003, 6:30 p.m. in Kingsland, GA.

(6) Tuesday, December 2, 2003, 6:30 p.m. in Brunswick, GA.

(7) Wednesday, December 3, 2003, 6:30 p.m. in Midway, GA.

**DATES:** Comments will be considered if received by December 31, 2003.

**ADDRESSES:** Written comments should be sent by mail to Reed Bohne, Manager, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, Georgia, 31411, by e-mail to [graysreefcomments@noaa.gov](mailto:graysreefcomments@noaa.gov), or by fax

to (912) 598-2367. Copies of the DMP/DEIS are available from the same address. Public hearings will be held at:

(1) Town and Country Inn and Conference Center, 2008 Savannah Highway, Charleston, SC 29407.

(2) Coastal Georgia Center, 305 Fahm Street, Savannah, GA 31401.

(3) Quality Inn Savannah South, I-95 and Highway 204, Savannah, GA 31419.

(4) Outreach Center, 515 Denmark Street, Statesboro, GA 30458.

(5) Holiday Inn Express, 1375 Hospitality Ave., Kingsland, GA 31548.

(6) Coastal Georgia Community College, 3700 Altama Avenue, Brunswick, GA 31520.

(7) Coastal Electric Cooperative, 1265 South Coastal Highway, Midway, GA 31320.

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

#### SUPPLEMENTARY INFORMATION:

##### Introduction

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434(e)) the National Marine Sanctuary Program (NMSP) has completed its review of the management plan for the Gray's Reef National Marine Sanctuary (GRNMS or Sanctuary), located 17.5 nautical miles off the coast of Georgia. The review has resulted in a proposed new management plan for the Sanctuary, several proposed revisions to existing regulations and several proposed new regulations. The new regulations would restrict fishing at GRNMS to use of rod and reel and handline gear by prohibiting the injuring, catching, harvesting, or collecting of any marine organism or part thereof in the Sanctuary except by these gear types. All other forms of fishing gear would have to be stowed when a vessel is in the Sanctuary. The regulations would also prohibit anchoring vessels in the Sanctuary. These measures would afford better protection to the nationally significant marine resources and habitats at GRNMS.

Existing regulations would also be revised to address placing or abandoning structures on the submerged lands; using underwater explosives or devices generating electrical current; and moving or damaging historical resources. The permit regulations for the Sanctuary are also being revised and clarified. The following requirements are proposed for issuance of permits: Prior to permit issuance, the Director of the NMSP would be required to consider the duration of the activity and its effects; the cumulative effects; and

whether it is necessary to conduct the proposed activity in the Sanctuary. Permit holders would also be required to display a copy of the permit on board any vessel or aircraft used in the permitted activity.

The new management plan for the Sanctuary contains a series of action plans that outline management, research, and education activities that are planned for the next five years. The activities are designed to address specific issues facing the Sanctuary and in doing so, help achieve the management objectives of the GRNMS and the larger mandates of the NMSP.

This document publishes the proposed regulations and the proposed revisions to existing regulations, publishes the text of the proposed Revised Designation Document for the Sanctuary, and announces the availability of the draft management plan and the draft environmental impact statement (DMP/DEIS). The draft management plan details the proposed goals and objectives, management responsibilities, research and monitoring activities, outreach and educational programs, and enforcement activities.

Grays' Reef National Marine Sanctuary, which was designated on January 16, 1981 (46 FR 7942), consists of approximately 16.68 square nautical miles of ocean waters and hard bottom located 17.5 nautical miles off Sapelo Island, Georgia. It is one of the largest nearshore rocky reefs off the southeastern United States and is in a transition zone between temperate and tropical waters. Some reef fish populations and plant communities change seasonally, while others are year-round residents. Migratory fish move through the Sanctuary, using the reef for food and shelter. Loggerhead sea turtles, a threatened species, use GRNMS for foraging and resting. The reef is also close to the only known calving ground for the highly endangered Northern right whale.

The hard bottom habitat at the Sanctuary is composed of marine sediments (mud, sand, and shells) that were deposited between 2-3,000,000 years ago. These marine sediments were consolidated into rock during subsequent glacial periods by numerous changes in sea level that repeatedly exposed and then submerged the areas of GRNMS as the coastline advanced and retreated across the continental shelf.

Recent bottom mapping indicates that the area is a single rock unit. It is made of calcareous sandstone that formed as a result of the compacting marine sediments and aerial exposure. The

irregularities of the bathymetry can be attributed to the easily erodable sandstone that has dissolved and pitted, creating the appearance of isolated ledges and patches of hard bottom.

The exposed rock offers moderate relief (0.5 to 10 feet in height) with sandy, flat-bottomed troughs between. The series of rock ledges and sand expanses has produced a complex habitat of caves, burrows, troughs, and overhangs that provide a solid base on which temperate and tropical marine flora and fauna attach and grow. This rocky platform with its rich carpet of remarkable attached organisms is known locally as a "live bottom" habitat.

