

part 71) modifies Class E airspace at Daytona Beach, FL. A GPS RWY 6 (Special) SIAP has been developed for Spruce Creek Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Spruce Creek Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. This amendment also reflects the current name of the Daytona Beach Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS, AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO FL E5 Daytona Beach, FL [Revised]

Daytona Beach International Airport, FL
(Lat. 29°10'48" N, long. 81°03'27" W)
Spruce Creek Airport
(Lat. 29°04'49" N, long. 81°02'48" W)
Ormond Beach Municipal Airport
(Lat. 29°18'04" N, long. 81°06'50" W)
Ormond Beach VORTAC
(Lat. 29°18'12" N, long. 81°06'46" W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 10-mile radius of Daytona Beach International Airport, and within a 6.4-mile radius of Spruce Creek Airport, and within 6.4-mile radius of Ormond Beach Municipal Airport and within 3.2 miles each side of the Ormond Beach VORTAC 256° radial extending from the 6.4-mile radius to 7 miles west of the VORTAC.

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Issued in College Park, Georgia, on March 9, 1998.

Wade T. Carpenter,

*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 98–8268 Filed 3–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 950609150–8003–04]

RIN 0648–A106

Jade Collection in the Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; notice of public availability of final supplemental environmental impact statement/management plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is amending the regulations and Designation Document for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary. For a number of years prior to the designation of the MBNMS, tourists and local residents routinely visited the Jade Cove area to explore for and collect pieces of the naturally occurring jade. This final rule will allow, under certain circumstances, these types of activities to occur while still protecting Sanctuary resources.

DATES: Congress and the Governor of the State of California have forty-five days of continuous session of Congress beginning on the day on which this document is published to review the amendment to the Designation Document and regulations before it takes effect. After the forty-five day review period, the amendment to the Designation Document and regulations automatically becomes final and takes effect, unless the Governor of the State of California certifies within the forty-five day period to the Secretary of Commerce that the amendment to the Designation Document and regulations is unacceptable. In such case, the amendment to the Designation Document and regulations cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State of California, and the original prohibition against collection of jade shall remain in effect. NOAA will publish in the **Federal Register** a document announcing the effective date following the forty-five day review period.

ADDRESSES: Copies of the Final Supplemental Environmental Impact Statement/Management Plan supporting this action may be obtained from Scott Kathey, Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, California 93940.

FOR FURTHER INFORMATION CONTACT: Scott Kathey at (408) 647–4251.

SUPPLEMENTARY INFORMATION:

I. Background

In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) was designated on September 18, 1992. SRD issued final regulations, effective January 1, 1993, to implement the Sanctuary designation (15 CFR Part 922 Subpart M). The MBNMS regulations at 15 CFR 922.132(a) prohibit a relatively narrow range of activities and thus make it unlawful for any person to conduct them or cause them to be conducted.

The MBNMS regulations prohibit exploring for, developing or producing oil, gas or minerals within the Sanctuary (15 CFR 922.132(a)(1)). Further, the regulations and Designation Document (the constitution for the Sanctuary) prohibit NOAA from issuing a permit or other approval for this activity in the Sanctuary (15 CFR 922.132(f); Designation Document, Article V). Therefore, the Sanctuary regulations and Designation Document absolutely prohibit exploring for, developing or

producing oil, gas or minerals in the MBNMS. Exploring for, developing or producing oil or gas in the MBNMS is also statutorily prohibited.

The region within the Sanctuary known as the Jade Cove area consists of a series of small coves located south of Big Sur, near the town of Gorda. Jade (also called nephrite) occurs in pods and nodules in the serpentine bedrock formation, extending down the cliffs and into the seabed. The coastal area is very dynamic, subject to strong waves and tides, which erode the bedrock and sometimes release the jade. Jade is found primarily as pebbles or larger stones on the shore and seabed, and as revealed deposits in the seafloor.

For a number of years prior to the designation of the MBNMS, tourists and local residents routinely visited the Jade Cove area to explore for and collect pieces of the naturally occurring jade. Even prior to the designation of the MBNMS, extraction of minerals from State submerged lands was prohibited by State law, unless authorized under a permit from the State (please see response to comment (9)). The U.S. Forest Service also prohibits the removal without a lease of any rocks or minerals within the Los Padres National Forest, which abuts the inshore boundary of the Sanctuary in the Jade Cove area.

