

after which improved transponder and associated pressure altitude reporting equipment will be required for flight within Terminal Control Areas (TCA's).

Notice No. 74-17 was published in the FEDERAL REGISTER on April 17, 1974 (39 FR 13785), stating that the Federal Aviation Administration was considering an amendment to Part 91 of the Federal Aviation regulations to postpone the effective compliance dates for operation within Terminal Control Areas by six months.

Interested persons were afforded an opportunity to participate in the proposed rulemaking through the submission of comments. Approximately one hundred public comments were received, which were virtually unanimous in support of the proposed postponement.

One commentator agreed with the six-month extension in Group I TCA's to January 1, 1975, but believed that the requirement for Group II and Group III TCA's should also be effective on the same date as that for Group I TCA's rather than being extended to July 1, 1975. He expressed the opinion that there was no information available to indicate unforeseen difficulties in meeting the equipment requirement after January 1, 1975. The information currently available to the FAA, including the most recent comments to the subject notice (74-17), clearly indicates, however, that there is a serious equipment supply problem which would prevent meeting the present schedule.

Many of the commentators suggested that a one-year extension would be more appropriate than the six-month extension. At present, the FAA believes that a six-month extension will be adequate to permit introduction of reliable equipment into the fleet.

Since this amendment relieves a restriction it may be made effective less than 30 days after publication in the FEDERAL REGISTER.

(Secs. 307, 313(a), Federal Aviation Act of 1958, 49 U.S.C. 1348, 1354(a); sec. 6(c) of the Department of Transportation Act, 49 U.S.C. 1655(c))

In consideration of the foregoing, §§ 91.24(b)(1), (b)(2), and (b)(3) of Part 91 of the Federal Aviation Regulations is amended to read as follows, effective June 27, 1974:

§ 91.24 ATC transponder equipment.

- (b) *Controlled airspace: all aircraft.*
 * * * This requirement applies—
 (1) After July 1, 1975, in Group II Terminal Control Areas governed by § 91.90(a);
 (2) After July 1, 1975, in Group II Terminal Control Areas governed by § 91.90(b);
 (3) After July 1, 1975, in Group III Terminal Control Areas governed by § 91.90(c), except as provided therein; and

Issued in Washington, D.C., on June 24, 1974.

ALEXANDER P. BUTTERFIELD,
 Administrator.

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Title 15—Commerce and Foreign Trade
 CHAPTER IX—NATIONAL OCEANIC AND
 ATMOSPHERIC ADMINISTRATION, DE-
 PARTMENT OF COMMERCE
 PART 922—MARINE SANCTUARIES

The National Oceanic and Atmospheric Administration (NOAA) on March 19, 1974 (39 FR 10255), proposed guidelines pursuant to Title III of the Marine Protection Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1061) and the delegation of authority by the Secretary of Commerce dated March 13, 1974, authorizing the Administrator of NOAA to exercise the authority granted under the Title, for the purpose of setting forth the procedure by which areas may be nominated as marine sanctuaries and the concepts, policies, and procedures for the processing of nominations and the selection, designation and operation of a marine sanctuary.

Written comments were to be submitted to the Office of Coastal Environment, National Oceanic and Atmospheric Administration before May 1, 1974, and consideration has been given these comments.

The Title recognizes that certain areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, or other coastal waters where the tide ebbs and flows, or of the Great Lakes and their connecting waters, need to be preserved or restored for their conservation, recreational ecological or esthetic values.

The Secretary of Commerce (Administrator NOAA) after consultation with the Secretaries of State, Defense, the Interior, Transportation, the Administrator of the Environmental Protection Agency, other interested Federal Agencies, the State(s) involved and with the approval of the President, may designate a marine sanctuary.

Prior to designating a marine sanctuary which includes waters lying within the territorial limits of any state, the Secretary (Administrator NOAA), shall consult with and give due consideration to the view of the responsible state officials involved. A designation under this section shall become effective sixty days after it is published, unless the governor of any state involved shall, before the expiration of the sixty-day period, certify to the Secretary that the designation, or a specified portion thereof, is unacceptable to his state, in which case the designated sanctuary shall not include the area certified as unacceptable until such time as the governor withdraws his certification of unacceptability.