The Sanctuary is a small but very important part of the broad continental shelf off the southeastern coast sometimes known as the South Atlantic Bight (SAB). The SAB extends from Cape Hatteras, North Carolina to Cape Canaveral, Florida. The outer reaches are dominated by the Gulf Stream flowing northeastward. The inner area is defined by the curve of the coastline between the two capes and is dominated by tidal currents, river runoff, local winds, seasonal storms, hurricanes, and atmospheric changes. While GRNMS lies in the inner-shelf zone of the SAB—which causes great seasonal variations in temperature, salinity, and water clarity—it is also influenced by the Gulf Stream. The Gulf Stream draws deep nutrient-rich water to the region, and carries and supports many of the tropical fish species and other animals found in the Sanctuary. Ocean currents transport fish and invertebrate eggs and larvae from other areas, linking this special place to reefs both north and south. GRNMS is the only protected natural reef area in the SAB.

The 16.68-square nautical miles of the Sanctuary constitute a tiny percentage of the ocean space off the coast, yet the Sanctuary's value as a natural marine habitat is recognized nationally and internationally. The live bottom is a flourishing ecosystem that attracts mackerel, grouper, black sea bass, angelfish, and a variety of other fishes. GRNMS is one of the most popular recreational fishing and sport diving destinations along the Georgia coast. Sport fishing occurs year-round but intensifies in warmer months and with the migration of pelagic game fish.

The Sanctuary is located near an area of Georgia coastline that has experienced a dramatic increase in population. Aerial and on-water surveys indicate that visitation to GRNMS has increased significantly since 1981. With continued technological innovations such as global positioning systems

(GPS), electronic fish finders, and improved watercraft design, it is likely that there will be increasing pressure on the resources of the Sanctuary. With its proposed new management plan and proposed regulations, NOAA hopes to continue to protect GRNMS for the continued appreciation and use by the current and future generations.

Because this proposed action includes changes to the Sanctuary's Designation Document, the DMP/DEIS is developed pursuant to section 304(a)(2) of the NMSA, 16 U.S.C. § 1434(a)(2), consistent with, and in fulfillment of, the requirements of the National Environmental Policy Act of 1969.

#### **Proposed Revised Designation Document**

NOAA is proposing to specify in the Designation Document that the submerged lands at GRNMS are legally part of the Sanctuary and are included in the boundary description. At the time the Sanctuary was designated in 1981, Title III of the Marine Protection, Research, and Sanctuaries Act (now also known as the National Marine Sanctuaries Act) characterized national marine sanctuaries as consisting of coastal and ocean waters but did not expressly mention submerged lands thereunder. NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98-498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. § 1432(3)). Therefore, to be consistent with the NMSA, NOAA is updating the Designation Document and the boundary description, and is replacing the term "seabed" with "submerged lands of the Sanctuary". Boundary coordinates in the revised Designation Document and in the Sanctuary regulations will be expressed by coordinates based on the North American Datum of 1983 (NAD 83). Although certain fishing activities have been regulated at GRNMS since 1981, terms are being added to the Designation Document to authorize regulations for use of allowable fishing gear and to prohibit the possession of non-allowed gear. This will allow fishing regulations specifically for GRNMS and approved by the South Atlantic Fishery Management Council to be proposed for the Sanctuary. The Designation Document is also being updated to authorize regulating drilling into the submerged lands of the Sanctuary; constructing, placing or abandoning material or matter; discharging or depositing material or

matter outside the Sanctuary that subsequently enters and injures a Sanctuary resource or quality; using explosives or devices that produce electric current underwater; and injuring historical resources.

#### **Proposed Revised Designation Document for the Gray's Reef National Marine Sanctuary**

##### *Article 1. Designation and Effect*

The Gray's Reef National Marine Sanctuary was designated on January 16, 1981 (46 FR 7942). Section 304 of the National Marine Sanctuaries Act (NMSA, 16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce to issue such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological or aesthetic resources and qualities of a national marine sanctuary. Section 1 of Article 4 of this Designation Document lists activities of the type that are presently being regulated or may need to be regulated in the future, in order to protect Sanctuary resources and qualities. Listing in section 1 does not mean a type of activity will be regulated in the future, however, if a type of activity is not listed, it may not be regulated, except on an emergency basis, unless section 1 is amended, following the procedures for designation of a sanctuary set forth in paragraphs (a) and (b) of section 304 of the NMSA, to include the type of activity.

Nothing in this Designation Document is intended to restrict activities that do not cause an adverse effect on the resources or qualities of the Sanctuary or on Sanctuary property or that do not pose a threat of harm to users of the Sanctuary.

