proposal should not be adopted at this time. The FAA has concluded that approaches should be stabilized at or before final fix inbound. To delay landing flap deployment until 1,000 feet would, in almost all cases, place the aircraft well inside the final approach fix at the time of landing flap deployment and this could result in serious consequences, particularly if wind shear is encountered.

Many commenters suggested changing the final flap setting point from 1,000 feet above the airport to the point of glide slope intercept or to the outer marker (or some other readily identifiable location) on a precision approach and the final approach fix on a nonprecision approach. The ATA and NBAA were among the commenters comprising this group. Because the ATA/NBAA procedures formed the basis of the rule proposed in Notice No. 76–26, their comments are considered particularly significant. The ATA stated that while most U.S. carriers use the 'reduced' flap approach the great majority of time, they use it under carefully prescribed conditions. The ATA also indicated that the majority of its member carriers have no difficulty with the procedures outlined in the notice in stabilized VFR meteoroligical conditions. The ATA felt, however, that in instrument conditions, greater emphasis must be placed on stabilizing the aircraft as soon as possible in the approach to allow adequate time to monitor the aircraft performance and ensure stabilization throughout the approach. Finally, ATA recommended selecting the landing flaps at glide slope intercept or at the final approach fix on a nonprecision approach. NBAA said landing flaps should be delayed until needed. The FAA will continue to work with ATA and NBAA in light of the proposed wind shear rulemaking action. Should further detailed guidance be required, the FAA will consider developing an advisory circular or operations bulletin.

Most of those who opposed the proposals expressed the belief that its adoption would derogate safety. In general, the FAA agrees with the reasons offered, which included the following:

1. The approach would not be stabilized until two-thirds of the way between the outer marker and the airport. At normal descent speeds that would be less than 30 seconds before touchdown.

2. Category I and II approaches require the aircraft to be stabilized on the approach at glide slope intercept in the landing configuration with no late-stage configuration changes. (FAA Advisory Circular 120–129 recommends stabilization at that point for Category I and II approaches.)

3. A late flap adjustment would require an attitude and a speed change, which would affect the accuracy of any timing required to identify the missed-approach point.

4. On some aircraft, a pitch change while using the slow trim on the autopilot would require a trim change. That could result in an out-of-trim condition when the autopilot is disconnected at minimum altitude, and thus affect the stability of the aircraft.

5. The pilot workload would be increased at a most critical stage of the flight.

Reasons for the Decision

Based on its review of the comments submitted and other available data, the FAA concludes that the changes in mandatory instrument approach techniques that would result from the adoption of any of the proposals contained in Notice No. 76–26 would not provide adequate levels of safety, even under specifically prescribed conditions and limitations. Both the National Transportation Safety Board and the FAA have consistently maintained that a stabilized approach is the best assurance that (1) cockpit workload will not be excessive, (2) overshooting or undershooting the touchdown point can be controlled, and (3) the pilot can better identify wind shear and other hazardous conditions. Delaying the use of landing flaps, as proposed, until the aircraft descends to an altitude of 1,000 feet or less above the airport could require configurations, attitude, and speed changes. Those factors could delay stabilization of the aircraft and increase the cockpit workload at a time when the crew is busy completing the final checklist and keeping abreast of any last minute tower or approach advisories, and visually searching for other traffic. Where a delay in stabilization and an increase in the cockpit workload occurs, mandatory use of the proposed approach procedure under instrument flight rule conditions would not be in the interest of the highest level of safety in air transportation.

Four alternatives which could be used to define the earliest point where the landing flap setting could be made were proposed in the NPRM and have been considered. Based upon the need for a stabilized approach and the possibility of wind shear even in VFR conditions, the FAA has determined that none of these alternatives is completely acceptable.

Evaluations

An environmental assessment of the effects of this withdrawal has been prepared in accordance with the National Environmental Policy Act of 1969, and implementing Federal directives and guidelines. That assessment concludes the action is not a major Federal action significantly affecting the quality of the human environment.

Under § 611(c)(1) of the Federal Aviation Act of 1958, as amended, the FAA has consulted with the Secretary of Transportation and the United States Environmental Protection Agency prior to the issuance of this notice.

The Decision and Withdrawal

Accordingly, the FAA concludes it should not adopt regulations based on the proposals contained in the notice of proposed rule making, and, accordingly, Notice No. 76–26 (41 FR 52396; November 29, 1976) is hereby withdrawn. This action, however, does not preclude the FAA from considering similar proposals in the future or commit it to any further course of action on those proposals.

(Secs. 307(c), 313(a), 601, 611(b), Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1348, 1354(a), 1421, and 1431(b)); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)); Title I of the National Environmental Policy Act of 1969 (49 U.S.C. §§ 4321 et seq.); Executive Order 11514, March 5, 1970; and 14 CFR 11.45)

Issued in Washington, D.C., on June 19, 1980.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 80-19106 Filed 6-25-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 934

Flower Garden Banks Marine Sanctuary

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes to designate a Marine Sanctuary in the waters of the Gulf of Mexico off Texas and Louisiana overlaying the East and West Flower Garden Banks. After review of comments, preparation of a Final Environmental Impact Statement (FEIS) and final consultation with Federal agencies, if a decision is made to

proceed, NOAA must seek Presidential approval of the proposed Sanctuary designation. After designation NOAA must promulgate necessary and reasonable regulations governing activities within the Sanctuary.