In addition, recognizing the key role of state(s) in areas adjacent to but outside their jurisdiction, the Secretary

(Administrator NOAA) will consult with the state(s) and give due consideration to the views of the responsible state officials involved.

Where areas outside the territorial sea are involved, the State Department is to negotiate with other Governments to achieve protection of a sanctuary to the maximum extent possible.

The Title recognizes that a program will be undertaken by NOAA to identify areas for marine sanctuary status, and that nominations will be made by states, local governments, organizations, industry and individuals. Public participation will be encouraged during the study and analysis phases leading to designation. Prior to a designation of a marine sanctuary, public hearings must be held in the coastal areas most affected by the designation. Regulations are to be promulgated for each such designated sanctuary.

These guidelines set forth the concepts and procedures under which marine sanctuaries will be designated and managed.

The National Oceanic and Atmospheric Administration is publishing herewith the final guidelines describing procedures for nomination, processing of the nomination, designation, revisions, and certification of activities within marine sanctuaries. The final guidelines herewith were revised from the proposed guidelines based on comments received. A total of twenty-two (22) states, agencies, organizations and individuals submitted responses to the proposed Title III Guidelines published in the FEDERAL REGISTER on March 19, 1974. Of these responses received, four (4) were wholly favorable as to the nature and content of the guidelines as they appear in the FEDERAL REGISTER on March 19, 1974. Eighteen (18) commentators submitted suggestions concerning the proposed title guidelines.

The following analysis summarizes key comments received on various sections of the proposed rules and presents a rationale for the changes made:

1. *Introduction.* Concern was expressed that overly large areas of the coastal waters would be made marine sanctuaries. It is not expected, however, that large areas of the oceans and coastal waters will be designated as marine sanctuaries, and all activity prohibited or drastically reduced. It is expected that sanctuaries will be only large enough to permit accomplishment of the purposes specified in the Act.

In each area designated, some activities will be totally compatible, others will need to be modified, and others will not be permitted. The size of the area will depend upon the proposal, an analysis of the factual information, the outcome of the draft environmental impact statement process, and public hearings.

Another commentator indicated that the guidelines failed to properly implement the policy underlying the Title. With this single exception, the consensus

of the reviewers was that the proposed guidelines were basically in harmony with the legislative intent and authority.

One commentator stated that multiple use of various sanctuaries seem to provide for extensive use that is neither intended nor permitted by the statute. An opposite point of view was expressed by commentators that the guidelines implied too restrictive a view of multiple use.

The question of multiple use will need to be examined on a case by case basis. The legislative history of the Title clearly indicates that multiple use of each area should be maximized consistent with the primary purpose. Additionally, the statute clearly indicates, as a safeguard that "no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary (Administrator) shall certify that the permitted activity is consistent with the purposes of this title and can be carried out within the regulations promulgated * * *

2. *Programmatic objectives.* One reviewer indicated that programmatic objectives § 922.2(a) provided for protection of geological and oceanographic features whereas the classification § 922.10 did not. The classification § 922.10 has been modified to provide for these purposes. It was suggested that estuarine sanctuaries be added to the list of public areas in § 922.2(b). The phrase "other preserved areas" covers not only estuarine sanctuaries but also other areas held for the public benefit. The intent is to complement public and private lands that are held and managed for purposes analogous to Title III.

3. *Definitions.* Concern was expressed that the definition of multiple use did not clearly express the concept that a sanctuary will have a primary purpose to which other uses must be compatible. The definitions has been modified accordingly.

4. *Effect of Marine Sanctuary Designation for Waters Outside of U.S. Jurisdictional Limits.* It was indicated that § 922.12 did not accurately reflect the 1958 Geneva Convention on the High Seas. The Department of State made specific recommendations in lieu of the proposed section. Their recommendation has been incorporated verbatim.