##### *Article 2. Description of the Area*

The Sanctuary consists of an area of ocean waters and the submerged lands thereunder located 17.5 nautical miles due east of Sapelo Island, Georgia. The exact coordinates are defined by regulation (15 CFR § 922.90).

##### *Article 3. Characteristics of the Area*

The Sanctuary consists of submerged calcareous sandstone rock reefs with contiguous shallow-buried hardlayer and soft sedimentary regime which supports rich and diverse marine plants, invertebrates, finfish, turtles, and occasional marine mammals in an otherwise sparsely populated expanse of ocean seabed. The area attracts multiple human uses, including recreational

fishing and diving, scientific research, and educational activities.

#### Article 4. Scope of Regulation

##### Section 1. Activities Subject to Regulation

The following activities are subject to regulations under the NMSA, either throughout the entire Sanctuary or within identified portions of it or, as indicated, in areas beyond the boundary of the Sanctuary, to the extent necessary and reasonable. Such regulation may include prohibitions to ensure the protection and management of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological or aesthetic resources and qualities of the area. Because an activity is listed here does not mean that such activity is being or will be regulated. All listing means is that the activity can be regulated, after compliance with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b).

1. Dredging, drilling into, or otherwise altering the submerged lands of the Sanctuary;

2. Within the boundary of the Sanctuary, discharging or depositing any material or other matter or constructing, placing, or abandoning any structure, material or other matter; or discharging or depositing any material or other matter outside the boundary of the Sanctuary that enters and injures a Sanctuary resource or quality;

3. Vessel operations, including anchoring;

4. Injuring, catching, harvesting, or collecting any marine organism or any part thereof, living or dead, or attempting any of these activities, by any means except by use of rod and reel and handline gear;

5. Possessing fishing gear that is not allowed to be used in the Sanctuary;

6. Using explosives, or devices that produce electric charges underwater; and

7. Removing, injuring, or possessing historical resources.

##### Section 2. Emergency Regulation

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or to minimize the imminent risk of such destruction, loss or injury, any activity, including any not listed in Section 1 of this article, is subject to immediate temporary regulation, including prohibition.

#### Article 5. Relation to Other Regulatory Programs

##### Section 1. Defense Activities

The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practical.

##### Section 2. Other Programs

All applicable regulatory programs will remain in effect, and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by a regulation implementing Article 4.

#### Article 6. Alteration of This Designation

The terms of designation, as defined in paragraph (a) of section 304 of the NMSA, 16 U.S.C. 1434(a), may be modified only by the procedures outlined in paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b), including public hearings, consultation with interested federal, state, and local government agencies, the South Atlantic Fishery Management Council, review by the appropriate Congressional committees, and approval by the Secretary of Commerce, or his or her designee.

Gray's Reef National Marine Sanctuary Boundary Coordinates based on the North American Datum of 1983 (NAD 83).

The boundary of the Gray's Reef National Marine Sanctuary includes all waters and the submerged lands thereunder within a rectangle starting at coordinate north 31.362732 degrees, west 80.921200 degrees; then runs northward to coordinate north 31.421064 degrees, west 80.921201 degrees; then eastward to coordinate north 31.421064 degrees, west 80.828145 degrees; then southward to coordinate north 31.362732 degrees, west 80.828145 degrees; and then back to the point of origin.

#### Summary of the Proposed Regulatory Amendment

The proposed regulatory changes would clarify that "submerged lands" are within the boundary and are part of the Sanctuary. This would update the boundary regulation to make it consistent with the NMSA and its definition of areas of the "marine environment" that may be designated as a sanctuary.

The proposed regulations would also modify the Sanctuary fishing regulations that have been in effect

since 1981. The current regulations prohibit the use of specific fishing gear within the Sanctuary, particularly wire fish traps and bottom trawls. Pursuant to section 304(a)(5) of the NMSA (16 U.S.C. 1434(a)(5)), the South Atlantic Fishery Management Council (SAFMC) was provided the opportunity to draft fishing regulations for the Sanctuary. During its meeting on March 6, 2003, the Council endorsed Sanctuary fishing regulations that would prohibit the use of all fishing gear in the Sanctuary except rod and reel and handline gear. Unlike the current sanctuary fishing regulations that allow all gear types except those specifically prohibited, this approach specifies the gear types that would be allowed and would prohibit all others. The regulation would prohibit the injuring, catching, harvesting, or collecting of any marine organism by any means except by rod and reel and handline. This would establish a clearer, more enforceable approach for the Sanctuary fishing regulations than those currently in effect. Rod and reel gear is the predominant fishing gear now in use at GRNMS and would continue to be allowed under the regulations recommended by the SAFMC. To facilitate enforcement of the gear restriction, a related regulation would require that all forms of fishing gear other than rod and reel and handline be stowed when vessels are in the Sanctuary.