The regulations for the proposed Flower Gardens Marine Sanctuary (the Sanctuary) were proposed on April 13, 1979 (44 FR 22081) and a Draft Environmental Impact Statement (DEIS) describing the effect of the proposed designation and regulations was issued concurrently. As a result of comments received on the proposed regulations and the DEIS and after consultation with interested Federal agencies, NOAA is revising the original proposed regulations.

DATE: Comments due August 25, 1980. (This comment period may be extended to close concurrently with the comment period on the FEIS.) Comments received by July 25, 1980, will be considered in preparation of the Flower Garden Banks Marine Sanctuary FEIS.

PERSON TO CONTACT FOR FURTHER INFORMATION: Dr. Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235 (202)634–4236.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431–1434 (the Act), authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as far seaward as the outer edge of the Continental Shelf as marine sanctuaries to preserve or restore distinctive conservation, recreational, ecological, or aesthetic values. Section 302(f) of the Act directs the Secretary to issue necessary and reasonable regulations to control any activities permitted within a designated marine sanctuary. The authority of the Secretary to administer the provisions of the Act has been delegated to the Assistant Administrator for Coastal Zone Management within the National Oceanic and Atmospheric Administration, U.S. Department of Commerce (the Assistant Administrator).

The Office of Coastal Zone Management proposes the designation of a Marine Sanctuary in an area of the Gulf of Mexico known as the East and West Flower Garden Banks located approximately 110 nautical miles (nm) southeast of Galveston, Texas, and 120 nm south of Cameron, Louisiana. The proposed Sanctuary would include the waters overlaying the Banks and extending to a distance of approximately 4 nm from the banks, a total area of approximately 257 square nautical miles (see Appendix A). The Banks are biologically unique and important. They contain the northernmost living coral reefs on the U.S. Continental Shelf and represent the only truly tropical coral reefs in the northwestern Gulf of Mexico. The live Banks contain some 18 coral species; the ecosystem supports more than 100 species of Caribbean reef fish and more than 200 species of invertebrates.

On April 13, 1979, NOAA published proposed regulations for the Sanctuary and, at the same time, released a DEIS describing the preferred Sanctuary alternative including the recommended boundary and the proposed regulations, and other alternative actions. The comment period was extended twice ending finally on August 10, 1979.

During review of the DEIS a significant number of commentors, including both supporters and opponents of the Sanctuary, generally expressed concern over the extent of the analysis and data base upon which the proposal was based. In response to these concerns NOAA requested that the Department of the Interior (DOI), Department of Energy (DOE) and the Environmental Protection Agency (EPA) participate as "cooperating agencies" in preparing the FEIS under the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.6). Representatives from these agencies worked with NOAA to gather information and to perform additional analysis in preparation of the final EIS. Available data were reviewed including information furnished by DOI regarding USGS projected leasing activities within the proposal area. The DOI projections of limited future leasing in the Flower Gardens area contributed to the decision to propose elimination of the moratorium. Attention was given to possible mechanisms for avoiding regulatory duplication and for insuring coordination of all agencies with overlapping jurisdictions and expertise in the area. As a result of public comment and cooperating agency input, NOAA has revised the proposed regulations in the following ways:

(1) Elimination of the five year moratorium originally proposed on hydrocarbon activities on tracts leased after the effective date of the proposed regulations.

(2) Replacement of an absolute prohibition originally proposed on bulk discharges of drilling muds with a system that would allow the Assistant Administrator for Coastal Zone Management (AA/CZM) to decide on appropriate disposal of bulk discharges on a case-by-case basis after review and recommendation by an interagency Sanctuary Task Force (Charter attached as Appendix C).

(3) Changing the anchoring restriction within the no-activity zone from prohibiting anchoring by all except recreational boats to prohibiting anchoring by all boats over 100 feet in length. This still is intended to be an interim measure pending completion of a proposed study on the feasibility and desirability of a mooring buoy system.

(4) Elimination of the prohibition of simultaneous discharges of drill muds and cuttings from a single platform or rig.

In addition to these changes, the depth to which drill muds and cuttings must be shunted has been revised to 10 meters from 6 meters and the monitoring requirements have been revised to allow for more case-by-case flexibility by the AA/CZM and the Sanctuary Task Force.

Finally, at the request of the Department of the Interior the no-activity zone has been defined, with Bureau of Land Management (BLM) assistance, by the aliquot method (see Appendix B).

NOAA received some comments on the DEIS and the proposed regulations from those who opposed the Sanctuary and the regulations as unnecessary and overly restrictive. Some commentors supported the proposal without change and some supported the Sanctuary but stated that the restrictions proposed by the regulations, particularly those relating to anchoring and hydrocarbon activities, were not sufficiently protective. In order to provide additional time to comment on the changes made in response to the comments or to submit new information relating to revisions suggested in previous comments and not adopted at this time, NOAA is reproposing the regulations for public review prior to issuing the FEIS, anticipated in July 1980.

