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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 030613151-3151-01]

Florida Keys National Marine Sanctuary: Establishment of Temporary No-Entry Zone in the White Bank Dry Rocks Area

AGENCY: National Ocean Service (NOS), National Marine Sanctuary Program.

ACTION: Temporary rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) issues a temporary rule prohibiting all entry into two areas off the east side of Key Largo within federal waters of the Florida Keys National Marine Sanctuary. The combined areas are approximately 0.50 square miles in size. This temporary rule is necessary to prevent injury to, and destruction of, living coral from stress to diseased coral within the close areas, and to protect healthy coral from human-caused contamination.

DATES: Entry is prohibited effective June 26, 2003 until August 25, 2003.

FOR FURTHER INFORMATION CONTACT:

Billy D. Causey, Superintendent, Florida Keys National Marine Sanctuary (FKNMS), Post Office Box 500368, Marathon, Florida 33050, (305) 743-2437.

SUPPLEMENTARY INFORMATION: NOAA is by this rule immediately prohibiting all entry into two areas off of Key Largo within federal waters of the Florida Keys National Marine Sanctuary (FKNMS). This action is taken in accordance with 15 CFR 922.165 of the FKNMS regulations (62 FR 32154, June 12, 1997). Section 922.165 provides that, where necessary to prevent or minimize the destruction of, loss of, or

injury to a Sanctuary resource, any and all activities are subject to immediate temporary regulation, including prohibition, for up to 60 days, with one 60-day extension.

Background

This temporary rule is necessitated by the recent discovery of an outbreak of a rapidly-spreading infectious coral disease in parts of the Florida Keys that is killing staghorn coral (*Acropora cervicornis*, *A. prolifera*). Field observations describe disease signs that include defined areas of pale/bleached tissue, some areas of clear demarcation between live and dead tissue, and rapid tissue loss from colonies of staghorn coral.

This emergency action establishes no-entry zones to quarantine two currently infected coral patch areas that are popular with swimmers and snorkelers visiting the Sanctuary. It is possible that humans entering the waters of the affected areas could inadvertently carry infectious agents to healthy coral reef areas. Infected corals are also more subject to stress from human activities. This action is intended to limit the innocent spread of infectious agents to health coral and to reduce stress to corals within the infected areas.

This temporary rule closes two areas, each approximately 0.25 square miles in size, to all entry by humans and vessels except pursuant to a valid scientific research permit. The areas are part of White Bank Dry Rocks off of Key Largo and are referred to for the purpose of this rule as "White Bank North Patch" and "White Bank South Patch". The locations by coordinates of the closed areas are set forth below. This rule prohibits all activities that are currently allowed in the areas, including transiting and fishing. Vessels greater than 50 meters in length are already prohibited from entering the areas by regulations establishing Areas to be Avoided (15 CFR 922.164(a)).

Location and Boundary of No-Entry Zones

Effective immediately, all entry is prohibited within the closed areas of White Bank Dry Rocks off of Key Largo. The coordinates of the areas are:

White Bank North Patch

- (1) 25 degrees 02.718 seconds N 80 degrees 22.261 seconds W;

- (2) 25 degrees 02.780 seconds N 80 degrees 22.105 seconds W;
 (3) 25 degrees 02.691 seconds N 80 degrees 22.000 seconds W;
 (4) 25 degrees 02.567 seconds N 80 degrees 22.157 seconds W.

White Bank South Patch

- (1) 25 degrees 02.414 seconds N 80 degrees 22.425 seconds W;
 (2) 25 degrees 02.446 seconds N 80 degrees 22.267 seconds W;
 (3) 25 degrees 02.314 seconds N 80 degrees 22.408 seconds W.

Penalties

Pursuant to 15 CFR 992.45, any violation of this rule is subject to a maximum civil penalty of \$120,000 per violation per day. Furthermore, the NMSA and regulations authorize a proceeding in rem against any vessel used in violation of any such regulation.

Classification

Under 5 U.S.C. 553(b)(B), the Assistant Administrator of the National Ocean Service, NOAA, for good cause, finds that providing prior notice and public procedure thereon with respect to this rule is impracticable and contrary to the public interest. Recent evidence has come to light of an outbreak of infectious coral disease in areas of White Bank Dry Rocks near Key Largo. It is possible that humans entering the waters of the affected areas could inadvertently carry infectious agents to healthy coral reef areas. Infected corals are also more subject to stress from human activities. This action is intended to limit the innocent spread of infectious agents to healthy coral and to reduce stress to corals within the infected areas. As such, further damage to the infected corals as well as to healthy corals outside of the close areas would occur if the prohibition implemented by this rule is delayed to provide prior notice and opportunity for public comment.

Likewise, under 5 U.S.C. 553(d)(3), the Assistant Administrator of the National Ocean Service, NOAA, finds good cause to waive the 30-day delay in effective date for this rule. First, if the rule is delayed for 30 days, significant damage to the living coral resources could result. Further, 30 days are not necessary to give notification to visitors who might use the area in the future to move to other nearby sites. The U.S. Coast Guard will give location immediate notification to vessels to stay

out of the no-entry zones. Notification will be made by the U.S. Coast Guard via notice to mariners, Sanctuary radio announcements, press releases, press conferences, and with assistance by the U.S. Coast Guard and Sanctuary staff on the water within the area. This rule is effective upon filing at the Office of the Federal Register.

Executive Order 12866

The Office of Management and Budget (OMB) has concurred that this rule is not significant within the meaning of section 3(f) of Executive Order 12866.

Executive Order 12612

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

Because this rule is not required to be issued with prior notice and opportunity for public comment by 5 U.S.C. 553 or by any other law, it is not subject to the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* As such, a regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act

This rule does 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.*

Dated: June 26, 2003.

Ted I. Lillestolen,

Captain/NOAA, Associate Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03-16615 Filed 6-26-03; 4:24 am]

BILLING CODE 3510-NK-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to firms designated by the ASX Futures Exchange Party Limited ("ASXF") from the application of certain of the

Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, which permits persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: July 1, 2003.

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Esq., Deputy Director, Susan A. Elliott, Esq., Staff Attorney, or Andrew V. Chapin, Esq., Staff Attorney, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Rule 30.10 Exempting Firms Designated by the ASX Futures Exchange Party Limited ("ASXF") From the Application of Certain of the Foreign Futures and Option Rules the Later of the Date of Publication of the Order Herein in the **Federal Register** or After Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein; and Granting Expanded Relief for Otherwise Permitted Transactions on all non-U.S. exchanges where ASXF Firms are authorized by Exchange Regulations to Conduct Futures Business for Customers, Subject to Certain Conditions.

Commission rules governing the offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade to customers located in the U.S. are contained in part 30 of the Commission's rules.¹ These rules include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures, that are generally comparable to those applicable to transactions on U.S. markets.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the

Commission, among other things, considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission determined to permit persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements under part 30 of the Commission's rules based upon substituted compliance with the regulatory requirements of the foreign jurisdiction.

Appendix A to part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Rule 30.10.² These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons that solicit and accept customer orders; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining standards of customer and market protection within the U.S.

Moreover, the Commission specifically stated in adopting Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for service of process in the U.S. with respect to transactions subject to part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to provide access to their books and records in the U.S. to Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.³

¹ Commission rules referred to herein are found at 17 CFR Ch. I (2002).

² 52 FR 28990, 29001 (August 5, 1987).

³ 52 FR 28980, 28981 and 29002.