The SAFMC's recommendation is consistent with public input received by the NMSP during the management plan review, and is supported by the Georgia Department of Natural Resources and NOAA Fisheries (National Marine Fisheries Service) Southeast Region. The SAFMC also recommended that the Sanctuary regulations require that fishing gear other than rods and reels and handlines be stowed when vessels are in the Sanctuary. Therefore, this regulation is also being proposed, as are definitions of "rod and reel and handline". The definitions would be based largely on existing definitions adopted by NOAA Fisheries in its regulations for the Fisheries of the Caribbean, Gulf, and South Atlantic, at 50 CFR 622.2. However, the proposed definitions for the Sanctuary regulations would allow only 3 hooks per line. The proposed regulation would apply to "any marine organism, or any part thereof, living or dead," and would encompass the taking of any marine organisms or parts by divers.

The proposed regulations would also prohibit anchoring vessels within the Sanctuary. The unique bottom formations and habitats at GRNMS are

vulnerable to the effects of anchoring. The documented increases of population in the region and of visitor use at GRNMS suggest that the risk from vessel anchoring will also increase and that prohibiting anchoring would help protect the live bottom habitat and the associated living marine resources that GRNMS was designated to protect. This regulation would have little impact on current users of the Sanctuary. Based on findings of a socioeconomic study (Ehler and Leeworthy) conducted in 2002, virtually none of the activities that occur at GRNMS require anchoring. Fishermen routinely allow their boats to drift during bottomfishing or are trolling for migratory species, and divers frequently use a "live-boat" for drift diving, due to the strong currents. There is overall support for the ban on anchoring among users surveyed during the socioeconomic study. In an emergency situation, boaters would be allowed to anchor in the Sanctuary and existing boundary marker buoys provide a place for a boat to moor in an emergency as well.

Finally, the regulations for the issuance of permits are being revised to add a new permit category for assisting in managing the Sanctuary. This would authorize NMSP to issue a permit to the Sanctuary manager for activities that otherwise would be prohibited if the activities assist in sanctuary management and if they satisfy permit criteria. The permit criteria are also being revised to allow NMSP or the manager to consider the duration of a proposed activity, its cumulative effects, and whether it is necessary to conduct the proposed activity in the Sanctuary. A permit holder would be required to display a copy of the permit in any vessel or aircraft being used in the permitted activity.

The following regulatory changes are also being proposed by this document: The term "seabed" is being replaced with "submerged lands of the Sanctuary" to be consistent with usage in the NMSA. The prohibition against dredging, drilling into or altering submerged lands of the Sanctuary specifically includes bottom formations to call attention to one of the critical elements of the ecosystem at GRNMS. The current prohibition against constructing any structure other than a navigation aid would be revised to include constructing, placing, abandoning any structure, or material on the Sanctuary submerged lands. This change would, among other things, prohibit activities that have been identified in the Florida Keys National Marine Sanctuary, where materials are placed on the submerged lands to create

lobster habitat. The prohibition against using poisons, electric charges, explosives, or similar methods to take any marine animal not otherwise prohibited from being taken would be revised to prohibit the use underwater of explosives and devices producing electric current while the reference to poisons is being removed because it is already addressed by the prohibition against discharges. Use of these items would be prohibited regardless of whether marine animals are being taken. NOAA is not aware of any non-scientific use of these materials underwater at GRNMS and proposes that their use be completely prohibited. The regulation prohibiting tampering with, damaging or removing historic or cultural resources is being revised to prohibit moving, removing, damaging, or possessing any Sanctuary historical resource, or attempting any of these. This change will better protect these resources from being removed and will facilitate enforcement by prohibiting their possession.

#### **Miscellaneous Rulemaking Requirements**

##### *National Marine Sanctuaries Act*

Section 304(a)(4) of the National Marine Sanctuaries Act, 16 U.S.C. 1434(a)(4), requires that the procedures specified in section 304 for designating a National Marine Sanctuary be followed for modifying any term of designation. Because this action would revise the Sanctuary boundary specifically to include the submerged land, it would revise the boundary terms of designation thus triggering the requirements of section 304. In particular, section 304 requires that the Secretary of Commerce submit to the Committee on Resources of the United States House of Representatives and the Committee on Commerce, Science, and Transportation of the United States Senate, no later than the same day as this notice is published, documents including a copy of this notice, the terms of the proposed designation (or in this case, the proposed changes thereto), the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities for the area, and a draft environmental impact statement. In accordance with section 304, the required documents are being submitted to the specified Congressional Committees.

##### *National Environmental Policy Act*

When changing a term of designation of a National Marine Sanctuary, section

304 of the NMSA, 16 U.S.C. 1434, requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that the DEIS be made available to the public. NOAA has prepared a DMP/DEIS on the proposal and copies are available at the address listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on the DMP/DEIS will be published in the FEIS and final rule.