While the comments on the DEIS and the originally proposed regulations received to date and reflected herein have been extensive, relevant new information received by July 25, 1980, will be considered in preparation of the FEIS which will discuss modifications to the proposed regulations in greater detail than found in this notice. However, the comment period on these reproposed regulations will remain open at least 60 days from publication and may be extended to close concurrently with the 30 day review period on the FEIS since the subject of the two documents is essentially identical. If a final decision is made to proceed with designation, all major comments received on the reproposed regulations will be responded to in the final

rulemaking document which will be submitted for Presidential approval and published after Sanctuary designation.

The major issues raised by comments in the review of the DEIS and the original proposed regulations are briefly summarized below. Certain minor clarifications have been made which are not discussed. All comments and changes will be addressed in the FEIS and/or the final rulemaking document as appropriate.

Main Comments on the Regulations

1. Size of the No-Activity Zone. The original proposed regulations defined a no-activity zone for hydrocarbon activities on both Banks as the areas within the 85 m isobaths as defined by the BLM quarter-quarter-quarter system or within the 100 m isobaths where such area extends further from the midpoint of either Bank. The basis presented in the DEIS for expanding the BLM no-activity zone was primarily to afford protection for concentrations of crinoids extending to 100 m depths by avoiding discharges and activities in that area.

A number of reviewers (Texas A & M University, DOI, DOE, Offshore Operators Committee, American Petroleum Institute, Western Oil and Gas Association, and several oil companies) were concerned that this regulation would withdraw additional areas from hydrocarbon exploration. They question whether or not there is a layer at 100 m which really should be classified as a "Crinoid Zone." They maintained that crinoids are found throughout the Gulf of Mexico, and that they do not require special protection either as a community or as a species. They stated that crinoids are abundant at 70 m depths but at 100 m they occur in reduced numbers and, in comparison with the hard bank communities above 80 m depths, are depauperate, attenuated and much less diverse. Additionally, these reviewers indicated that scientific evidence does not exist to support the premise that the condition of the crinoid community affects the coral reef and algal-sponge zone.

Other reviewers (EPA, Marine Sanctuary Coalition, Natural Resources Defense Council, Thomas Wiewandt (University of Florida) contended that the small size of the proposed no-activity zones was inadequate for protection of the reef communities. They maintained that larger buffer zones were necessary to protect the reefs from possible impacts resulting from oil and gas activities. These reviewers recommended that the no-activity zones be extended to 1 nm from the midpoints of the Banks. In the opinion of these reviewers the enlarged no-activity zone was necessary to provide a safety margin to take account of the following:

a. Sediment plumes can extend more than two miles;

b. Coral reefs are sensitive to sedimentation and turbidity;

c. Whole, used drilling muds and some drilling mud constituents are toxic;

d. Inadequate information currently exists about the ultimate effects of the discharge of drilling muds and cuttings; and

e. Crinoid communities, a vital part of reef ecosystems, are known to have spotty distribution which could certainly extend below the 100 m isobath.

One reviewer (David L. Meyer, University of Cincinnati) suggested that current research on the ecology of crinoids supported the proposed regulation enlarging the no-activity zone to include the area within the 100 m isobaths. This reviewer maintained that protection for the crinoid zone is necessary and that activities such as dredging, drilling, discharge of muds, and platform construction could increase turbidity and seriously harm the crinoid populations.

DOI suggested that the no-activity boundary be defined by the aliquot system for leasing purposes. NOAA feels that the original determination of the no-activity zones, i.e., the areas of maximum sensitivity, is approximately correct. However, NOAA has agreed to use the aliquot system to define these areas. Using this method, as suggested by DOI, does increase slightly the area of each no-activity zone originally proposed in the DEIS and regulations (see Appendix B).

Although DOI recommended the aliquot method primarily for leasing purposes, NOAA proposes to use the same no-activity boundaries for all purposes to avoid the confusion of two no-activity zones applying to different uses. In addition, recent BLM and USGS bathymetric data show that the original proposed boundary of the zone, the 100 m isobath, is difficult to apply because this isobath does not close completely around the Banks. NOAA will list the no-activity boundary coordinates based on the aliquot method in the FEIS for navigational purposes.

2. Moratorium. The DEIS proposed a moratorium on hydrocarbon exploration and development activities on tracts unleased on the effective date of the regulations. The DEIS indicated that existing information on the effects of chronic discharges of drilling muds and cuttings did not conclusively eliminate the possibility of harm to coral and other reef biota. The moratorium would afford time to conduct additional research on the effects of oil and gas activities on the Flower Garden Banks.

Several reviewers including DOI, DOE, and numerous industry groups objected to this provision of the proposed regulations. They felt that the moratorium was unnecessary and that, in view of all the studies by DOI and others, oil and gas operations can proceed safely near the Banks subject only to DOI restrictions. These reviewers maintained that NOAA had ignored current data available from industry monitoring and BLM studies and failed to document any instance of damage to the reefs caused by oil and gas operations. These commentors believed that other authorities, *e.g.*, EPA, Coast Guard and particularly DOI under the OCS Lands Act Amendments of 1978, were fully adequate to protect the environment and were successfully doing so. Some suggested that the proposed moratorium conflicts with the President's Energy Message of April 5, 1979, the stated intent of which was to step up exploration and production of oil and gas from Federal lands onshore and offshore. These reviewers contended that current energy shortages and price increases emphasize the priority of increasing production from domestic sources to offset continued high dependence on foreign supplies. These commentors maintained that the need for the moratorium does not appear to be established when assessed against energy requirements.