5. *Nominations.* Several commentators asserted that the nomination process was not clearly elaborated and that no indication exists that NOAA is charged with the responsibility to take an active role in seeking areas for designation as marine sanctuaries.

Changes have been made to explain how interested individuals and organizations may obtain information as to nominations and their status and to explain how NOAA will stimulate and coordinate a Federal program.

6. *Analysis of nominations.* Concern was indicated that the public was not included in the analysis process at an early enough time and that the guidelines were ambiguous as to the prepara-

tion of a draft environmental impact statement and public notice thereof.

Changes have been made to indicate that a draft environmental impact statement will be prepared and that public notice will announce its public availability and solicit comment.

7. *Consultation.* One commentator indicated the guidelines did not elaborate how differences between a state and NOAA would be resolved. Where the proposed sanctuary is within areas over which the state has jurisdiction the Governor has veto power over the action. It is anticipated that in all considerations the state(s) affected will be fully involved in the process, thus differences can be resolved at each step of the process.

8. *Revision and certification.* Concern was expressed that provisions were omitted for revising an established sanctuary and for certification of proposed activities in a sanctuary.

New sections have been added in order to satisfy these concerns.

T. P. GLEITER,
Assistant Administrator
for Administration.

A new Part 922 is added, to read as follows:

- Subpart A—General**
- Sec. 922.1 Policy and objectives.
922.2 Programmatic objectives.
- Subpart B—Classifications of Marine Sanctuaries**
- 922.10 Classifications.
922.11 Definitions.
922.12 Effect of marine sanctuary designation of waters outside of U.S. jurisdictional limits.
922.13 Effect of international principles involving freedom of the seas.
- Subpart C—Nomination of Candidates**
- 922.20 Nominations.
922.21 Analysis of nomination.
922.22 Public participation.
922.23 Consultation process.
922.24 Designation.
922.25 Operation.
922.26 Revision.
922.27 Certification of other activities.
- Subpart D—Enforcement**
- 922.30 Civil penalties.
922.31 Notice of violation.
922.32 Enforcement hearings.
922.33 Determinations.
922.34 Final action.

AUTHORITY: Title III, Pub. L. 92-532, 86 Stat. 1061, and delegation of authority by Secretary of Commerce, March 13, 1974.

Subpart A—General

§ 922.1 Policy and objectives.

(a) The Marine Sanctuaries Program shall be conducted under the expressed policy of the Title which is to designate areas as far seaward as the outer edge of the continental shelf, as defined in the Convention of the Continental Shelf, 15 U.S.T. 74; TIAS 5578, of other coastal waters where the tide ebbs and flows, or of the Great Lakes and their connecting waters, which the Administrator determines necessary for the purpose of preserving or restoring such areas for their

conservation, recreational, ecological, or esthetic values.

(b) Multiple use of marine sanctuaries as defined in this subpart will be permitted to the extent the uses are compatible with the primary purpose(s) of the sanctuary.

(c) It is anticipated that the marine sanctuaries program will be conducted in close cooperation with section 312 of the Coastal Zone Management Act of 1972, P.L. 92-583, which recognizes that the coastal zone is rich in a variety of natural, commercial, recreational, industrial and esthetic resources of immediate and potential value to the present and future well-being of the nation and which authorizes the Secretary of Commerce to make available to a coastal State grants of up to 50 percent of the costs of acquisition, development and operation of estuarine sanctuaries.

§ 922.2 Programmatic objectives.

Marine Sanctuaries may be designated to preserve, restore, or enhance areas for their conservational, recreational, ecological, research or esthetic values in coastal waters. Anticipated examples include:

(a) Areas necessary to protect valuable, unique or endangered marine life, geological features, and oceanographic features.

(b) Areas to complement and enhance public areas such as parks, national seashores and national or state monuments and other preserved areas.

(c) Areas important to the survival and preservation of the nation's fisheries and other ocean resources.

(d) Areas to advance and promote research which will lead to a more thorough understanding of the marine ecosystem and the impact of man's activities.