##### *Executive Order 12866: Regulatory Impact*

This proposed rule has been determined to be not significant within the meaning of section 3(f) of Executive Order 12866 because it will not result in:

- (1) An annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety;
- (2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) A material alteration of the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of such recipients; or
- (4) Novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

##### *Executive Order 12612: 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 12612.

##### *Regulatory Flexibility Act*

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the DMP/DEIS for the GRNMS would not have a significant economic impact on a substantial number of small entities, based on the regulatory flexibility analysis as follows:

#### **Initial Regulatory Flexibility Analysis for the Proposed Management Plan and Proposed Rule for the Gray's Reef National Marine Sanctuary**

*Description of the action being taken:* This action involves changes to clarify existing regulations and promulgation of new regulations for the Gray's Reef

National Marine Sanctuary (GRNMS or Sanctuary). This action is being proposed by the National Marine Sanctuary Program (NMSP) of the National Oceanic and Atmospheric Administration (NOAA). A review and revision of the management plan for the GRNMS, located off the coast of Georgia in the federal exclusive economic zone (EEZ), was undertaken starting in 1999. Because the existing management plan for the Sanctuary dates back to 1983, the decision was made to prepare an entirely new management plan for the site. No boundary expansion is being proposed, but several regulatory clarifications and new regulations are included as part of the new management plan. The changes to clarify existing regulations are:

- Including submerged lands in the boundary of the Sanctuary, which is consistent with the National Marine Sanctuaries Act; and
- Revising existing regulations to address placing or abandoning structures on the submerged lands; using explosives or devices generating electrical current underwater; and moving, removing, damaging, or possessing historical resources. The permit regulations for the Sanctuary are also being revised and clarified. Prior to permit issuance, the Director of the NMSP would be required to consider the duration of the activity and its effects; the cumulative effects; and whether it is necessary to conduct the proposed activity in the Sanctuary. Permit holders would also be required to display a copy of the permit on board any vessel or aircraft used in the permitted activity.

The proposed new regulations are:

- Anchoring any vessel in the Sanctuary, except as provided in § 922.92 when responding to an emergency threatening life, property, or the environment, or except as may be permitted by the Director.
  - (i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead, within the Sanctuary by any means except by use of rod and reel and handline gear. (ii) There shall be a rebuttable presumption that any marine organism or part thereof found in the possession of a person within the Sanctuary has been collected or removed from the Sanctuary.
- Except for possessing fishing gear stowed and not available for use, possessing or using within the Sanctuary any fishing gear or means except rod and reel and handline gear.

The new regulations will help address the increase in fishing activities and

gear types that have a strong potential to damage the nationally significant bottom formations and the associated living marine resources at GRNMS that were the basis for the designation of the Sanctuary.

Summary of reasons why the action is being taken: The National Marine Sanctuaries Act (NMSA) requires that management plans for sanctuaries be reviewed every five years and that the management plans and regulations are revised, as necessary. This review provides the opportunity to ensure that management plans and regulations address current issues facing each site. The review undertaken at GRNMS indicates that the regulatory changes should be made.

*Statement of the objectives and legal basis for such a rule:* The legal basis for this action is the NMSA. The objective of preparing a new management plan, and its accompanying regulatory changes, is to meet the mandates of the NMSA, primarily the protection of the resources of the GRNMS.

*Description/Estimate of the number of small entities to which the rule would apply:*

#### *Overview of Sanctuary Users*

Based on current socioeconomic studies and on-site surveys of visitor use, NOAA has determined that the majority of users in GRNMS are fishing recreationally with rod and reel gear. These recreational fishermen primarily use personal boats originating from various locations along the Georgia coast. There are less than ten fishing charter operations along the Georgia coast that occasionally target GRNMS.

Commercial fishing activity is negligible in GRNMS. Most commercial gear, such as bottom trawls, specimen dredges, explosives, and wire fish traps, are already prohibited in GRNMS by existing Sanctuary and Magnuson-Stevens Act regulations due to the potential for damage to live bottom habitat. Surveys indicate that one charter boat captain may fish commercially on occasion using handline gear. Commercial hook-and-line fishermen targeting reef fish usually bypass the Sanctuary to fish well offshore along or just inside the shelf "break," which is 80 nautical miles off Georgia but much closer to shore off Cape Hatteras, North Carolina, and Cape Canaveral, Florida. Commercial boats typically work north and south along the "break" well offshore of GRNMS and normally land most of their catches in Florida and South Carolina since it is a shorter trip to and from the "break" to these ports.