NOAA is amending the regulations for the MBNMS to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary, specifically the area bounded by the 35°55'20" N latitude parallel (coastal reference point: beach access stairway at south Sand Dollar Beach) to the north, the 35°53'20" N latitude parallel (coastal reference point: westernmost tip of Cape San Martin) to the south, and from the mean high tide line seaward to the 90-foot isobath (depth line). Limited, small scale collection of loose pieces of jade (which would otherwise naturally disintegrate) from the Jade Cove area will have at most a *de minimis* effect on the jade resource, a non-living resource, and will not destroy, cause the loss of, or injure other resources or qualities of the MBNMS. It should also be noted that the MBNMS Sanctuary Advisory Council (Council) recommended to SRD that the regulations be amended to allow small scale jade collection. The Council has devoted considerable time during several of its monthly meetings to obtain information and public testimony, and convened a task force to review this issue. There was also public support for the course of action.

The prohibition against permitting or otherwise approving the exploration, development or production of oil, gas or

minerals in the Sanctuary is a term of the Designation Document for the Sanctuary. Pursuant to section 304(a)(4) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(a)(4)), the terms of designation of a national marine sanctuary may be modified only by the same procedures by which the original designation is made. Therefore, to allow limited, small-scale jade collection in the Jade Cove area of the Sanctuary, NOAA must comply with the procedures by which the Sanctuary was designated. Designations of national marine sanctuaries are governed by sections 303 and 304 of the NMSA (16 U.S.C. 1433, 1434). Section 304 requires the preparation of an environmental impact statement, State consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to State waters within the Sanctuary (this final rule pertains entirely to State waters). This final rule is therefore accompanied by a Final Supplemental Environmental Impact Statement/Management Plan (FSEIS/MP). This final rule represents NOAA's preferred alternative as discussed in the FSEIS/MP. The Governor of California has forty-five days of continuous session of Congress beginning today to certify an objection to this final rule, should he make such a determination. If the Governor certifies an objection to this final rule, it will not take effect and the original prohibition will remain in effect.

NOAA issued an Advance Notice of Proposed Rulemaking (ANPR) on August 9, 1995 (60 FR 40540), to inform the public of the issue under consideration and to invite general advice, recommendations, information, and other comments from interested parties concerning the collection of marine jade within the Sanctuary. The comment period closed on September 8, 1995, with 195 comments received. Most comments were from individuals and favored unrestricted jade collection. NOAA issued a proposed rule on June 13, 1997 (62 FR 32320), to inform the public of NOAA's proposed course of action and to invite comments from interested parties. The comment period closed August 12, 1997, with 246 written comments received. A public hearing was held on July 30, 1997, with eight verbal comments received. All the comments were supportive of the proposed rule. A general summary of written and verbal comments and NOAA's responses follows.

II. Comments and Responses

(1) *Comment:* All comments support the proposed regulation allowing limited, small scale jade collection to

occur in the Jade Cove area of the Sanctuary.

Response: No response necessary.

(2) *Comment:* How were the boundaries for the area of jade collection chosen?

Response: NOAA consulted with jade collectors, artisans, divers, natural resource managers, and other knowledgeable parties, and received input from the Sanctuary Advisory Council, to determine the most commonly used area of traditional marine jade collection and selected the boundaries of the Jade Cove area to accommodate such traditional collection while still protecting the resources and qualities of the NBNMS.

(3) *Comment:* The place name "north Plaskett Point" used in the proposed rule to identify the northern boundary of the jade collection area is not locally recognized. Please replace it with "south Sand Dollar Beach," which is a better known reference point. Specifically, there is a set of stairs located at south Sand Dollar Beach which coincides with the northern boundary of the collection area and is known to local residents and frequent visitors.

Response: NOAA agrees and has made the appropriate changes.

(4) *Comment:* NOAA should undertake an assessment of how much jade is available for harvesting.

Response: Because most of the jade in the Jade Cove area is present in smaller pods and nodules, not in veins, it is difficult to assess or measure the exact amount of jade in the Sanctuary. Information presented to NOAA at a meeting of the MBNMS Advisory Council in June 1994 by a geologist from the U.S. Geological Survey indicated that historic collection had not "limited" the jade resource and she did not believe that future collections at the same level would "limit" the jade resource.

(5) *Comment:* Collection of jade should require reporting of the amount taken to determine if there are any impacts of casual collection on the environment.

Response: The amount of jade removed pursuant to a permit issued by NOAA will be required to be reported. The amount of jade removed under the general exception, however, may be difficult to assess given the isolation and exposure of the area, the transitory nature of many visitors to the area, and the lack of NOAA or other personnel to monitor jade collection activities. NBNMS may establish a voluntary reporting system for jade removed under the general exception to assist in determining how much jade is removed

on an annual basis from the Jade Cove area.