Subpart B—Classification of Marine Sanctuaries

§ 922.10 Classifications.

Multiple use may be permitted in each classification to the extent the uses are compatible with the primary purpose(s) for which the sanctuary is established. Areas may be established to augment public and private lands or marine areas set aside by local, state or Federal government and private organizations for analogous purposes. Marine sanctuaries will be established for one, or a combination of, the following purposes:

(a) *Habitat areas.* Areas established under this concept are for the preservation, protection and management of essential or specialized habitats representative of important marine systems. Management emphasis will be toward preservation. The quantity and type of public use will be limited and controlled to protect the values for which the area was created.

(b) *Species areas.* Areas established under this concept are for conservation of genetic resources. Management emphasis may be to maintain species, populations and communities for restocking

other areas and for reestablishment purposes in the future. The result will be a contribution to the goal stated by the Council on Environmental Quality, that is, "the widest possible diversity of and within species should be maintained for ecological stability of the biosphere and for use as natural resources." The orientation envisaged will be toward species preservation by protection of such areas as migratory pathways, spawning grounds, nursery grounds, and the constraints on these areas will be those necessary to achieve these purposes.

(c) *Research areas.* (1) Areas established under this concept will exist for scientific research and education in support of management programs carried out for the purpose of the title.

(2) The purpose of the research areas is to establish ecological baselines against which to compare and predict the effect on man's activities, and to develop an understanding of natural processes. Research areas will be chosen according to the biota they support, to include representative samples of the significant ecosystems in the nation, and to the history of prior research carried out in the area, and its proximity or availability to potential uses marine sanctuary designation will insure that the area will be relatively unaffected for a long period of time, thus adding a measure of stability to a research program and the value of the data in management decisions.

(d) *Recreational and esthetic areas.* Areas established under this concept will be based on esthetic or recreational value.

(e) *Unique areas.* Areas established under this concept will be to protect unique or nearly one of a kind geological, oceanographic, or living resource feature.

§ 922.11 Definitions.

As used in this part, the following terms shall have the meaning indicated below:

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Marine sanctuary" means those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention of the Continental Shelf, 15 U.S.T. 74, TIAS 5578, of other coastal waters where the tide ebbs and flows, of the Great Lakes and their connecting waters, for the purpose of preserving, restoring or enhancing such areas for their conservation, recreational, ecological, research, or esthetic values.

(c) The term "multiple use" as used in this section shall mean the contemporaneous utilization of an area or resource for a variety of compatible purposes to the primary purpose so as to provide more than one benefit. The term implies the long-term, continued uses of such resources in such a fashion that one will not interfere with, diminish, or prevent other permitted uses.

(d) "Ocean waters" means those waters of the open seas lying seaward of the baseline from which the territorial sea is measured, as provided for in the Convention of the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606, TIAS 5639.

(e) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, or any state or local unit of government.

(f) "Secretary" means the Secretary of Commerce.

§ 922.12 Effect of marine sanctuary designation for waters, outside the U.S. jurisdictional limits.

The designation of a marine sanctuary and the regulations pertaining to it will be binding on United States nationals. The United States has exclusive jurisdiction over all resources within the territorial sea in which it exercises sovereignty subject only to the right of innocent passage. Beyond that limit, the U.S. regulations would be binding on foreign citizens only to the extent consistent with international law.

§ 922.13 Effect on international principles involving freedom of the seas.

The designation of a marine sanctuary will not infringe upon the normal rights of innocent passage in territorial waters, the rights of navigation through international straits, or the freedoms of the high seas, including freedom of navigation.

Subpart C—Nomination of Candidates

§ 922.20 Nominations.

(a) The nomination of a given marine area for consideration as a designated marine sanctuary may result from studies carried out by Federal, State or local officials or from any other interested persons. Nominations should be addressed to:

Director, Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Rockville, Maryland 20852

Information may be obtained on nominations by inquiring to the above office.