While GRNMS is an important recreational fishing destination for Georgia, it has only limited use by SCUBA divers due to the depth, strong currents and frequent turbidity. Only one diving operation has been identified as offering trips to GRNMS (approximately 10 trips per year). This business was found to be the only one that offers diving trips on its own boat; the others simply provide retail services, instruction, and tank fills. Employees of other diving businesses do offer their services as guides on privately owned boats. Spearfishing activities also appear to be very limited at GRNMS for many of the same reasons that limit divers. The one dive operator, who offers trips to GRNMS, reported that spearfishing in the Sanctuary is rare. The new regulations would prohibit spearfishing and the removal of marine organisms or parts (e.g., seashells); all other non-extractive diving related activities such as underwater photography and nature would be unaffected.

#### *Application and Impact of Regulations on Sanctuary Users*

The regulations would apply to all users of the Sanctuary, including small entities. However, as described above, nearly all users already conduct their activities in such a manner as to already be in compliance with the proposed regulations (i.e., most fishermen and divers do not anchor within the area, and the large majority of recreational fishermen use rod and reel gear to fish in the area). There is only one known captain who occasionally fishes commercially in GRNMS using handline gear. Handline gear would continue to be authorized for use in the Sanctuary. Spearfishing, an occasional practice at the Sanctuary, is available throughout the EEZ off Georgia, particularly at the artificial reefs and other natural live bottom habitat areas. The protection of Sanctuary waters as the only restricted area for spearfishing in the South Atlantic Bight EEZ may have positive effects in attracting non spearfishing divers to GRNMS. The NMSP therefore expects that this rule would have no significant socioeconomic impacts.

*Description of proposed reporting, record keeping and other compliance requirements:* There are no new reporting, record keeping, or other compliance requirements proposed.

*Identification of relevant federal rules that it may duplicate:* The NMSP is not aware of any other duplicative laws. The Sanctuary lies within the South Atlantic Fishery Management Council's (SAFMC) region. The SAFMC develops, and NOAA Fisheries approves and

implements, various fishery management plans addressing specific fish species, groups of species, habitat restrictions, gear types, harvest limits, and closures. The result is a variety of restrictions on size and number of fish caught, type of gear used, category of permits, and time and area closures. The new proposed regulations would simplify the public's understanding of allowable activities in GRNMS, while maintaining SAFMC/NOAA Fisheries restrictions.

*Description and analysis of significant alternatives that would accomplish the stated objectives of applicable statutes:*

1. Alternatives to the anchoring prohibition:

- Prohibit anchoring and establish a mooring buoy system. This alternative is not preferred primarily because (1) user surveys and discussion with the GRNMS Advisory Council indicate that it is unnecessary for users to anchor or moor in order to fish or dive in the area. In fact, the Advisory Council strongly recommended against deploying a mooring buoy system, because it was not needed, could be a navigational obstacle, and would be an inefficient use of the Sanctuary's limited resources. (2) There are concerns that a mooring buoy system would concentrate activities, leading to overfishing, localized diver impacts, and concentrated marine debris. A secondary consideration was the cost of installing and maintaining a mooring buoy system. Anchoring and mooring to existing boundary markers would be allowed in GRNMS in emergencies.

- Establish and mark an anchoring zone over sandy bottom and prohibit anchoring elsewhere in the Sanctuary.

This alternative is not preferred for the same reasons given for the mooring buoy alternative. Additionally, recent on-water and aerial survey analysis indicates that the majority of anchoring occurs in live bottom areas of GRNMS where users are fishing and sometimes diving. Thus, a designated anchoring zone over sand would provide no real benefit to users because it would distance users from the features that attract both fishermen and divers.

- Take no regulatory action but conduct an extensive research and monitoring program on the impacts of anchoring within GRNMS.

The short-term negative socioeconomic impacts are expected to be negligible. Long-term biological consequences of continued anchoring could be severe and the effects on the economic viability of the natural community for recreational and research purposes could be negative. In addition, design and implementation of the

research and monitoring program would incur substantial costs. This alternative would represent a significant commitment of funding and personnel to activities for which the results are already clear. This alternative is not an efficient or productive use of limited Sanctuary resources and is not preferred.

- No Action.

This alternative is not preferred because allowing continued use of anchors at GRNMS would increase the potential for continued damage to the live bottom habitat in the Sanctuary. Given the recent observations by scientific divers of damage to the live bottom, and analysis of anchoring locations in hard bottom areas, continuation of anchoring assures that live bottom resources will be damaged and degraded. Also, as human population increases in the nearby coastal region and the visitor use grows at GRNMS, the damages are likely to increase. The long-term result would be diminished socioeconomic value as the biological communities degrade.

2. Alternatives to the fishing "allowable gear" regulation:

- Prohibit use or possession of spearguns, nets, bandit gear, buoy gear, longlines, traps, or pots in GRNMS.