In contrast, several reviewers (EPA, Marine Science Institute, Defenders of Wildlife, Marine Sanctuary Coalition, Natural Resources Defense Council) supported the five-year moratorium on oil and gas development. These reviewers concurred with the position that additional time is required to conduct a comprehensive research program on the effects of oil and gas activities at the Banks. They felt that the current literature on the fate and effects of drill muds sufficiently indicated the potential for harm to justify a five-year study period. One reviewer (Jerry Akers (private citizen)) maintained that a five-year moratorium was insufficient, and that the period should be extended to ten years.

As a result of evaluation of all comments the moratorium has been eliminated from the final proposal. The lack of substantial data on adverse effects of oil and gas activities in the Flower Gardens area in combination with the United States Geological Survey (USGS) limited leasing projections led NOAA to decide that such a moratorium was unnecessary.

3. Bulk Discharges. Under the original proposed regulations, bulk discharges of

drilling muds would be prohibited within the Sanctuary.

Several reviewers, including DOI, DOE and numerous industry groups maintained that this prohibition which would compel barging muds away from the drilling sites, might be hazardous to the safety of oil and gas personnel, would be exceedingly expensive, environmentally dangerous, and would not necessarily result in any benefit to the Flower Garden Banks. They believe that accidental barge spills pose a greater danger to the reefs than discharges. Barging would require mooring large surface craft at the drilling facility for long periods of time in the adverse weather conditions that frequently occur in the Gulf of Mexico and could be dangerous to those conducting the activity. In rough weather the accidental potential is high and this requirement could result in a significant potential hazard to the ecology of the Banks. In the case of spills in the Sanctuary the surface discharge of large amounts of mud would be more hazardous to the environment than the alternative of shunting these materials to the bottom. If a barge containing mud broke loose in heavy seas and capsized near the top of the coral reef it would release a load (1400–2300 barrels) of drilling muds directly on the Banks with potentially disastrous environmental consequences. These reviewers maintained that properly shunting the drill cuttings and muds into the nepheloid layer is a safer, more effective, and less expensive method of disposal.

Several reviewers (Chevron, Offshore Operator Committee, Mobil Oil) indicated that the prohibition of the bulk discharge of mud would increase the cost of drilling approximately $300,000–$400,000 per well.

One reviewer (Gulf Oil) suggested that alternative disposal of the barged drilling mud either by ocean dumping or on land was a problem. Gulf maintained that EPA permits for ocean dumping will be increasingly difficult if not impossible to obtain. Land disposal will present additional problems because of EPA's presently proposed classification of drill muds and brines as "special waste" and, therefore, subject to hazardous waste management regulations under the Resource Conservation and Recovery Act of 1976. The full impact of the regulation covering these "special wastes" cannot be determined since the final regulations have not been promulgated. The problems associated with land disposal were reinforced during discussions with the U.S. Fish and Wildlife Service.

In contrast, several reviewers (EPA, Linda Fields and Gary Fields (private Citizens), Paul Sammarco (Clarkson College), Joel Cohen (University of Miami), and Alexander Stone (Marine Wilderness Society)) supported the proposed regulation prohibiting bulk discharge of drilling muds within the Sanctuary.

The final NOAA proposal does not place an absolute prohibition on bulk discharges, but provides that the Assistant Administrator must certify any permit or other authority allowing bulk discharges on a case-by-case basis after review and recommendation by an interagency Sanctuary Task Force. The revised procedure does not affect the existing authority of those agencies now regulating discharges (DOI and EPA) to exercise their expertise and statutory mandates. If those agencies allow a bulk discharge, the Assistant Administrator must certify consistency with the Sanctuary purposes. The proposal avoids duplicating existing regulatory activities but assures Sanctuary oversight on a matter of significant concern.

4. Monitoring. Under the original proposed regulations, the effects of discharges of drill muds and cuttings upon Sanctuary resources would be monitored at least once before drilling, frequently during drilling, and at least once after drilling, in accordance with the specific requirements, set forth in the permits issued by the Environmental Protection Agency.

Industry reviewers and Texas A & M University maintained that the DEIS gave no justification for the requirement that monitoring be conducted within the entire Sanctuary (approximately four nautical miles from the no-activity zone of each Bank (see Appendix A)). Furthermore, they maintained that several short term monitoring studies within 1 nm of the 85 m isobath have shown no adverse impact.

DOI maintained that the BLM monitoring program over the last five years has included projects to map the Banks, assess and monitor the health of the reefs (qualitatively and quantitatively, using active and passive in-water, visual methods), monitor drilling activities when they occur, and measure seasonal changes in hydrographic conditions, including currents. Based upon these studies, BLM feels that the existing DOI requirements for shunting and monitoring are adequate to protect the coral reefs from the effects of discharges.

In contrast, several reviewers (EPA, David L. Meyer (University of Cincinnati), Joel W. Hedgpeth (private citizen), Judith Lang (University of Texas)) supported the proposed regulations requiring monitoring of the effects of discharges of drill cuttings and effluents within the entire Sanctuary.

The final NOAA proposal eliminates the requirement that ties monitoring of the effects of drill cuttings and effluents to NPDES permit conditions. Instead it provides that the Assistant Administrator must certify any permit allowing discharge of drilling fluids, drilling muds, cuttings or produced waters after receiving the recommendation from the Sanctuary Task Force. This proposed regulation avoids duplicating existing agency activity, provides flexibility for requiring additional monitoring efforts where needed, and ensures Sanctuary oversight of monitoring.

5. Shunting of Drilling Muds. The original proposed regulations required shunting to within 6 meters of the bottom throughout the Sanctuary to increase the probability that the material would be deposited into the nepheloid layer.

Current BLM lease stipulations require that drill cuttings and drilling muds be disposed of by shunting the material to the bottom through a downpipe that terminates 30 feet (10 meters) or closer to the bottom within three nautical miles of the 85-meter isobath around the Banks.

DOE, DOI and industry objected to the proposed regulation. These reviewers suggested that since, according to the DEIS, the "Bureau of Land Management reef monitoring studies have not indicated any effects on the reefs from shunting activities that have occurred to date," there is no evidence whatsoever that the 10-meter restriction is inadequate. Additionally, they commented that shunting to less than 10 meters may cause mechanical problems; cuttings may accumulate causing the shunt pipe to become blocked and result in surface discharges. These commentors recommended that the proposed regulations be changed to be consistent with current DOI/BLM requirements.

Other reviewers suggested that the proposed regulation to shunt drilling muds to within 6 meters was not stringent enough. Applied Biology, Inc., questioned whether a discharge at this depth would insure that the material remained in the nepheloid layer and recommended that shunting to 1 meter be required.

Several other reviewers (Marine Science Institute, Marine Wilderness Society, Lee Mitchell (University of Iowa)) objected to any disposal of cuttings and muds anywhere within the proposed Sanctuary. These commentors

maintained that in the absence of detailed information on the behavior of the nepheloid layer and bottom current movements, all discharged material should be transported elsewhere to a disposal site.

The requirements for shunting to within 6 m depth throughout the Sanctuary outside the no-activity zones has been revised to the 10 m depth. Discussions with the cooperating agencies indicated that there was insufficient basis for modifying the existing 10 m requirement at this time.

6. Simultaneous Discharges. The original proposed regulations prohibited the simultaneous discharge of effluents from more than one well from a single rig or platform.

A number of reviewers said that the prohibition on more than one discharge from a single rig or platform was superfluous. Several pointed out that exploratory rigs are equipped to drill only one well at a time. While one reviewer (EPA) felt that the prohibition on discharges from production platforms should be retained, others pointed out that on all but a few very large production platforms only one drilling rig operates at any time and that it is highly unlikely that such a platform would be used in the Sanctuary. In view of these comments and confirming information from USGS and BLM, and considering EPA's ability to regulate this conduct in the unlikely event that it is imminent, this requirement has been eliminated.

7. Anchoring. The original proposed regulations prohibited anchoring on the Banks by any vessel except recreational vessels. (Anchoring on corals or coral heads or in such a manner as to damage any coral formation was to be avoided.)

Almost all reviewers felt that the original prohibition of anchoring by all but recreational boats appeared unreasonable and difficult to enforce since the uses of vessels could not be determined accurately without onboard inspection. To resolve this problem and since the magnitude of anchor damage, the primary concern, is directly related to vessel size rather than type of vessel the proposed regulations now prohibit anchoring of vessels longer than 100 ft.

Some reviews felt that the proposed regulation was inadequate to protect the coral. They maintained that anchoring poses an undesirable degree of environmental risk. For these reasons, several of the reviewers recommended the establishment of a short scope mooring buoy system. This proposed regulation is intended as an interim measure pending design and completion of a mooring buoy feasibility study.

Designation Document

NOAA policy and its General Marine Sanctuary Regulations (44 FR 6930) provide that the regulatory system for a marine sanctuary will be established by two documents, a Designation document and the regulations issued pursuant to Section 302(f) of the Act. The designation will serve as a constitution for the Sanctuary, establishing among other things the purposes of the Sanctuary, the types of activities that may be subject to regulation within it and the extent to which other regulatory programs will continue to be effective. The proposed Flower Gardens Designation document is essentially unchanged from the original proposal and would provide as follows:

Draft Designation Document—Designation of the Flower Garden Banks Marine Sanctuary

Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92–532, (the Act) the Flower Garden Banks are hereby designated a Marine Sanctuary for the primary purposes of: (1) protecting this unique and fragile ecological community; (2) promoting scientific understanding of ecological interactions and interdependencies characteristic of the Banks.

Article 1. Effect of Designation

Within the area designated as the Flower Garden Banks Marine Sanctuary (the Sanctuary), described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulation but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation and additional activities may be regulated only by amending Article 4.

Article 2. Description of the Area

The Sanctuary consists of a 257 square nautical mile (nm^2) area of the Gulf of Mexico located approximately 110 nm southeast of Galveston, Texas, and 120 nm south of Cameron, Louisiana, overlaying the East and West Flower Garden Banks, the approximate midpoints of which are respectively, 27°55'07.44"N; 93°36'08.49"W and 27°52'14.21"N; 93°48'54.79"W and extending to a distance of approximately 4nm from the Banks. The precise boundaries are defined by regulation.

Article 3. Characteristics of the Area That Give It Particular Value

The Flower Garden Banks contain the northernmost coral reef ecosystems in the Gulf of Mexico with hundreds of species of marine organisms, including at least 18 species of Caribbean corals and diverse tropical faunal and floral communities. The Banks provide exceptional recreational experiences and scientific research opportunities and generally have unique value as an ecological, recreational, and esthetic resource.

Article 4. Scope of Regulation

Section 1. *Activities Subject to Regulation.* In order to protect the distinctive values of the Flower Garden Banks, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of the coral and other marine features and the ecological, recreational, and esthetic values of the area:

a. Removing, breaking or otherwise deliberately harming coral, bottom formations or marine invertebrates or plants, or taking tropical fish, except incidentally to other fishing operations.

b. Operations of vessels other than fishing vessels, including anchoring and navigation, and anchoring by fishing vessels.

c. Dredging, or altering the seabed in any manner.

d. Construction.

e. Discharging or depositing any substance or object.

f. Using poisons, electric charges, or explosives.

g. Trawling or dragging bottom gear.

h. Spearfishing.

Section 2. *Consistency with International Law.* The regulations governing the activities listed in Section 1 of this Article will be applied to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law or as otherwise authorized by international agreement.

Section 3. *Emergency Regulations.* Where essential to prevent immediate, serious and irreversible damage to the ecosystem of the Banks, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article would be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1. *Fishing.* The regulation of fishing is not authorized under Article 4 except with respect to the removal or deliberate damage of distinctive features (paragraph (a)), the use of certain techniques (paragraph (f)), or trawling on the Banks (paragraph (g)). In addition, fishing vessels may be regulated with respect to discharges (paragraph (e)) and anchoring (paragraph (b)). All regulatory programs pertaining to fishing, including particularly Fishery Management Plans promulgated under the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.* shall 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 any regulation implementing Article 4.

Section 2. *Defense Activities.* The regulation of those activities listed in Article 4 shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be conducted consistently with such regulation to the maximum extent practicable.

Section 3. *Other Programs.* All applicable regulatory programs shall 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 any regulation implementing Article 4. The Sanctuary regulations shall set forth any necessary certification procedures.

Article 6. Alterations to this Designation

This Designation can be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Gulf of Mexico Regional Fishery Management Council, and approval by the President of the United States.

Only those activities listed in Article 4 are subject to regulation in the Sanctuary. Before any additional activities may be regulated, the Designation must be amended through the entire designation procedure including public hearings and approval by the President. However, no additional regulation is proposed for two listed activities, spearfishing and navigation, at this time because, despite the potential threat, the current need for additional control is not established.

Interested persons are encouraged to submit comments on the changes in these proposed regulations to the address listed above. While information and points of view already submitted will be reconsidered, all comments received to date have been considered at length during the redrafting of these regulations. New information, particularly that which may have developed since the close of the comment period on the DEIS on August 10, 1979, would be helpful.

Dated: June 17, 1980.

Michael Glazer,

Assistant Administrator for Coastal Zone Management.

Accordingly, Part 934 is proposed as follows:

PART 934—FLOWER GARDEN BANKS MARINE SANCTUARY REGULATIONS

Sec.

Authority: Secs. 302(f), 302(g), 303, of the Marine Protection, Research and Sanctuaries Act of 1972.

§ 934.1. Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of Section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431–1434 (the Act). The following regulations are issued pursuant to the authorities of Sections 302(f), 302(g) and 303 of the Act.

§ 934.2. Purpose.

The purpose of designating the East and West Flower Garden Banks as a Marine Sanctuary is to provide comprehensive long term management to protect the Banks in their natural state and to regulate uses within the Sanctuary to insure the health and well-being of the coral and associated flora and fauna and the continued availability of the area as a recreational and research resource.

§ 934.3. Boundaries.

The Sanctuary consists of a 257 square nautical mile (nm^2) area of water of the Gulf of Mexico located approximately 110 nautical miles (nm) southeast of Galveston, Texas, and 120 nm south of Cameron, Louisiana, overlaying and surrounding those Banks known as the East and West Flower Garden Banks and extending to a distance of approximately 4 nm from the Banks. The coordinates are defined in Appendix A.

§ 934.4. Definitions

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

(b) "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(c) "Bulk discharge" means a discharge of drill fluids and cuttings other than that of materials separated out by properly operating shale shaker, desander and desilter units, including but not limited to drill fluids and cuttings contained on the drill facility at the termination of drilling each well hole and drill fluids and cuttings evacuated from the drill fluid system during the course of drilling, for the purpoose of reconstituting the operational drill fluid.

(d) "No-Activity Zones" means the two core areas of the Sanctuary, within the coordinates defined in Appendix B, of maximum environmental sensitivity which overlay the East and West Flower Garden Banks and immediately adjacent environments.

(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.

§ 934.5. Allowed Activities.

All activities except those specifically prohibited by Sections 934.6 and 934.7 may be carried on in the Sanctuary subject to any prohibitions, restrictions or conditions imposed by any applicable regulations, permit, license, or other authorization.

§ 934.6. Prohibited Activities.

(a) Except as may be immediately and urgently necessary for the protection of life or the environment, or as may be permitted by the Assistant Administrator in accordance with §§ 934.9 or 934.10, or as limited by paragraph (b), the following activities are prohibited within the Sanctuary:

(1) *Removing or damaging distinctive natural features—generally.* (i) No person shall break, cut or similarly damage or destroy any coral or bottom formation, any marine invertebrate or any marine plant. Divers are prohibited from handling coral or standing on coral formations.

(ii) No person shall collect or remove any coral or bottom formation, or marine plant. No person shall take, except incidentally to other fishing operations, any marine invertebrate nor any tropical fish which is a fish of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which lives in a direct interrelationship with the corals. There shall be a rebuttable presumption that any items listed in this paragraph found in the possession of a person within the Sanctuary have been collected or removed from within the Sanctuary.

(iii) No person shall use poisons, electric charges, explosives or similar methods to take any marine animal or plant.

(2) *Injurious vessel operations.* (i) No vessel larger than 100 feet in length shall anchor within the no-activity zones.

(ii) No person shall place any rope, chain, or anchor in such a way as to injure any coral or other bottom formation anywhere within the Sanctuary. All practicable efforts shall be taken to drop anchors on sand flats off the reefs and place them so as not to drift into the coral formations. When anchoring dive boats, the first pair of divers down shall inspect the anchor to ensure that it is placed off the corals and will not shift in such a way as to damage corals. No further diving is permitted until the anchor is placed in accordance with these requirements.

(iii) All vessels from which diving operations are being conducted shall fly

in a conspicuous manner the international code flag alpha "A" and no vessel under power shall approach closer than 300 ft. (92 m) to a boat displaying the diving flag except at a maximum speed of 3 knots.

(3) *Altering of or construction on the seabed.* No person shall dredge, drill, or otherwise alter the seabed in any way, nor construct any structure except for navigation aids, within the no-activity zones.

(4) *Trawling.* No person shall trawl or drag bottom gear within the no-activity zones.

(5) *Discharging polluting substances.* No person shall deposit or discharge any materials or substances of any kind except

(i) Fish or parts

(ii) Effluents from marine sanitation devices

(iii) Non-polluted cooling waters from ocean vessels

(iv) Effluents incidental to hydrocarbon exploration and exploitation activities as allowed by § 934.7.

(b) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions and other international agreements to which the United States is signatory.

§ 934.7. Hydrocarbon operations.

(a) Exploration for or exploitation of hydrocarbons is prohibited within the no-activity zones.

(b) Outside the no-activity zones, hydrocarbon exploration and exploitation is allowed subject to all prohibitions, restrictions and conditions imposed by applicable regulations, permits, licenses or other authorizations including those issued by the Department of the Interior, the Coast Guard, the Corps of Engineers and the Environmental Protection Agency, and subject further to the following:

(1) Cuttings and adherent drilling muds must be shunted to within 10 m of the bottom.

(2) Bulk discharges of drilling fluids or drilling muds must be found by the Assistant Administrator to be consistent with the purposes of the Sanctuary and to result in no significant adverse impact to Sanctuary resources in accordance with certification procedures of § 934.10.

(3) The effects of the discharge of drilling fluids, drilling muds, cuttings or produced waters, must be found by the Assistant Administrator to be adequately monitored in accordance with the certification procedures of § 934.10. Such certification shall include the condition that it shall be revoked or suspended if the monitoring discloses significant adverse impacts upon Sanctuary resources.

(c) Permits issued prior to the effective date of these regulations are not subject to the certification requirements of this section for a period of one year from such effective date.

(d) Nothing in this section shall require the certification of any authorization to discharge where such discharge is immediately and urgently necessary for the protection of life or the environment nor shall anything affect the duty to comply with the conditions of such authorization.

§ 934.8. Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than $50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding in rem against any vessel used in violation of any such regulation. Procedures are set out in Subpart D of Part 922 (15 CFR Part 922) of this chapter. Subpart D is applicable to any instance of a violation of these regulations.

§ 934.9. Permit Procedures and Criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct any activity in the Sanctuary including any activity specifically prohibited under section 934.6 if such activity is either (1) research related to the resources of the Sanctuary or (2) to further the educational value of the Sanctuary, or (3) for salvage or retrieval operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, Attn: Sanctuary Programs Office, Division of Operations and Enforcement, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW, Washington, D.C. 20235. An application shall provide sufficient information to enable the Assistant Administrator to make the determination called for in paragraph (c) of this section and shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit the Assistant Administrator shall evaluate such matters as (1) the general professional and financial responsibility of the applicant; (2) the appropriateness of the methods envisioned to the purposes(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, educational or scientific information; (4) the end value of the activity and (5) such other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this Section, the Assistant Administrator shall utilize the recommendations of the Flower Gardens Marine Sanctuary Task Force (STF), the Charter which is attached as Appendix C, and may seek and consider the views of any other person or entity, within or outside of the Federal Government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, in his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require submission of one or more reports of the status or progress of such activity. Any information obtained shall be made available to the public except where such information is privileged or proprietary and entitled to confidential treatment pursuant to Section 20 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1355.

(f) The Assistant Administrator may amend, suspend or remoke a permit granted pursuant to this Section, in whole or in part, temporarily or indefinitely if the permit holder (the Holder) has acted in violation of the terms of the permit or of the applicable regulations. Any such action shall be in writing to the Holder, and shall set forth the reason(s) for the action taken. The Holder may appeal the action as provided for in § 934.11.

§ 934.10 Certification of other Permits.

(a) Except as otherwise provided in this Section, all permits, licenses and other authorizations issued pursuant to any other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by § 934.6 or § 934.7. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

(b) No permit, license, or other authorization allowing the bulk discharge of drilling fluids or drilling muds shall be valid unless certified by

the Assistant Administrator as consistent with the purposes of the Sanctuary and with these regulations.

(c) No permit, license, or other authorization allowing the discharge of drilling fluids, drilling muds, cuttings or produced waters shall be valid unless the Assistant Administrator certifies that the effects of such discharge will be adequately monitored.

(d) In considering whether to make the certifications called for in this Section, the Assistant Administrator shall utilize the recommendations of the STF and may seek and consider the views of any other person or entity, within or outside the Federal Government, and may hold a public hearing as deemed appropriate.

(e) Certification shall be presumed unless the Assistant Administrator acts to deny or condition certification called for in this Section within sixty (60) days from the date that the Assistant Administrator receives notice of the proposed permit and the necessary supporting data.

(f) The Assistant Administrator may amend, suspend, or revoke any certification made under this Section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken. Either the holder or the issuing agency may appeal the action as provided for in § 934.11.

§ 934.11 Appeals of administrative action.

(a) Any interested person (the Appellant) may appeal the granting, denial or conditioning of any permit under § 934.9 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal shall be in writing, shall state the action(s) appealed and the reason(s) therefore, and shall be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this Section, the Administrator shall notify the permit applicant, if other than the Appellant and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator shall decide the appeal in accordance with the criteria set out in § 934.9(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing and the Hearing Officer's recommended decision, if any, as provided in paragraph (c) of this section and such other considerations as deemed appropriate. The Administrator shall notify all interested persons of the decision, and the reason(s) therefore, in writing within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a Hearing Officer designated for that purpose and give notice of the time, place, and subject matter of the hearing in the Federal Register. Such hearing shall be held no later than 30 days following publication of the notice in the Federal Register unless the Hearing Officer extends the time for reasons deemed equitable. The Appellant and the Applicant, if different and, at the discretion of the Hearing Officer, other interested persons, may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's action shall constitute final action for the Agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this Section may be extended for a period not to exceed 30 days by the Administrator for good cause, either upon his or her own motion or upon wirtten request of the Appellant or Applicant stating the reason(s) therefor.

Appendix A—Boundary of the Flower Garden Banks Marine Sanctuary

The Boundary of the Flower Garden Banks Marine Sanctuary is approximately 4 nautical miles from the Banks. The boundary can be described by lines connecting the following points. (See Figure I for location points.)

	Latitude	Longitude
1	27°46'30.5"N	93°53'31.7"W
2	27°46'39.6"	93°54'07.9"
3	27°47'25.1"	93°55'22.0"
4	27°48'13.2"	93°56'11.6"
5	27°49'30.3"	93°57'15.5"
6	27°52'38.7"	93°57'21.9"
7	27°54'04.1"	93°56'36.2"
8	27°55'27.4"	93°56'36.6"
9	27°58'03.0"	93°52'37.9"
10	27°58'54.6"	93°49'36.7"
11	27°59'11.1"	93°47'17.3"
12	27°58'54.4"	93°45'35.3"
13	27°58'04.8"	93°44'00.6"
14	27°56'59.6"	93°43'08.0"
15	28°01'24.8"	93°41'36.4"
16	28°02'53.1"	93°37'46.3"
17	28°02'31.6"	93°33'29.6"
18	28°01'14.2"	93°31'44.2"
19	28°00'06.4"	93°31'02.6"
20	27°58'30.0"	93°30'47.1"
21	27°57'54.6"	93°30'52.2"
22	27°57'36.6"	93°30'51.4"
23	27°56'39.7"	93°30'15.4"
24	27°54'15.3"	93°29'57.2"
25	27°52'27.8"	93°30'39.2"
26	27°51'11.2"	93°31'42.0"
27	27°50'23.5"	93°32'45.2"
28	27°49'56.1"	93°33'41.1"
29	27°49'42.3"	93°34'19.5"
30	27°48'51.1"	93°36'14.5"
31	27°49'37.2"	93°40'05.6"
32	27°51'08.7"	93°41'31.1"
33	27°53'01.1"	93°42'39.0"
34	27°49'43.0"	93°43'38.8"
35	27°47'24.4"	93°46'02.5"
36	27°47'01.3"	93°46'41.4"

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