(b) The nomination for designation as a marine sanctuary must contain the following information:

(1) A general description of the area including the following information:

(i) Purpose for which the nomination is made;

(ii) Geographic coordinates of the site;

(iii) Plant and animal life in the area;

(iv) Geological characteristics of the area; and

(v) Present and prospective uses and impacts on the area and resources thereof.

(2) A nomination for research purpose should contain a specific scientific justification, a statement of how the research will aid in management decisions,

and a history of prior research carried out on the area.

(c) A Federal program will be stimulated and coordinated by NOAA to establish a coherent system of estuarine and marine ecosystems, recreational and esthetic areas, and research areas. It is anticipated that this system will emerge as part of the State coastal zone management plans, taking into account the national interest.

§ 922.21 Analysis of nomination.

(a) Upon receipt of a nomination or as the result of action by NOAA, the involved State(s), other Federal agencies, will be notified of the nomination and requested to participate in a preliminary review to determine feasibility.

(b) If a preliminary review demonstrates the feasibility of the nomination, a more in-depth study will be required. Factual information will be gathered to obtain an understanding of the:

(1) Animal and plant life;

(2) Geological features;

(3) Weather and oceanographic conditions and features;

(4) Present and potential recreational and economic uses;

(5) Present and potential adjacent land uses;

(6) Laws and programs of Federal, State and local government that apply to the area.

(c) An analysis will be made of how the sanctuary will impact on the present and potential uses, and how these uses will impact on the primary purpose for which the sanctuary is being considered.

(d) The factual information and the results of the analysis activity will be used in preparation of a draft environmental impact statement and proposed regulations. Subsequent to completion of the in-depth study by the Administrator, a draft Environmental Impact Statement will be prepared and circulated for review in compliance with the National Environmental Policy Act of 1969 and implementing the Council on Environmental Quality guidelines. The draft Environmental Impact Statement will discuss proposed regulations and operational procedures and programs.

§ 922.22 Public participation.

(a) The purpose of this section is to ensure that all interested parties have the opportunity to present their views.

(b) When a nomination has been determined feasible, a press release will be issued by NOAA announcing the nomination and that a Draft Environmental Impact Statement is in preparation.

(c) When notice of the Draft Environmental Impact Statement (DEIS) has been published by the Council on Environmental Quality, a press release will be issued by NOAA announcing the DEIS and soliciting comment.

(d) The Administrator will hold public hearings in the coastal areas which would be most directly affected by such designation, for the purpose of receiving and giving proper consideration to the

views of any interested party. Such hearings should be held no earlier than 30 days after the Council on Environmental Quality announces receipt of the draft Environmental Impact Statement by publication in the FEDERAL REGISTER. Public hearings need not be held on each proposal or nomination, but only when sufficient facts and data are available to the Administrator which indicates that designation action appears to be feasible, and a Draft Environmental Impact Statement has been prepared.

§ 922.23 Consultation process.

The consultation process is designed to coordinate the interests of the State and various Federal departments and agencies, including those responsible for the management of fisheries resources, the protection of national security and transportation interests, and the recognition of responsibility for the exploration and exploitation of mineral resources.

§ 922.24 Designation.

The designation by the Administrator will clearly state the purpose for which the sanctuary is designated, regulations and guidelines promulgated, and management program under which it will operate.

§ 922.25 Operation.

The designation of a marine sanctuary establishes the basis for a continuous operating program designated to maintain the purpose for which the sanctuary is designated. This involves a program of continuous scientific evaluation, surveillance, and enforcement to insure the integrity of the system. An interpretive program may be conducted to aid in public understanding and enjoyment of the sanctuary. A specific program will be established for each designated marine sanctuary.

§ 922.26 Revision.

Revision of a designated marine sanctuary may be proposed by the same procedure as for nomination. A public hearing will be held in the area most affected by the proposed action. A Draft Environmental Impact Statement may be required if the proposed action will significantly affect the quality of the Environment.

§ 922.27 Certification of other activities.

The Act specifies that once a marine sanctuary is designated, no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes of this title and can be carried out within the regulations promulgated. The Regulations promulgated for each sanctuary will contain a certification procedure.

Subpart D—Enforcement

§ 922.30 Penalties.

Any person subject to the jurisdiction of the United States who violates any

regulation issued pursuant to this title will be liable to a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Administrator. Each day of a continuing violation will constitute a separate violation. No penalty will be assessed under this section until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Administrator, will commence action in the appropriate district court of the United States in order to collect the penalty and to seek such other relief as may be appropriate. A vessel used in the violation of a regulation issued pursuant to this title will be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof. The district courts of the United States will have jurisdiction to restrain a violation of the regulations issued pursuant to this title, and to grant such other relief as may be appropriate. Actions will be brought by the Attorney General in the name of the United States, either on his own initiative or at the request of the Administrator.

§ 922.31 Notice of violation.

Upon receipt of information that any person has violated any provision of this title, the Administrator or his designee will notify such person in writing of the violation with which he is charged, and will convene a hearing to be conducted no sooner than 60 days after such notice, at a convenient location, before a hearing officer. Such hearing will be conducted in accordance with the procedures of § 922.32.

§ 922.32 Enforcement hearings.

Hearings convened pursuant to § 922.31 will be hearings on a record before a hearing officer. Parties may be represented by counsel, and will have the right to submit motions, to present evidence in their own behalf, to cross examine adverse witnesses, to be apprised of all evidence considered by the hearing officer, and to receive copies of the transcript of the proceedings. Formal rules of evidence will not apply. The hearing officer will rule on all evidentiary matters, and on all motions, which will be subject to review pursuant to § 922.33.

§ 922.33 Determinations.

Within 30 days following conclusion of the hearing, the hearing officer will in all cases make findings of facts and recommendations to the Administrator, including, when appropriate, a recommended appropriate penalty, after consideration of the gravity of the violation, prior violations by the person charged, and the demonstrated good faith by such person in attempting to achieve rapid compliance with the provisions of the title and regulations issued pursuant thereto. A copy of the findings and recommendations of the hearing officer shall be provided to the person charged at the same time they are for-

warded to the Administrator. Within 30 days of the date on which the hearing officer's findings and recommendations are forwarded to the Administrator, any party objecting thereto may file written exceptions with the Administrator.

§ 922.34 Final action.

A final order on a proceeding under this part will be issued by the Administrator or by such other person designated by the Administrator to take such final action, no sooner than 30 days following receipt of the findings and recommendations of the hearing officer. A copy of the final order will be served by registered mail (return receipt requested) on the person charged or his representative. In the event the final order assesses a penalty, it shall be payable within 60 days of the date of receipt of the final order, unless judicial review of the order is sought by the person against whom the penalty is assessed.

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Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-10854]

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Business of Registrant

The Securities and Exchange Commission today adopted a clarifying amendment to Item 1(a) of Form 10-K (17 CFR 249.310) under the Securities Exchange Act of 1934 ("Act"). Item 1(a) and (b) was last amended in Securities Act Release No. 5395 (June 1, 1973), effective August 1, 1973 (38 FR 17202).

Item 1(a) calls for a description of the registrant's principal products and services, markets and methods of distribution. Item 1(b) requires a description of any material changes and developments during the fiscal year in the business done and intended to be done; also, Item 1(b) contains nine specific topics, such as competitive conditions, backlog and reliance upon a small number of customers, as to which disclosure might be required.

The Commission is advised that some registrants construe the above disclosure requirements as not calling for a description of business done and intended to be done, unless there has been a material change in the registrant's business. The Commission did not intend this result. Instead, it was intended that each report on Form 10-K contain a brief description of the business done and intended to be done with an additional discussion highlighting material changes occurring during the fiscal year. In Securities Act Release No. 5395 the Commission stated:

The description of business item in Form 10-K, as adopted, requires a brief description of the registrant's business, which is an existing requirement, and the material changes in such business that occurred during the fiscal year. The Commission believes