Some gear types not currently prohibited would have negative impacts on habitat and biodiversity. The types of gear include various nets, commercial hook and line, longlines, sea bass pots, and buoy gear. Eliminating use of these gear types would reduce fishing pressure on reef fish stocks and protect vulnerable marine resources, such as invertebrates, marine mammals, sea turtles and sea birds. Also, the South Atlantic Fishery Management Council and NOAA Fisheries have instituted numerous regulations addressing specific fish species, groups of species, habitat restrictions, gear types, harvest limits, and closures. The result is a mosaic of restrictions on size and number of fish caught, type of gear used, category of permits, and time and area closures.

Regulating specific gear types could add more complication and confusion for fishermen by lengthening the list of restricted fishing methods and gear, versus clearly identifying what gear is allowed in GRNMS.

In addition, periodic analysis of new fishing gear, or gear types newly applied in the EEZ off the southeastern United States, would be necessary to keep the regulations current. This would add more cost to GRNMS and could increase the number of regulatory changes for Sanctuary users to adjust to over time. Addressing additional gear prohibitions

would incur more costs over time, both to GRNMS and users who may have already invested in fishing gear that is damaging to GRNMS resources, and possibly create more confusion than clarity for users of GRNMS. Thus, this alternative is not preferred.

- Allow fishing in GRNMS only with rod and reel, handline, and spearfishing gear without powerheads.

This alternative is identical to the preferred alternative, except that it would also allow the use of spearfishing gear without powerheads. When GRNMS was designated, spearfishing was identified as an activity that may be regulated at a later time to "ensure the protection and preservation of the Sanctuary's marine features and the ecological, recreational, and aesthetic value of the area." Although spearfishing was listed because of the potential for damage to marine resources, only the prohibition on powerheads (explosives) was promulgated at that time. Given the increasing use by recreational visitors and the lack of individual large fish observed by researchers, GRNMS staff and the GRNMS Advisory Council conclude that spearfishing should be prohibited. A restriction on spearfishing at GRNMS was also supported by the dive charter operators surveyed by NOAA. This alternative is therefore not preferred.

- No Action.

Fishing, specifically recreational fishing with rod and reel gear represents the primary use of GRNMS. With increasing numbers of fishermen accessing the Sanctuary, maintaining the health of the living and non-living resources is a complex challenge. NOAA expects that the continuing and increasing levels of certain activities in GRNMS will result in a degradation of the habitat and living marine resources. This is particularly true given the increase in use, improvements in technology and the variety of new fishing gear not contemplated when the current regulations were adopted 22 years ago. Taking no action would ignore these significant changes over the last 22 years. The conservation standards established for the Sanctuary in 1981 were based on levels of use far lower than today. Recalibration of the conservation measures based on current use is therefore appropriate. Consequently taking the "no action" alternative is not preferred.

*Paperwork Reduction Act*

This proposed rule would not impose an information collection requirement subject to review and approval by OMB

under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

#### List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 15, 2003.

#### Richard W. Spinrad,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR Part 922 is proposed to be amended as follows:

### PART 922—[AMENDED]

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

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

2. 15 CFR Part 922, Subpart I (the regulations for GRNMS) is revised to read as follows:

#### § 922.90 Boundary.

The Gray's Reef National Marine Sanctuary (Sanctuary) consists of approximately 16.68 square nautical miles of ocean waters and the submerged lands thereunder, off the coast of Georgia. The Sanctuary boundary includes all waters and submerged lands within a rectangle marked by the following coordinates:

Datum: NAD83

Geographic Coordinate System

(a) N 31.362732 degrees W 80.921200 degrees

(b) N 31.421064 degrees W 80.921201 degrees

(c) N 31.421064 degrees W 80.828145 degrees

(d) N 31.362732 degrees W 80.828145 degrees

(e) N 31.362732 degrees W 80.921200 degrees

#### § 922.91 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

**Handline** means a single line with no more than three attached hook(s) that is tended directly by hand.

**Rod and reel** means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, and from which a single line having no more than three hooks attached is deployed. The line is payed out from and retrieved on the reel manually, electrically, or hydraulically. Not more than eight hooks per line may be used to capture

bait fish and the hooks must not exceed #8 size category of the "sabiki" style bait hooks.

**Stowed and not available for immediate use** means not readily accessible for immediate use, *e.g.*, by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, partially disassembled (such as spear shafts being kept separate from spear guns), or stowed for transit.

#### § 922.92 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.93, the following activities are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Dredging, drilling into, or otherwise altering in any way the submerged lands of the Sanctuary (including bottom formations).

(2) Constructing any structure other than a navigation aid, or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands of the Sanctuary.

(3) Discharging or depositing any material or other matter except:

(i) Fish or fish parts or bait and chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling water.

(4) Operating a watercraft other than in accordance with the Federal rules and regulations that would apply if there were no Sanctuary.

(5) (i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead, within the Sanctuary by any means except by use of rod and reel and handline gear.