(6) *Comment:* NOAA should consider an alternative of seasonal closures on jade collection, if only for safety reasons.

Response: NOAA believes that the inhospitable and often harsh conditions in winter are self-limiting to collection of marine jade in the Jade Cove area. People collect jade at their own risk. NOAA's action only removes a restriction on a previously prohibited activity.

(7) *Comment:* The proposed rule is not clear on what restrictions, if any, exist on the commercial use of jade collected under the conditions of the proposed rule. Please clarify.

Response: NOAA does not place any conditions on the use of jade that has been removed under the general exception. Persons who wish to remove jade under a Sanctuary permit will be required to explain the purpose for which the jade is to be removed, including commercial or "for profit" uses. All permits will be considered on a case-by-case basis according to the general permit criteria at 15 CFR 922.48 and 922.133; preference will be given to research and education uses. NOAA will not allow commercial excavation or mining of the jade resource within the MBNMS.

(8) *Comment:* If a person finds a loose large piece of jade that cannot be carried out by an individual, can he break the large piece into several smaller pieces with the hand tools allowed under the exception and remove the smaller pieces?

Response: If a stone is not removable under the conditions given in the general exception for limited, small-scale jade collection under this rule, including an individual being allowed to remove only what he carries himself, then a permit will be required to remove the stone. Hand tools are only allowed to aid in maneuvering and lifting loose stones, and scratching the surface of a stone as necessary to determine if it is jade. Hand tools are not authorized to be used to break or chip stones under any circumstances.

(9) *Comment:* NOAA stated in the proposed rule that prior to Sanctuary designation, collection of marine jade from California ocean areas was a violation of state law. This is not true and should be corrected.

Response: Under California law, the State Lands Commission (SLC) has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State (California Public Resources Code § 6301). The SLC is authorized to issue prospecting permits and leases for

the extraction and removal of minerals, other than oil and gas or other hydrocarbon substances, from lands, including tide and submerged lands belonging to the state, consistent with the procedures of the California Code of Regulations, Title 2, Division 3, Article 4, Section 2200–2205. As the SLC has not prescribed regulations for the noncommercial hobby collection of minerals from state lands, any collection of minerals from such lands is considered commercial collection.

Should any person remove, without a permit, jade in large amounts or for the purpose of sale, the SLC has authority under Public Resource Code § 6302 to seek civil damages for trespass, and for conversion of public property. The SLC also has authority to seek criminal penalties for trespass (Penal Code § 602) or for theft (Penal Code § 484, 495).

(10) *Comment:* Please enter into the official record the document Jade Collection—A California Heritage previously submitted to NOAA.

Response: Jade Collection—A California Heritage is part of the administrative record for this rule and is available for public inspection.

(11) *Comment:* Please enter into the official record all previous correspondence sent to NOAA on the issue of jade collection within the Sanctuary.

Response: All correspondence sent to NOAA on the issue of jade collection prior to the public comment period of the proposed rule was considered in the course of NOAA's decision-making process and is available for public inspection.

(12) *Comment:* Can a collector collect jade outside the established collection zone if he/she obtains a Sanctuary permit?

Response: No. The absolute prohibition against exploring for, developing or producing oil, gas or minerals will remain in effect outside the Jade Cove area within the Sanctuary.

III. Revised Article V of the Designation Document for the Monterey Bay National Marine Sanctuary

No change to Article I–IV, and Article VI of the Designation Document have been made by NOAA. Article V of the Designation Document is amended by revising paragraph 2. Paragraph 2 of Article V is presented in its entirety with the revised language in italics.

Article V. Effect on Leases, Permits, Licenses, and Rights

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) the exploration for, development of or production of oil,

gas or minerals within the Sanctuary except for limited, small-scale jade collection in the Jade Cove area of the Sanctuary [defined as the area bounded by the 35°55'20" N latitude parallel (coastal reference point: beach access stairway at South Sand Dollar Beach), the 35°53'20" N latitude parallel (coastal reference point: westernmost tip of Cape San Martin), and the mean high tide line seaward to the 90-foot isobath (depth line)]; (2) the discharge of primary-treated sewage (except for regulation, pursuant to Section 304(c)(1) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by the U.S. Environmental Protection Agency (in consultation with the U.S. Army Corps of Engineers) prior to the effective date of designation. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

End of Revised Article V of the Designation Document

IV. Summary of the Regulatory Amendment

Jade is a non-living resource of the MBNMS (see 15 CFR 922.3). Allowing limited, small-scale collection of small pieces already loose, which would otherwise naturally disintegrate, will have at most a *de minimis* effect on the jade resource. Further, it appears that collection of loose pieces of jade from the authorized area of the Sanctuary can be conducted without destroying, causing the loss of, or injuring other Sanctuary resources or qualities. Small scale, limited collection of jade is allowed under an exception to the MBNMS prohibitions, with certain conditions. Larger loose pieces of jade not allowed to be collected under the exception may be authorized to be collected under a Sanctuary permit. However, under no circumstances will NOAA allow the use of pneumatic, mechanical, electrical, hydraulic or explosive tools to collect jade. NOAA will also not issue a permit to allow excavation or mining of the jade resource, or the collection of larger loose pieces that support important components of the benthic community.

Consequently, NOAA is amending section 922.132(a)(1), 922.132(f), and section 922.133(c) to provide an exception to the prohibition against exploring for, developing or producing

oil, gas or minerals in the Sanctuary, to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary [defined as the area bounded by the 35°55'20"N latitude parallel (coastal reference point: beach access stairway at south Sand Dollar Beach), the 35°53'20"N latitude parallel (coastal reference point: westernmost tip of Cape San Martin), and the mean high tide line seaward to the 90-foot isobath (depth line)]. NOAA is also amending section 922.132(a)(4) to provide, for consistency, a corresponding exception to the prohibition against alteration of the seabed for collection of loose jade as described below. The exception is limited to the Jade Cove area as this has been the primary area historically of marine jade collection.

The exception also contains certain other limitations to protect Sanctuary resources and qualities. The exception limits collection to jade pieces already loose from the seabed, meaning that natural storm or wave action has already completely separated the stone from the seabed. Under the general exception, no tools may be used to collect jade except (a) a hand tool, defined as a hand-held implement, utilized for the collection of jade pursuant to section 922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar or abalone iron), to maneuver or lift a loose jade piece or scratch the surface of a stone as necessary to determine if it is jade; (b) a lift bag or multiple lift bags with a combined lift capacity not to exceed 200 pounds; or (c) a vessel (except for a motorized personal watercraft (see § 922.132(a)(7))) to provide access to the authorized area. Finally, each person may collect only what that person individually carries. The two hundred pound lift bag limit corresponds with the restriction limiting jade removal to what each person individually carries. Over one hundred pounds is considered to be a very heavy physical demand level (see Matheson, L. and Matheson, M. Examiners Manual for the Spinal Function Sort), and appears to correspond with the maximum amount that an average person could lift. The two hundred pound lift bag will allow safe transport to the surface of stones weighing less than 200 pounds. More important, the limitation is consistent with the overall effort to avoid jade collection that could adversely impact benthic (bottom) habitat.

Loose stones exceeding two hundred pounds would be of such mass as to be more likely to support important components of the benthic community and should not be readily made available for removal under the

regulatory exception. A Sanctuary permit will be required for the collection of such loose pieces of jade. Applications for Sanctuary permits will be reviewed on a case-by-case basis under the general permit criteria contained at 15 CFR §§ 922.48 and 922.133, and will require that the applicant have all necessary approvals from other jurisdictions, including the California State Lands Commission. Preference will be given to those applicants proposing to collect such larger pieces for research or educational purposes. Any Sanctuary permits issued for jade collection will be conditioned to protect Sanctuary resources and in no circumstances will NOAA permit the use of pneumatic, mechanical, electrical, hydraulic or explosive tools to collect jade. This prohibition applies equally to collection activities conducted from authorized vessels, thus no deck cranes, davits, winches or other onboard equipment may be used to collect jade. NOAA will also not permit any excavation or mining of the jade resource, or the collection of larger loose pieces that support important components of the benthic community.

The exception for the limited, small-scale collection of loose pieces of jade does not extend to oil or gas or any other mineral. Furthermore, there is a statutory prohibition against leasing, exploration, development, or production of oil or gas in the Sanctuary.

Any collection of jade in Jade Cove, which is within California State waters, will require a State permit because of the State's prohibitions against taking minerals from State submerged lands (please see response to comment (9)). This is consistent with 15 CFR 922.42, which provides that any activity within a specific national marine sanctuary not expressly prohibited or otherwise regulated by that sanctuary's regulations may be conducted subject to, among other things, all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction. Current Federal and State restrictions on jade collection in upland areas adjacent to the Sanctuary are unaffected by this rulemaking.

V. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the National Marine Sanctuaries Act, 16 U.S.C. 1434(a)(4), provides that the terms of designation may be modified only by the same procedures by which the original designation is made.

Designations of National Marine Sanctuaries are governed by sections 303 and 304 of the NMSA, 16 U.S.C. 1433, 1434. Section 304 requires the preparation of an environmental impact statement, State consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to State waters within the Sanctuary.

Congress and the Governor of the State of California have forty-five days of continuous session of Congress beginning on the day on which this document is published to review the amendment to the Designation Document and regulations before it takes effect. After the forty-five day review period, the amendment to the Designation Document and regulations automatically becomes final and takes effect, unless the Governor of the State of California certifies within the forty-five day period to the Secretary of Commerce that the amendment to the Designation Document and regulations is unacceptable. In such case, the amendment to the Designation Document and regulations cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State of California, and the original prohibition shall remain in effect. NOAA will publish in the **Federal Register** a notice of effective date following the forty-five day review period.

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 an environmental impact statement (EIS) as provided by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that the EIS be made available to the public. NOAA prepared and made available to the public a draft supplemental environmental impact statement/management plan for the Monterey Bay National Marine Sanctuary on the proposal to amend the regulations and Designation Document to allow limited, small-scale jade collection in the Jade Cove area of the Sanctuary. A final supplemental environmental impact statement/management plan has been prepared and is available to the public from the addresses listed at the beginning of this notice.

Executive Order 12866: Regulatory Impact

NOAA has concluded that this regulatory action is 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 entitlement, 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 sufficient 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 as follows:

The rule amends the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) regulations to allow limited, small-scale collection of jade from an area within the Sanctuary known as Jade Cove, consistent with other applicable Federal and State law. Prior to the designation of the Sanctuary, extraction of minerals from State submerged lands was prohibited by State law, unless authorized by a permit issued by the State. The regulations implementing the designation of the Sanctuary absolutely prohibit exploration for, development or production of oil, gas or minerals in the Sanctuary. Consequently, because jade is a mineral, its collection is absolutely prohibited even if authorized by a State permit. Jade can be collected within Jade Cove, which is within California State waters, provided its collection is authorized by a State permit. Without a State permit, its collection would be prohibited by the State's prohibitions against taking minerals from State submerged lands and disturbing State subsurface lands. NOAA is aware of only one small business that used the jade resource prior to the Sanctuary's designation. That business did not conduct large-scale collection or rely solely on jade from Jade Cove. Most of its jade was collected from other sources, including from upland and out of State sources. Consequently, the rule is not expected to significantly impact a substantial number of small business entities.

Accordingly, a Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This rule will 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, Historic preservation, Intergovernmental relations, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 16, 1998.

Captain Evelyn Fields,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR Part 922 is 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.*

Subpart M—Monterey Bay National Marine Sanctuary

2. Section 922.131 is amended by adding the following definition in alphabetical order to read as follows:

§ 922.131 Definitions.

* * * * *

Hand tool means a hand-held implement, utilized for the collection of jade pursuant to § 922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar or abalone iron). Pneumatic, mechanical, electrical, hydraulic or explosive tools are, therefore, examples of what does not meet this definition.

* * * * *

3. Section 922.132 is amended by revising paragraphs (a)(1), (a)(4) introductory text, (d) and (f). By removing "or" at the end of paragraph (a)(4)(iv), by removing the period at the end of paragraph (a)(4)(v), and adding "; or" in its place, and by adding paragraph (a)(4)(vi) to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

(a) * * *

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary except: jade may be collected (meaning removed) from the

area bounded by the 35°55'20" N latitude parallel (coastal reference point: beach access stairway at south Sand Dollar Beach), the 35°53'20" N latitude parallel (coastal reference point: westernmost tip of Cape San Martin), and from the mean high tide line seaward to the 90-foot isobath (depth line) (the "authorized area") *provided that:*

(i) Only jade already loose from the seabed may be collected;

(ii) No tool may be used to collect jade except:

(A) A hand tool (as defined in § 922.131) to maneuver or lift the jade or scratch the surface of a stone as necessary to determine if it is jade;

(B) A lift bag or multiple lift bags with a combined lift capacity of no more than two hundred pounds; or

(C) A vessel (except for motorized personal watercraft) (see paragraph (a)(7) of this section) to provide access to the authorized area;

(iii) Each person may collect only what that person individually carries; and

(iv) For any loose piece of jade that cannot be collected under paragraphs (a)(1) (ii) and (iii) of this section, any person may apply for a permit to collect such a loose piece by following the procedures in § 922.133.

* * * * *

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary except as an incidental result of:

* * * * *

(vi) Collection of jade pursuant to paragraph (a)(1) of this section, provided that there is no constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

* * * * *

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, paragraphs (a) (2) and (8) of this section, and paragraph (a)(10) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to §§ 922.48 and 922.133 or a Special Use permit issued pursuant to section 310 of the Act.

* * * * *

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit under §§ 922.48 and 922.133 or a Special Use permit under

section 310 of the Act authorizing, or otherwise approve: the exploration for, development or production of oil, gas or minerals within the Sanctuary, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.47, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to January 1, 1993. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

4. Section 922.133 is amended by revising paragraphs (a) and (c) to read as follows:

§ 922.133 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.132(a)(1) as it pertains to jade collection in the Sanctuary, § 922.132(a) (2) through (8), and § 922.132(a) (10), if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and 922.48.

* * * * *

(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 § 922.132(a)(1) as it pertains to jade collection in the Sanctuary, § 922.132(a) (2) through (8), and § 922.132(a)(10) if the Director finds the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; allow the removal, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, of loose jade from the Jade Cove area under § 922.132(a)(1)(iv); assist in managing the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the

activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. For jade collection, preference will be given for applications proposing to collect loose pieces of jade for research or educational purposes. In addition, the Director may consider such other factors as he or she deems appropriate.

* * * * *

[FR Doc. 98-7201 Filed 3-27-98; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

[T.D. 98-21]

Copyright/Trademark Name Protection; Disclosure of Information; Correction

AGENCY: Customs Service, Treasury.

ACTION: Final rule; corrections.

SUMMARY: Customs published in the **Federal Register** of March 12, 1998, a document which amended the Customs Regulations to allow Customs to provide to intellectual property rights (IPR) owners sample merchandise and to disclose to IPR owners certain information regarding the identity of persons involved with importing merchandise that is detained or seized for infringement of the IPR owner's registered copyright, trademark, or trade name rights. Inadvertently, § 133.43 was incorrectly amended. This document corrects the amendment of that section.

DATES: This correction is effective April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Smith, Attorney, Intellectual Property Rights Branch (202) 927-2326.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1998, Customs published in the **Federal Register** (63 FR 11996)(FR Doc. 98-6183) T.D. 98-21 to amend the Customs Regulations at part 133 to allow Customs to provide to intellectual property rights (IPR) owners sample merchandise and to disclose to IPR owners certain information regarding the identity of persons involved with importing merchandise that is detained or seized for infringement of the IPR owner's registered copyright, trademark, or trade name rights.

This document corrects three editorial errors to § 133.43 that were contained in

T.D. 98-21. The editorial errors concern the amendment to § 133.43, which pertains to the procedure on suspicion of infringing copies.

It has come to Customs attention that a requirement currently in paragraph (b)(2) of § 133.43 that was never intended to be changed was inadvertently dropped from the regulatory text in the March 12 publication. The dropped requirement, that Customs is reinserting in this correction document, concerns what a copyright owner must file with a port director to prevent an imported article suspected of being an infringing copy from being released if the importer files a denial that the article is an infringing copy. The copyright owner must file a bond along with a written demand for exclusion from entry of the detained article. The text of paragraph (b)(2) of § 133.43 in the March 12 publication inadvertently dropped the bond requirement.

The second and third errors concern the text of the second sentence in paragraph (c). One error incorrectly identified trademark owners as the object of the procedure when it should have referenced copyright owners. The other error mistakenly included words ("Customs detention or seizure, or * * * , in the event that the Commissioner of Customs, or his designee, or a federal court determines that the article does not bear an infringing mark") that should have been omitted and were not. Accordingly, this document corrects those errors.

Correction of Publication

Accordingly, the publication on March 12, 1998, of the final rule (T.D. 98-21)(63 FR 11996)(FR Doc. 98-6183) is corrected as follows:

1. On page 12000, in the third column, paragraphs (b)(6) and (c) of § 133.43 are corrected to read as follows:

§ 133.43 Procedure on suspicion of infringing copies.

* * * * *

(b) * * *
(6) Notice that the imported article will be released to the importer unless, within 30 days from the date of the notice, the copyright owner files with the port director:

(i) A written demand for the exclusion from entry of the detained imported article; and

(ii) A bond, in the form and amount specified by the port director, conditioned to hold the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention in the event the Commissioner or his designee