(ii) There shall be a rebuttable presumption that any marine organism or part thereof found in the possession of a person within the Sanctuary has been collected or removed from the Sanctuary.

(6) Except for fishing gear stowed and not available for immediate use, possessing or using within the Sanctuary any fishing gear or means except rod and reel and handline gear.

(7) Using underwater any explosives, or devices that produce electric charges underwater.

(8) Moving, removing, damaging, or possessing, or attempting to move,

remove, damage, or possess, any Sanctuary historical resource.

(9) Anchoring any vessel in the Sanctuary, except as provided in this section, when responding to an emergency threatening life, property, or the environment, or except as may be permitted by the Director.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

#### § 922.93 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.92(a)(1) through (9) if conducted in accordance with scope, purpose, manner, terms and conditions of a permit issued under this section and § 922.48.

(b) Applications for such permits should be addressed to the Director, National Marine Sanctuary Program, ATTN: Manager, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

(c) 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 an activity prohibited by § 922.92(a)(1) through (9). The Director must also find that the activity will:

(1) Further research related to the resources and qualities of the Sanctuary;

(2) Further the educational, natural, or historical resource value of the Sanctuary;

(3) Further salvage or recovery operations in connection with a recent air or marine casualty; or

(4) Assist in managing the Sanctuary.

(d) The Director shall not issue a permit unless the Director also finds that:

(1) The applicant is professionally qualified to conduct and complete the proposed activity;

(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(3) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;

(4) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to the activity's impacts on Sanctuary resources and qualities;

(5) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities,

considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(6) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary as a source of recreation, or as a source of educational or scientific information considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

(7) It is necessary to conduct the proposed activity within the Sanctuary to achieve its purposes;

(8) The reasonably expected end value of the activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse impacts on Sanctuary resources and qualities from the conduct of the activity; and

(9) Other matters deemed appropriate do not make the issuance of a permit for the activity inappropriate.

(e) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(f) The Director shall, *inter alia*, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(g) The Director may, *inter alia*, make it a condition of any permit issued to require the submission of one or more reports of the status and progress of such activity.

(h) The Director may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

[FR Doc. 03-27237 Filed 10-30-03; 8:45 am]  
BILLING CODE 3510-NK-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-128203-02]

RIN 1545-BA81

#### Partnership Transactions Involving Long Term Contracts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains a correction to a proposed regulation that was published in the **Federal Register** on May 15, 2002 (68 FR 46516), relating to partnership transactions involving contracts accounted for under a long term contract method of accounting.

**FOR FURTHER INFORMATION CONTACT:** Richard Probst (202) 622-3060 (not a toll free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The proposed regulations that are the subject of this correction are under section 460 of the Internal Revenue Code.

##### Need for Correction

As published, the proposed regulations (REG-128203-02), contains an error that may prove to be misleading and is in need of clarification.

##### Correction of Publication

Accordingly, the publication of the proposed regulations (REG-128203-02), which are the subject of FR Doc. 03-18484, is corrected as follows:

On page 46518, column 1, in the preamble under the paragraph heading "1. Contribution of a Contract to a Partnership", line 8 from the top of the column, the language "to the contract, and the contributes the" is corrected to read "to the contract, and then contributes the".

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 03-27498 Filed 10-30-03; 8:45 am]  
BILLING CODE 4830-01-P

## POSTAL SERVICE

### 39 CFR Part 111

#### Sender-Identified Mail: Enhanced Requirement for Discount Rate Mailings

AGENCY: Postal Service.

ACTION: Proposed rule; withdrawal.

**SUMMARY:** The proposal to require enhanced sender identification for all discount rate mailings published in the **Federal Register** on October 21, 2003 (Vol. 68, No. 203, pages 60052-60054), is withdrawn.

**DATES:** This notice is effective upon publication.

**FOR FURTHER INFORMATION CONTACT:** Joel Walker (703) 292-3652.

**SUPPLEMENTARY INFORMATION:** The Postal Service will issue a further notice regarding this proposal at a later date.

**Neva R. Watson,**

*Attorney, Legislative, Office of Legal Policy and Ratemaking.*

[FR Doc. 03-27466 Filed 10-30-03; 8:45 am]  
BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[Region 2 Docket No. PR11-267b; FRL-7580-9]

#### Approval and Promulgation of State Plans for Designated Facilities; Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the "State Plan" submitted by the Commonwealth of Puerto Rico to fulfill the requirements of sections 111(d)/129 of the Clean Air Act for Commercial and Industrial Solid Waste Incineration (CISWI) units. Specifically, the State Plan that EPA is proposing to approve, establishes emission limits for organics, carbon monoxide, metals, acid gases and particulate matter and compliance schedules for the existing CISWI units located in the Commonwealth of Puerto Rico which will reduce the designated pollutants. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving Puerto Rico's State Plan submittal, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received on or before December 1, 2003.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments