

modification is not difficult to accomplish and the time required to install it is only 3 workhours, the FAA considers that 6 months is an adequate time period in which affected operators can comply. Additionally, the FAA considers that the compliance time as proposed, represents the maximum interval of time allowable wherein the modification could reasonably be accomplished, parts could be obtained, and an acceptable level of safety could be maintained.

Since issuance of the Notice, the FAA has reviewed and approved McDonnell Douglas DC-10 Service Bulletin 29-132, Revision 1, dated August 26, 1991. This revision of the service bulletin corrects certain part numbers, drawing numbers, and functional test procedures. The final rule has been revised to reference this service bulletin as the appropriate source of service information.

The format of the final rule has been restructured to be consistent with the standard Federal Register style.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 428 McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 243 airplanes of U.S. registry will be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$55 per manhour. The cost of parts to accomplish this modification is estimated to be \$70 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$57,105.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will

not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Regulatory Docket. A copy of it may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

#### § 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**91-23-14. McDonnell Douglas:** Amendment 39-8083, Docket No. 91-NM-89-AD.

Applicability: Model DC-10-10, -10F, -15, -30, -30F, -40, -40F, and KC-10A (Military) series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent an unobserved indication that the hydraulic system number 3 shutoff valve has closed, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the Master Caution Warning System by installing a wire in accordance with paragraph 2.

Accomplishment Instructions, of McDonnell Douglas DC-10 Service Bulletin 29-132, Revision 1, dated August 26, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(d) The modification requirements shall be done in accordance with McDonnell Douglas DC-10 Service Bulletin 29-132, Revision 1, dated August 26, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California, 90801, ATTN: Group Leader, MD-

11/DC-10 and DC-8/-8, Service Change Operations, Mail Code 73-30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8083, AD 91-23-14) becomes effective on January 9, 1992.

Issued in Renton, Washington, October 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-29167 Filed 12-4-91; 6:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 943

[Docket No. 80851-1105]

RIN 0648-AB49

### Flower Garden Banks National Marine Sanctuary Regulations

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

**ACTION:** Notice of National Marine Sanctuary designation; final rule; interim final rule; and summary of final management plan.

**SUMMARY:** The National Oceanic and Atmospheric Administration, by the Designation Document contained in this notice, designates two separate areas of ocean waters over and surrounding the East and West Flower Garden Banks, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico, as the Flower Garden Banks National Marine Sanctuary (the "Sanctuary"). The area designated at the East Bank is located approximately 120 nautical miles south-southwest of Cameron, Louisiana, and encompasses 19.20 square nautical miles, and the area designated at the West Bank is located approximately 110 nautical miles southeast of Galveston, Texas, and encompasses 22.50 square nautical miles.

Further, NOAA by this notice issues final and interim final regulations to implement the designation by regulating activities affecting the Sanctuary

consistent with the provisions of the Designation Document.

**DATES: Effective Date:** Pursuant to section 304(b) of the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. 1434(b)), Congress has forty-five days of continuous session beginning on the day on which this notice is published to review the designation and regulations before they take effect. After forty-five days, the designation automatically becomes final and takes effect, and the regulations automatically become final or interim final, as the case may be (see **SUPPLEMENTARY INFORMATION** section below), and take effect, unless the designation or any of its terms is disapproved by Congress through enactment of a joint resolution. A document announcing the effective date will be published in the **Federal Register**.

**Comments:** Comments are invited on §§ 943.3(a)(5), (6), (7), (9), (12), (14), and (15), §§ 943.5(a)(1), (11), (12), (13), and (e), and § 943.6 and will be considered if submitted in writing to the address below on or before February 3, 1992.

**ADDRESSES:** Comments should be submitted in writing to Commander William Harrigan, Acting Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 606-4122. Copies of the Final Environmental Impact Statement/Management Plan (FEIS/MP) prepared for the designation are available upon request to the Office of Ocean and Coastal Resource Management.

**FOR FURTHER INFORMATION CONTACT:** Annie Hillary, (202) 606-4122.

**SUPPLEMENTARY INFORMATION:** As indicated above, NOAA by this notice issues final and interim final regulations to implement the designation by regulating activities affecting the Sanctuary consistent with the provisions of the Designation Document. Sections 943.3(a)(5), (6), (7), (9), (12), (14), and (15), §§ 943.5(a)(1), (11), (12), (13), and (e), and section 943.6 are issued as interim final regulations. These sections: (1) Add definitions not included in the proposed regulations; (2) make explicit an implicit prohibition in the proposed regulations on exploring for, developing, or producing oil, gas, or minerals within certain areas of the Sanctuary; (3) add a prohibition on the possession within the Sanctuary, except for valid law enforcement purposes, of a variety of marine resources; (4) add a prohibition on spearfishing within the Sanctuary; (5) add a prohibition on feeding fish within

the Sanctuary; (6) add a prohibition on the possession or use within the Sanctuary, except possession while passing without interruption through it or for valid law enforcement purposes, of any fishing gear, device, equipment or means except conventional hook and line gear; (7) modify the regulation regarding activities of the Department of Defense; and (8) for areas of the Sanctuary where oil, gas, and mineral activities are allowed, add a requirement to shunt all drilling cuttings and fluids to the seabed. These additional prohibitions and requirements and other changes are made in response to comments received during the rulemaking and/or are a logical outgrowth of the proposed regulations. They provide for the national defense or are necessary in order to manage and ensure the long-term survival of Sanctuary resources and qualities. Comments on these sections are invited and will be considered in connection with the issuance of final regulations if submitted in accordance with the instructions appearing in the **DATES** section below. All other sections of the regulations are issued as final regulations.

#### 1. Background

Title III of the Marine Protection, Research, and Sanctuaries Act, as amended (the "Act"), 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries if, as required by section 303 of the Act (16 U.S.C. 1433), the Secretary finds, in consultation with Congress, a variety of specified officials, and other interested persons, that the designation will fulfill the purposes and policies of the Act (set forth in section 301(b) (16 U.S.C. 1431(b))) and: (1) The area proposed for designation is of special national significance due to its resource or human-use values; (2) existing state and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; (3) designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and (4) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

Before the Secretary may designate an area as a national marine sanctuary, section 303 (16 U.S.C. 1433) requires him or her to make the above described findings and section 304 (16 U.S.C. 1434),

setting forth the procedures for designation, requires him or her to publish in the **Federal Register** regulations implementing the designation and to advise the public of the availability of the FEIS/MP.

The authority of the Secretary to designate national marine sanctuaries has been delegated to the Under Secretary for Oceans and Atmosphere by DOC Organization Order 10-15, section 3.01(z), January 11, 1988. The authority to administer the other provisions of the Act has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 05-50, September 21, 1983, as amended.

The Flower Garden Banks are two of over thirty major outer-continental shelf geological features in the northwestern Gulf of Mexico. The East and West Flower Garden Banks, separated by eight nautical miles of open water, sustain the northernmost living coral reefs on the United States continental shelf. The complex and biologically productive reef communities that cap the Banks are in delicate ecological balance because of the fragile nature of coral and the fact that the Banks lie on the extreme northern edge of the zone in which extensive reef development can occur. In addition to their coral reefs, the Banks harbor the only known oceanic brine seep in continental shelf waters of the Gulf of Mexico. Because of these features, the Flower Garden Banks offer a combination of esthetic appeal and recreational and research opportunity matched in few other ocean areas.

In April 1979, NOAA published proposed regulations (44 FR 22081) and a draft environmental impact statement (DEIS) for the proposed designation of the East and West Flower Garden Banks as a national marine sanctuary. However, a FEIS was not prepared. NOAA withdrew the DEIS in April 1982, and removed the site from the list of areas being considered for designation. One of the major reasons for this action was that a fishery management plan for Coral and Coral Reefs in the Gulf of Mexico and South Atlantic (FMP) was about to be implemented. It was expected that the FMP and its implementing regulations would protect the coral formations in the area of the proposed national marine sanctuary from being damaged by large vessels by prohibiting these vessels from anchoring. However, the final regulations implementing the FMP (49 FR 29607 (1984)) did not include the expected "no-anchoring" provision.

The continued lack of a ban on large-  
 el anchoring led to renewed interest  
 nsuring the site's protection by  
 designating it as a national marine  
 sanctuary, and on August 2, 1984,  
 NOAA announced (49 FR 30988) that the  
 Flower Garden Banks had again become  
 an Active Candidate for designation as  
 a sanctuary. On June 24, 1986, NOAA  
 sponsored a public scoping meeting in  
 Galveston, Texas, to solicit public  
 comment on the scope and significance  
 of issues involved in designating the  
 sanctuary. Again the response was  
 generally favorable to proceeding with  
 the designation.

NOAA published proposed  
 regulations including a proposed  
 Designation Document (54 FR 7953) and  
 a DEIS/MP for the proposed designation  
 of the Flower Garden Banks as a  
 national marine sanctuary in February  
 1989. Public hearings to receive  
 comments on the proposed designation,  
 proposed regulations, and DEIS/MP  
 were held in Houston, Texas, on March  
 30, 1989. All comments received by  
 NOAA in response to the **Federal  
 Register** notice and at the public  
 hearings were considered and, where  
 appropriate, were incorporated. The  
 significant comments on the proposed  
 regulations and the regulatory elements  
 the DEIS/MP and NOAA's responses  
 to them follow:

(1) *Comment:* A number of  
 commentors advocated the selection of  
 the largest regulatory/boundary  
 alternative, Alternative 3. Alternative 3  
 was advocated both because it would  
 enclose the four-mile buffer zones  
 beyond the no-activity zones and  
 because it would incorporate into the  
 Sanctuary regulations the Minerals  
 Management Service (MMS) biological  
 lease stipulations for lease sale 112,  
 which prohibit activities associated with  
 exploration for or production of  
 hydrocarbons within the no-activity  
 zones and require that drilling wastes  
 disposed of in the buffer zones be  
 shunted to within 10 meters of the  
 bottom. These stipulations are currently  
 imposed by the Department of the  
 Interior (DOI) on a lease by lease basis  
 and therefore do not provide permanent  
 protection.

*Response:* NOAA recognizes that  
 activities occurring in the four-mile  
 buffer zones may potentially generate  
 pollutants that could threaten the  
 significant resources of the Flower  
 Garden reefs. NOAA therefore agrees  
 that the reefs must be protected from the  
 possible adverse impacts of buffer zone  
 activities. Alternative 1 requires that  
 drilling operations comply with a  
 Sanctuary regulation prohibiting

discharges and deposits that enter the  
 Sanctuary and injure a Sanctuary  
 resource or Sanctuary quality. NOAA  
 believes that this regulation, applying to  
 other discharges and deposits as well as  
 drilling wastes, provides broad  
 protection to Sanctuary resources.  
 NOAA has also modified Alternative 1  
 by including a shunting requirement for  
 oil and gas activities in the Sanctuary  
 (which are allowed only in the areas  
 outside the no-activity zones). NOAA  
 has therefore concluded that the  
 Alternative 1 boundaries, which  
 encompass the present boundaries of  
 the no-activity zones, rounded out to  
 allow more easy identification of the  
 boundaries of the Sanctuary for  
 enforcement purposes, are more in  
 keeping than the Alternative 3  
 boundaries with § 922.1(c)(2) of the  
 National Marine Sanctuary Program  
 regulations (15 CFR part 922), which  
 states that sanctuary size will be no  
 larger than necessary to ensure effective  
 management.

With respect to activities within the  
 no-activity zones, NOAA agrees that the  
 Alternative 3 provision explicitly  
 prohibiting hydrocarbon exploration,  
 development or production within these  
 zones would provide stronger protection  
 than the prohibition on altering the  
 seabed, the primary means of regulating  
 hydrocarbon activities within these  
 zones under Alternative 1. NOAA has  
 therefore modified Alternative 1 by  
 incorporating into it an explicit  
 prohibition of hydrocarbon exploration,  
 development and production activities  
 within the no-activity zones. Thus  
 modified (see also the SUMMARY  
 section above), Alternative 1 remains  
 the preferred alternative.

(2) *Comment:* Two commentors stated  
 that the stipulations in current leases  
 are adequate to protect the Banks from  
 the adverse effects of oil and gas  
 operations. Such operations should  
 therefore be exempt from the regulation  
 prohibiting discharges that occur outside  
 of the Sanctuary and then drift into it  
 and injure Sanctuary resources.

*Response:* NOAA disagrees. These  
 stipulations are applied on a lease by  
 lease basis. The Sanctuary regulations,  
 in contrast, prohibit oil and gas  
 exploration, development and  
 production in the no-activity zones, and  
 cannot be discontinued without a  
 regulatory amendment. The regulations  
 also now require shunting in areas if the  
 Sanctuary where oil and gas activities  
 are not prohibited.

(3) *Comment:* Several commentors  
 were concerned about or misinterpreted  
 the effect of Sanctuary regulations on oil  
 and gas operations occurring outside of

the no-activity zones but within  
 Sanctuary boundaries.

*Response:* Language has been added  
 to subsection 943.5 to make clear that  
 necessary activities incidental to oil and  
 gas operations, including the use, when  
 necessary, of explosives for platform  
 removal, that take place within the  
 Sanctuary, but outside of the no-activity  
 zones, are allowed.

(4) *Comment:* Several commentors  
 expressed concern that shunted drilling  
 wastes or other contaminant discharges  
 at or near the seafloor surrounding the  
 Banks might be swept up to the coral  
 reefs and injure resources.

*Response:* In analyzing the flow of  
 water at the base of the Flower Garden  
 Banks, Rezak *et al.*, 1985, reported that  
 "the strength of the stratification is so  
 great that little vertical motion is  
 possible as the flow encounters the  
 bank." They conclude that "from both  
 theory and order magnitude estimates,  
 one would expect the flow to diverge  
 around the banks with a very modest  
 vertical excursion (on the order of 10 m)  
 on the point of the bank where the flow  
 diverges." These findings indicate that  
 the contaminants from subsurface spills,  
 instead of being deposited on the reefs,  
 would be swept around the Banks by the  
 currents.

(5) *Comment:* A number of  
 commentors recommended that mooring  
 buoys be emplaced and all anchoring be  
 prohibited.

*Response:* NOAA agrees that mooring  
 buoys should be emplaced over the  
 coral reefs. Through a local cooperative  
 effort and in consultation with NOAA,  
 mooring buoys have been installed over  
 the reefs. The Sanctuary regulations  
 have been revised to prohibit anchoring  
 in all areas of the Sanctuary where  
 mooring buoys are available. NOAA  
 will amend the regulations appropriately  
 if the anchoring that is allowed in areas  
 where buoys are not available is found  
 to have an adverse impact on Sanctuary  
 resources.

(6) *Comment:* Two commentors  
 recommended that NOAA develop a  
 proposal that the International Maritime  
 Organization (IMO) designate the  
 Flower Garden Banks as an "Area To Be  
 Avoided."

*Response:* NOAA, in consultation  
 with the U.S. Coast Guard (USCG) and  
 the Department of State, will work to  
 develop a proposal for the designation  
 by the IMO of the Flower Garden Banks  
 as an "Area To Be Avoided".

(7) *Comment:* A number of  
 commentors advocated prohibiting all  
 fishing activities within the Sanctuary.  
 The proposed Sanctuary regulations  
 would have prohibited all fishing except



by use of conventional hook and line or surfishing gear. These commentors, in general, concerned that hook line gear could snag and damage coral.

*Response:* One of the goals of the National Marine Sanctuary Program as set forth in the Act is "to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of marine resources not prohibited pursuant to other authorities." As the DEIS/MP notes, most recreational and commercial fishing at the Flower Garden Banks is done with conventional hook and line gear and at the fringes of the reefs in waters of 100 to 150 foot depths where snappers and groupers are most abundant. NOAA has no evidence that this fishing is depleting Flower Garden Bank resources. However, if NOAA later determines that such fishing has an adverse impact on Sanctuary resources, NOAA has the authority to regulate such fishing on a temporary emergency basis during which time NOAA can consult with the Gulf of Mexico Fishery Management Council to decide on more permanent measures for resolving the problem. (See also the response to comment 8 below.)

(8) *Comment:* Many commentors recommended prohibiting spearfishing the time of designation instead of merely listing it for possible future regulation.

*Response:* The recommendation was adopted. Spearfishing is now prohibited. Studies on the effects of piscivorous predator removal of coral reef fish communities reveal that spearfishing is detrimental to fisheries resources and causes selective removal of large predator species (Bohnsack, 1982). At the Flower Garden Banks spearfishing would have a negative influence on the resident reef fish population because of the nature of recruitment of juvenile fish species.

(9) *Comment:* Several commentors advocated prohibiting all live collecting.

*Response:* The proposed regulations would have prohibited all collecting and this prohibition has been maintained.

(10) *Comment:* Several commentors recommended that the emphasis of the interpretation and education program should be on projects that provide information to user groups whose activities could have an adverse impact on Flower Garden Banks resources. This emphasis was lacking in the draft management plan description of the education programs although the DEIS/MP did note that, in light of the Sanctuary's remoteness and the concomitant problems that will be encountered in surveillance and

enforcement operations, the dissemination of information must be emphasized in the enforcement program.

*Response:* The management plan description of the education program has been expanded to emphasize that this program will stress efforts to provide information to special-interest groups and industry associations that may present a potential threat to Flower Garden Banks resources or that may otherwise play a role in resource protection. The target groups will include excursion-boat operators based in nearby ports; merchant vessels bound to and from Corpus Christi and other nearby ports; the crews of offshore platforms and platform service vessels based largely in Morgan City, Louisiana; and commercial fishermen operating primarily out of Pensacola, Florida.

A major function of the Sanctuary manager and staff will be maintaining communication with these groups. Subject to the availability of funds, NOAA will allocate whatever resources are needed to ensure the effectiveness of this effort.

(11) *Comment:* Several commentors interpreted NOAA's exemption of certain activities for the national defense as an exemption for the Department of Defense (DOD) from all prohibitions of the Sanctuary regulations.

*Response:* The proposed regulation regarding DOD activities provided that the prohibitions did not apply to DOD activities necessary for the national defense. Rather than focusing on determining what activities are necessary for the national defense, the interim final regulation regarding DOD activities focuses on potential impacts of DOD activities on Sanctuary resources and qualities. The interim final regulation differs from the proposed regulation by: (i) Making all activities being carried out by DOD as of the effective date of Sanctuary designation exempt from the Sanctuary regulatory prohibitions, not just those determined necessary for the national defense; (ii) with regard to new DOD activities, exempting those with no potential for any significant adverse impact on Sanctuary resources or qualities from the requirement of obtaining a case-by-case exemption from the Sanctuary regulatory prohibitions; (iii) adding a requirement that DOD carry out its activities in a manner that minimizes any adverse impact on Sanctuary resources and qualities; and (iv) adding a requirement that DOD, in the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to

spills and groundings, caused by it, promptly coordinate with NOAA for the purpose of taking appropriate actions to respond to and mitigate the harm, and, if possible, restore or replace the Sanctuary resource or quality.

## II. Designation Document

Section 304(a)(4) of the Act requires that the designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and the types of activities that will be subject to regulation by the Secretary to protect these characteristics. The section also specifies that the terms of the designation may be modified only by the same procedures by which the original designation was made. Thus the terms of the designation serve as a constitution for the Sanctuary.

The Designation Document for the Flower Garden Banks National Marine Sanctuary follows:

### Designation Document for the Flower Garden Banks National Marine Sanctuary

Under the authority of title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 *et seq.*, two separate areas of ocean waters over and surrounding the East and West Flower Garden Banks, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico, as described in Article II, are hereby designated as the Flower Garden Banks National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historic and esthetic resources and qualities of these areas.

#### Article I. Effect of Designation

The Act authorizes the Secretary of Commerce to issue such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and esthetic resources and qualities of a sanctuary. Section 1 of Article IV of this Designation Document lists those activities that may have to be regulated on the effective date of designation or at some later date in order to protect Sanctuary resources and qualities. Thus, the act of designation empowers the Secretary of Commerce to regulate the activities listed in Section 1. Listing does

not necessarily mean that an activity will be regulated; however, if an activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the same procedures by which the original designation was made.

#### Article II. Description of the Area

The Flower Garden Banks National Marine Sanctuary consists of two separate areas of ocean waters over and surrounding the East and West Flower Garden Banks, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles south-southwest of Cameron, Louisiana, and encompasses 19.20 square nautical miles, and the area designated at the West Bank is located approximately 110 nautical miles southwest of Galveston, Texas, and encompasses 22.50 square nautical miles. The two areas encompass a total of 41.70 square nautical miles (143.21 square kilometers). Appendix I to this designation document sets forth the precise Sanctuary boundaries.

#### Article III. Characteristics of the Area That Give It Particular Value

The Flower Garden Banks sustain the northernmost living coral reefs on the U.S. continental shelf. They are isolated from other reef systems by over 300 nautical miles (550 kilometers) and exist under hydrographic conditions generally considered marginal for tropical reef formation. The composition, diversity and vertical distribution of benthic communities on the Banks are strongly influenced by this physical environment. Epibenthic populations are distributed among several interrelated biotic zones, including a *Diploria-Montastrea-Porites* zone, a *Madroxis mirabilis* zone, and an algal sponge zone.

The complex and biologically productive reef communities that cap the Banks offer a combination of esthetic appeal and recreational and research opportunity matched in few other ocean areas. These reef communities are in delicate ecological balance because of the fragile nature of coral and the fact that the Banks lie on the extreme northern edge of the zone in which extensive reef development can occur. In addition to their coral reefs, the Banks contain the only known oceanic brine seep in continental shelf waters of the Gulf of Mexico. Because of these features, the Flower Garden Banks are particularly valuable for scientific research.

#### Article IV. Scope of Regulations

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

The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the area:

- a. Anchoring or otherwise mooring within the Sanctuary;
- b. Discharging or depositing, from within the boundaries of the Sanctuary, any material or other matter;
- c. Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other matter;
- d. 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;
- e. Exploring for, developing or producing oil, gas or minerals within the Sanctuary;
- f. Taking, removing, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, catch, collect, harvest, feed, injure, destroy or cause the loss of, a Sanctuary resource;
- g. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, caught, collected or harvested, that, if it had been found within the Sanctuary, would be a Sanctuary resource.
- h. Possessing or using within the Sanctuary any fishing gear, device, equipment or means.
- i. Possessing or using airguns or explosives or releasing electrical charges within the Sanctuary.
- j. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

##### Section 2. Consistency With International Law

The Sanctuary regulations shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other international agreements to which the United States is a party.

##### Section 3. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or

quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

#### Article V. Effect on Other Regulations, Leases, Permits, Licenses, and Rights

##### Section 1. Fishing Regulations, Licenses, and Permits

The regulation of fishing is authorized under Article IV. All regulatory programs pertaining to fishing, including fishery management plans promulgated under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, shall remain in effect. Where a valid regulation promulgated under these programs conflicts with a Sanctuary regulation, the regulation deemed by the Secretary of Commerce or designee as more protective of Sanctuary resources and qualities shall govern.

##### Section 2. Other

If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Secretary of Commerce or designee as more protective of Sanctuary resources and qualities shall govern.

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization issued by any Federal authority of competent jurisdiction, or any valid right of subsistence use or access, may be terminated by the Secretary of Commerce or designee as a result of this designation or as a result of any Sanctuary regulation if such authorization or right was in existence on the effective date of this designation. However, the Secretary of Commerce or designee may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

Accordingly, the prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by any valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with Sanctuary regulations regarding the certification of such authorizations and rights (e.g., notifies



the Secretary or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Secretary or designee as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

Pending final agency action on the certification request, such holder may exercise such authorization or right without being in violation of any prohibitions set forth in the Sanctuary regulations, provided the holder is in compliance with Sanctuary regulations regarding certifications.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal authority of competent jurisdiction, provided that the applicant complies with Sanctuary regulations regarding notification and review of applications (e.g., notifies the Secretary or designee of the application for such authorization and provides requested information regarding the application), the Secretary or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Secretary or designee deems necessary to protect Sanctuary resources and qualities.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity conducted in accordance with the scope, purpose, terms, and conditions of the National Marine Sanctuary permit issued by the Secretary or designee in accordance with the Sanctuary regulations. Such permits may only be issued if the Secretary or designee finds that the activity for which the permit is applied will: further research related to Sanctuary resources; 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; or assist in managing the Sanctuary.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity conducted in accordance with the scope, purpose, terms, and conditions of a Special Use permit issued by the Secretary or designee in accordance with section 310 of the Act.

If the Sanctuary regulations prohibit oil, gas, or mineral exploration, development or production in any area of the Sanctuary, the Secretary or designee may in no event permit or otherwise approve such activities in that area, and any leases, licenses, permits, approvals, or other authorizations issued after the effective date of Sanctuary designation authorizing the exploration, development, or production of oil, gas, or minerals in that area shall be invalid.

#### *Article VI. Alterations to This Designation*

The terms of designation may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with any appropriate Federal, State, regional and local agencies, review by the appropriate Congressional committees and approval by the Secretary of Commerce or designee.

#### **Appendix I—Flower Garden Banks National Marine Sanctuary Boundary Coordinates**

#### *End of Designation Document*

#### **III. Summary of the Final Management**

The FEIS/MP for the Flower Garden Banks National Marine Sanctuary recognizes the need for a balanced approach to management that reflects the multiple use character of the area as well as the paramount need to protect its resources. The MP guides management of the Sanctuary during the first five years of operation. In describing the Sanctuary's location, resources and uses, the MP discusses programs for resource protection, research, and interpretation and details agency administrative roles and responsibilities.

As part of the National Marine Sanctuary Program attention is focused on the value of the area's resources. To ensure that these resources are protected, the Sanctuary resource protection program includes: (1) Coordination of policies and procedures among the agencies sharing responsibilities for resource protection; (2) participation by interested agencies and organizations in the development of procedures to address specific management concerns (e.g., monitoring and emergency-response programs); and (3) the enforcement of Sanctuary regulations in addition to other regulations already in place.

Effective management of the Sanctuary requires the initiation of a Sanctuary research program that addresses management issues. The

Sanctuary research program will be directed to improving knowledge of the Sanctuary's resources and environment and of how they may be affected by various types of human activity. To avoid duplication of effort and achieve maximum benefits from the research, NOAA will coordinate its research efforts with those of other agencies.

Increased public understanding and appreciation of the value of Flower Garden Banks natural resources is essential for their protection. The interpretation program for the Sanctuary will be directed to developing public awareness of the Sanctuary, its resources, and the regulations designed to protect them.

The Sanctuary will be managed initially by NOAA's Sanctuaries and Reserves Division in Washington, DC.

#### **IV. Summary of Regulations**

The regulations set forth the boundaries of the Sanctuary; prohibit a relatively narrow range of activities; establish requirements applicable to certain activities; establish procedures for applying for National Marine Sanctuary permits to conduct prohibited activities; establish certification procedures for existing leases, licenses, permits, approvals, other authorizations, or rights authorizing the conduct of a prohibited activity; establish notification and review procedures for applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity; set forth the maximum per-day penalties for violating Sanctuary regulations; and establish procedures for administrative appeals.

Specifically, the regulations add a new part 943 to title 15, Code of Federal Regulations.

Section 943.1 sets forth as the purpose of the regulations to implement the designation of the Flower Garden Banks National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of the designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Section 943.2 and the appendix following § 943.13 sets forth the boundaries of the Sanctuary.

Section 943.3 defines various terms used in the regulations. Other terms appearing in the regulations are defined at 15 CFR 922.2 and/or in the Marine Protection, Research, and Sanctuaries Act of 1972, as amended. Section 943.3 adds several definitions not contained in proposed § 943.3 and deletes others not needed because of these additions and

other revisions to the regulations. Definitions have been added for "Director," "effective date of Sanctuary designation," "historical resource," "no-activity zone," "Sanctuary quality," "shunt" and "vessel." Comments on these new definitions are invited.

Section 943.4 allows all activities except those prohibited by § 943.5 to be undertaken subject to the requirements of § 943.6, any emergency regulation promulgated pursuant to § 943.7 and all prohibitions, restrictions, and conditions validly imposed by any other Federal authority of competent jurisdiction. Thus, e.g., vessels of 100 feet or less in registered length could anchor in areas of the Sanctuary where mooring buoys are not available, subject to certain restrictions on their use of anchoring gear, and fish could be caught by use of conventional hook and line fishing gear.

Section 943.5 prohibits a variety of activities and thus make it unlawful for any person to conduct them. However, any of the prohibited activities except for exploring for, developing, or producing oil, gas, or minerals in the no-activity zones defined by these regulations could be conducted lawfully if one of the following four situations applies:

(1) The activity is necessary to respond to an emergency threatening life, property, or the environment; authorized by a National Marine Sanctuary permit issued under § 943.10; or authorized by a Special Use permit issued under section 310 of the Act.

(2) With regard to Department of Defense activities: The activity is being carried out as of the effective date of Sanctuary designation; the activity has no potential for any significant adverse impacts on Sanctuary resources or qualities; or the activity, although having the potential for significant adverse impacts, is exempted by the Director of the Office of Ocean and Coastal Resource Management after consultation between the Director and the Department of Defense. The regulations require that the Department of Defense carry out its activities in a manner that minimizes any adverse impact on Sanctuary resources and qualities and that it, in the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by it, promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality. The interim final regulation regarding Department of Defense activities differs

from the proposed regulation by: (i) Making all activities being carried out by the Department of Defense as of the effective date of Sanctuary designation exempt from the Sanctuary regulatory prohibitions, not just those determined necessary for the national defense; (ii) with regard to new Department of Defense activities, exempting those with no potential for any significant adverse impact on Sanctuary resources or qualities from the requirement of obtaining a case-by-case exemption from the Sanctuary regulatory prohibitions; (iii) adding the requirement of minimization of adverse impacts; and (iv) adding the requirement of prompt coordination, in the event of an untoward incident, for the purpose of taking appropriate actions. Rather than focusing on determining what activities are necessary for the national defense, the regulation as modified focuses on potential impacts of Department of Defense activities on Sanctuary resources and qualities. Comments are invited.

(3) The activity is authorized by a certification by the Director of the Office of Ocean and Coastal Resource Management under section 943.11 of a valid lease, permit, license, or other authorization issued by any Federal authority of competent jurisdiction and in existence on (or conducted pursuant to any valid right of subsistence use or access in existence on) the effective date of this designation, subject to complying with any terms and conditions imposed by the Director as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(4) The activity is authorized by a valid lease, permit, license, approval or other authorization issued by any Federal, State, or local authority of competent jurisdiction after the effective date of Sanctuary designation, provided that the Director or designee was notified of the application in accordance with the requirements of § 943.12, the applicant complies with the requirements of § 943.12, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

The regulations shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other international agreements to which the United States is a party.

The first activity prohibited is the exploration for, development, or production of oil, gas, or minerals within the no-activity zones in the Sanctuary. The proposed regulations did not explicitly contain such a prohibition but as discussed in the response to comment 1 above, the proposed prohibition on altering the seabed was intended to bar such activities. To make the intended prohibition clearer, an explicit prohibition on the exploration for, development, or production of oil, gas, or minerals within the no-activity zones in the Sanctuary has been added. The intent of this regulation is to protect Sanctuary resources and qualities. Comments are invited.

The second activity prohibited is anchoring or otherwise mooring within the Sanctuary a vessel greater than 100 feet in registered length. The third activity prohibited is anchoring within the Sanctuary a vessel of 100 feet or less in registered length where a mooring buoy is available. The fourth activity prohibited is anchoring within the Sanctuary a vessel using more than 15 feet of chain or wire rope attached to the anchor. The fifth activity prohibited is anchoring a vessel within the Sanctuary using anchor lines (exclusive of such chain or wire rope) that are not constructed of soft fiber or nylon, polypropylene, or similar material.

These regulations on anchoring and other mooring are necessary to protect the fragile benthic communities of the Sanctuary from damage. Although the regulations would permit vessels of 100 feet or less in registered length to anchor subject to the limitations on anchoring gear and the availability of mooring buoys, should such anchoring by these vessels damage the benthic communities, it could be prohibited or otherwise regulated.

The sixth activity prohibited is discharging or depositing from within the boundaries of the Sanctuary any material or other matter, except fish, fish parts, chumming material or bait used in or resulting from fishing operations in the Sanctuary, marine sanitation device biodegradable effluent, water generated by routine vessel operations, and engine exhaust. The seventh activity prohibited is depositing or discharging, from beyond the boundaries of the Sanctuary, any material or other matter, except for the exclusions listed above, if it enters the Sanctuary and injures a Sanctuary resource or quality. The intent of these prohibitions is to protect Sanctuary resources and qualities.

The eighth activity prohibited is constructing, placing or abandoning any structure, material or other matter on the



scabed of the Sanctuary; or drilling into, dredging or otherwise altering the seabed. Anchoring is exempt from this prohibition. (The regulatory restrictions on anchoring are described above.) The intent of this prohibition is to protect Sanctuary resources and qualities.

The ninth activity prohibited is injuring, removing, or attempting to injure or remove, any coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota, or carbonate rock within the Sanctuary. The intent of this prohibition is to protect Sanctuary resources. The tenth activity prohibited is taking any marine mammal or turtle within the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act and Endangered Species Act. The intent of this prohibition is to protect Sanctuary resources.

The eleventh activity prohibited is injuring, catching, collecting, harvesting or feeding or attempting to injure, catch, collect, harvest or feed any fish in the Sanctuary by use of bottom longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear. The intent of this prohibition is to protect Sanctuary resources. The regulation encompasses a prohibition on spearfishing, which was not included in the proposed regulations. A prohibition on feeding fish was also not included in the proposed regulations. Comments are invited.

The twelfth activity prohibited is possessing within the Sanctuary (regardless of where collected, caught, removed, or harvested), except for valid law enforcement purposes, any carbonate rock, coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota or fish (except for fish caught, collected or harvested by use of conventional hook and line gear). The intent of this prohibition, which was not included in the proposed regulations, is to facilitate the enforcement of the above prohibitions against injuring, collecting, harvesting, removing or catching, or attempting to injure, collect, harvest, remove or catch, Sanctuary resources. Because it often would not be possible for an enforcement officer to determine whether a marine resource in the possession of someone within the Sanctuary was collected, harvested, removed or caught in the Sanctuary, by prohibiting the possession of these items while in the Sanctuary, if the enforcement officer finds one of them in a person's possession, the person would

be in violation of this prohibition. Comments are invited.

The thirteenth activity prohibited is possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear. The intent of this prohibition, which was not included in the proposed regulations, is to facilitate the enforcement of the above prohibitions against injuring, catching, harvesting or collecting, or attempting to injure, catch, harvest or collect, any fish in the Sanctuary except by conventional hook and line gear. Comments are invited.

The fourteenth activity prohibits possessing, except for valid law enforcement purposes, or using explosives or releasing electrical charges within the Sanctuary. The intent of this prohibition is to protect Sanctuary resources from the harmful effects of explosives and electrical charges. The use of explosives and electrical charges in seismic operations, for example, has been documented to be lethal or damaging to fish eggs and larvae, disturbing to the fish and other marine life, and possibly destructive to commercial fishing gear (Gulf of Mexico Sales 131, 135, and 137; Central, Western and Eastern Planning Areas DEIS, USDOJ, MMS, 1990).

The prohibitions do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones incidental to exploration for, development of, or production of oil and gas in those areas.

If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director or designee as more protective of Sanctuary resources and qualities governs.

Section 943.6 sets forth requirements regarding hydrocarbon drilling discharges. This section requires that any person engaged in the exploration for, development of, or production of oil or gas in areas of the Sanctuary outside the no-activity zones shunt all drilling cuttings and fluids to the seabed through a downpipe that terminates at an appropriate distance, but no more than ten meters, from the seabed. DOI already requires such shunting with respect to Lease Sale 112 tracts, and incorporation of the shunting requirement into the Sanctuary regulations reflects NOAA's belief as to the importance of continuing such requirement. This requirement was not

included in the proposed regulations, but was added for the reasons stated in the response to Comment 2 above. Comments are invited.

Section 943.7 authorizes the regulation, including prohibition, on a temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury.

Section 943.8 sets forth the maximum statutory civil penalty per day for conducting a prohibited activity—\$50,000. Each day of a continuing violation constitutes a separate violation. Section 943.9 repeats the provision in section 312 of the Act that any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury, and any vessel used to destroy, cause the loss of, or injure any sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The purpose of §§ 943.8 and 943.9 is to notify the public of the liability.

Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at part 904, title 15, Code of Federal Regulations.

Section 943.10 sets forth the procedures for applying for a National Marine Sanctuary permit to conduct a prohibited activity and the criteria governing the issuance, denial, amendment, suspension, and revocation of such permits. Permits may be granted by the Director of the Office for Ocean and Coastal Resource Management or designee if he or she finds that the activity will: Further research related to Sanctuary resources; 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; or assist in the management of the Sanctuary. In deciding whether to issue a permit, the Director or designee would be required to 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. In addition, the Director or designee would be authorized to consider any other factors she or he deems appropriate.

Section 943.11 sets forth procedures for requesting certification of leases, licenses, permits, approvals, other authorizations, or rights in existence on the date of Sanctuary designation authorizing the conduct of an activity prohibited under § 943.5(a)(2)-(14). Pursuant to § 943.5(g), the prohibitions in § 943.5(a)(2)-(14) do not apply to any activity authorized by a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with the requirements of § 943.11 (e.g., notifies the Director or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Director or designee as she or he deems necessary to achieve the purposes for which the Sanctuary was designated.

Section 943.11 allows the holder 90 days from the effective date of Sanctuary designation to request certification. The holder is allowed to conduct the activity without being in violation of § 943.5(a) pending final agency action on his or her certification request, provided the holder has complied with all requirements of § 943.11.

Section 943.11 also allows the Director or designee to request additional information from the holder and to seek the views of other persons.

As a condition of certification, the Director or designee will impose such terms and conditions on the exercise of such lease, permit, license, approval, other authorization, or right as she or he deems necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under section 304(c)(2) of the Act.

The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 943.13.

Any amendment, renewal or extension not in existence as of the date of Sanctuary designation of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 943.12.

Section 943.12 states that consistent with § 943.5(h), the prohibitions of § 943.5(a)(2)-(14) do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal authority of competent jurisdiction, provided that the applicant notifies the Director or designee of the application for such authorization within 15 days of the date of filing of the application or of the effective date of Sanctuary designation, whichever is later, that the applicant is in compliance with the other provisions of § 943.11, that the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and that the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

Section 943.12 allows the Director to request additional information from the applicant and to seek the views of other persons.

The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the procedures set forth in § 943.13.

An application for an amendment to, an extension of, or a renewal of an authorization is also subject to the provisions of § 943.12.

Section 943.13 sets forth the procedures for appealing to the Assistant Administrator or designee actions of the Director or designee with respect to: (1) The granting, conditioning, amendment, denial, suspension or revocation of a National Marine Sanctuary permit under § 943.10 or a Special Use permit under section 310 of the Act; (2) the granting, denial, conditioning, amendment, suspension or revocation of a certification under § 943.11; or (3) the objection to issuance or the imposition of terms and conditions under § 943.12.

Prior to conditioning existing or future leases, permits, licenses, approvals, other authorizations, or rights, NOAA intends to consult with relevant issuing agencies as well as holders or applicants. NOAA's policy is to encourage best available management practices for the Sanctuary.

## V. Miscellaneous Rulemaking Requirements

### *Executive Order 12291*

Under Executive Order 12291, the Department must judge whether the regulations in this notice are "major" within the meaning of section 1 of the Order, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. The Administrator of NOAA has determined that the regulations in this notice are not major because they are not likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### *Regulatory Flexibility Act*

The regulations in this notice allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. The procedures in these regulations for applying for National Marine Sanctuary permits to conduct prohibited activities, for requesting certifications for preexisting leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity will all act to lessen any adverse economic effect on small entities. The regulations, in total, will not have a significant economic impact on a substantial number of small entities, and when they were proposed the General Counsel of the Department of Commerce so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

### *Paperwork Reduction Act*

This rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. 96-511). The collection of information requirement applies to persons seeking permits to conduct prohibited activities and is necessary to determine whether the activities are consistent with the management goals for the Sanctuary.



The collection of information requirement contained in the rule was submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act and was approved under OMB Control No. 0648-0141. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 1.83 hours annually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public on the collection of information requirement are specifically invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Desk Officer for NOAA); and to Richard Roberts, room 305, 6010 Executive Boulevard, Rockville, MD 20852.

#### Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685, Oct. 26, 1987).

#### National Environmental Policy Act

In accordance with section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370(a)), a DEIS/MP was prepared for the designation and the proposed regulations. As required by section 304(a)(2) of the Act, the DEIS/MP included the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundaries of the designated area, and the existing and potential uses and resources of the area. Copies of the DEIS/MP were made available for public review on February 16, 1989, with comments due on April 25, 1989. Public hearings were held in Houston, Texas on March 30, 1989. All comments were reviewed and, where appropriate, incorporated into the FEIS/MP and these regulations.

#### List of Subjects in 15 CFR Part 944

Administrative practice and procedure, Environmental protection, Marine resources, Natural resources, and Reporting and recordkeeping requirements.

Dated: November 29, 1991.

Frank W. Maione,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Accordingly, for the reasons set forth above, 15 CFR ch. IX is amended as follows:

1. Part 943 is added to subchapter A to read as follows:

### PART 943—FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

Sec.

- 943.1 Purpose.
  - 943.2 Boundaries.
  - 943.3 Definitions.
  - 943.4 Allowed activities.
  - 943.5 Prohibited activities.
  - 943.6 Shunting requirements applicable to hydrocarbon-drilling discharges.
  - 943.7 Emergency regulations.
  - 943.8 Penalties for commission of prohibited activities.
  - 943.9 Response costs and damages.
  - 943.10 National Marine Sanctuary permits—application procedures and issuance criteria.
  - 943.11 Certification of pre-existing leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.
  - 943.12 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.
  - 943.13 Appeals of administrative action.
- Appendix I to part 943—Flower Garden Banks National Marine Sanctuary Boundary Coordinates.
- Appendix II to part 943—Coordinates for the Department of the Interior topographic lease stipulations for OCS lease sale 112.

Authority: Sections 302, 303, 304, 305, 307, and 310 of title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

#### § 943.1 Purpose.

The purpose of the regulations in this part is to implement the designation of the Flower Garden Banks National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

#### § 943.2 Boundaries.

The Flower Garden Banks National Marine Sanctuary consists of two separate areas of ocean waters over and surrounding the East and West Flower Garden Banks, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area

designated at the East Bank is located approximately 120 nautical miles south-southwest of Cameron, Louisiana, and encompasses 19.20 square nautical miles, and the area designated at the West Bank is located approximately 110 nautical miles southeast of Galveston, Texas, and encompasses 22.50 square nautical miles. The two areas encompass a total of 41.70 square nautical miles (143.21 square kilometers). The boundary coordinates for each area are listed in appendix I to this part.

#### § 943.3 Definitions.

(a) (1) *Act* means title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

(2) *Administrator* or *Under Secretary* means the Administrator of the National Oceanic and Atmospheric Administration/Under Secretary of Commerce for Oceans and Atmosphere.

(3) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

(4) *Conventional hook and line gear* means any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand- or electrically operated, hand-held or mounted. This term does not include bottom longlines.

(5) *Director* means the Director of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

(6) *Effective date of Sanctuary designation* means the date the regulations implementing the designation of the Sanctuary become effective.

(7) *Historical resource* means a resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events.

(8) *Injure* means change adversely, either in the long or short term, a chemical, biological or physical attribute of, or the viability of. To "injure" therefore includes, but is not limited to, to cause the loss of and to destroy.

(9) *No-activity zone* means one of the two geographic areas delineated by the Department of the Interior in stipulations for OCS lease sale 112 over and surrounding the East and West



Flower Garden Banks as areas in which activities associated with exploration or development of, or production of hydrocarbons are prohibited. The precise coordinates of these areas are provided in appendix II. These particular coordinates define the geographic scope of the "no-activity zones" for purposes of the regulations in this Part. These coordinates are based on the "1/4 1/4 1/4" system formerly used by the Department of the Interior, a method that delineates a specific portion of a block rather than the actual underlying isobath.

(10) *Person* means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, agency, department or instrumentality of the Federal government, of any State or local unit of government, or of any foreign government.

(11) *Sanctuary* means the Flower Garden Banks National Marine Sanctuary.

(12) *Sanctuary quality* means a particular and essential characteristic of the Sanctuary, including but not limited to water quality and air quality.

(13) *Sanctuary resource* means any living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or esthetic value, including, but not limited to, carbonate rock, corals and other bottom formations, coralline algae and other plants, marine invertebrates, brine-seep biota, fish, turtles and marine mammals.

(14) *Shunt* means to discharge expended drilling cuttings and fluids near the ocean seafloor.

(15) *Vessel* means a watercraft of any description capable of being used as a means of transportation in the waters of the Sanctuary.

(b) Other terms appearing in the regulations in this Part are defined at 15 CFR 922.2 and/or in the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*).

#### § 943.4 Allowed activities.

All activities except those prohibited by § 943.5 may be undertaken subject to the requirements of § 943.6, subject to any emergency regulations promulgated pursuant to § 943.7, and subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal authority of competent jurisdiction. If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director or

designee as more protective of Sanctuary resources and qualities shall govern.

#### § 943.5 Prohibited activities.

(a) Except as specified in paragraphs (c) through (h) of this section, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Exploring, developing or producing oil, gas or minerals within a no-activity zone.

(2) Anchoring or otherwise mooring within the Sanctuary a vessel greater than 100 feet (30.48 meters) in registered length.

(3) Anchoring a vessel of less than or equal to 100 feet (30.48 meters) in registered length within an area of the Sanctuary where a mooring buoy is available.

(4) Anchoring a vessel within the Sanctuary using more than fifteen feet (4.57 meters) of chain or wire rope attached to the anchor.

(5) Anchoring a vessel within the Sanctuary using anchor lines (exclusive of the anchor chain or wire rope permitted by paragraph (a)(4) of this section) other than those of a soft fiber or nylon, polypropylene, or similar material.

(6) Discharging or depositing, from within the boundaries of the Sanctuary, any material or other matter except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from fishing with conventional hook and line gear in the Sanctuary;

(ii) Biodegradable effluents incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322;

(iii) Water generated by routine vessel operations (e.g., cooling water, deck wash down, and graywater as defined by section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322) excluding oily wastes from bilge pumping; or

(iv) Engine exhaust.

The prohibitions in this paragraph (a)(6) do not apply to the discharge, in areas of the Sanctuary outside the no-activity zones, of drilling cuttings and drilling fluids necessarily discharged incidental to the exploration for, development of, or production of oil or gas in those areas unless such discharge injures a Sanctuary resource or quality. (See § 943.6 for the shunting requirement applicable to such discharges.)

(7) Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(6)(i)

through (iv) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(8) Drilling into, dredging or otherwise altering the seabed of the Sanctuary (except by anchoring); or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary.

(9) Injuring or removing, or attempting to injure or remove, any coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota or carbonate rock within the Sanctuary.

(10) Taking any marine mammal or turtle within the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*

(11) Injuring, catching, harvesting, collecting or feeding, or attempting to injure, catch, harvest, collect or feed, any fish within the Sanctuary by use of bottom longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear.

(12) Possessing within the Sanctuary (regardless of where collected, caught, harvested or removed), except for valid law enforcement purposes, any carbonate rock, coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota or fish (except for fish caught by use of conventional hook and line gear).

(13) Possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear.

(14) Possessing, except for valid law enforcement purposes, or using explosives or releasing electrical charges within the Sanctuary.

(b) The regulations in this part shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other international agreements to which the United States is a party.

(c) The prohibitions in paragraphs (a)(2), (4), (5), (8) and (14) of this section do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas.

(d) The prohibitions in paragraphs (a)(2) through (14) of this section do not



apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(e)(1) The prohibitions in paragraphs (a)(2) through (14) of this section do not apply to activities being carried out by the Department of Defense as of the effective date of Sanctuary designation. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (14) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impacts on Sanctuary resources or qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. New activities with the potential for significant adverse impacts on Sanctuary resources or qualities may be exempted from the prohibitions in paragraphs (a)(2) through (14) of this section by the Director or designee after consultation between the Director or designee and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by a component of the Department of Defense, the cognizant component shall promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions in paragraphs (a)(2) through (14) 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 § 943.10 or a Special Use permit issued pursuant to section 310 of the Act.

(g) The prohibitions in paragraphs (a)(2) through (14) of this section do not apply to any activity authorized by a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with § 943.11 and with any terms and conditions on the exercise of

such lease, permit, license, approval, other authorization, or right imposed by the Director or designee as a condition of certification as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(h) The prohibitions in paragraphs (a)(2) through (14) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation, provided that the applicant complies with § 943.12, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

(i) Notwithstanding paragraphs (f), (g) and (h) of this section, in no event may the Director or designee issue a National Marine Sanctuary permit under § 943.10 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas or minerals in a no-activity zone, and any leases, licenses, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas or minerals in a no-activity zone and issued after the effective date of Sanctuary designation shall be invalid.

#### § 943.6 Shunting requirements applicable to hydrocarbon-drilling discharges.

Persons engaged in the exploration for, development of, or production of oil or gas in areas of the Sanctuary outside the no-activity zones must shunt all drilling cuttings and drilling fluids to the seabed through a downpipe that terminates an appropriate distance, but no more than ten meters, from the seabed.

#### § 943.7 Emergency regulations.

Where necessary to prevent or minimize the destruction of loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities are subject to immediate temporary regulation, including prohibition.

#### § 943.8 Penalties for commission of prohibited activities.

(a) Each violation of the Act, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than \$50,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

#### § 943.9 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury, and any vessel used to destroy, cause the loss of, or injure any sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.

#### § 943.10 National Marine Sanctuary permits—Application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 943.5(a)(2) through (14) if conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section.

(b) Applications for such permits should be addressed to the Director of the Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. An application must include a detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel, and methodology to be employed. The qualifications and experience of all personnel must be set forth in the application. The application must set forth the potential effects of the activity, if any, on Sanctuary resources and qualities. Copies of all other required licenses, permits, approvals, or other authorizations must be attached.

(c) Upon receipt of an application, the Director or designee may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons.

(d) The Director or designee, 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 § 943.5(a)(2) through (14), if the Director or designee finds that the activity will: further research related to Sanctuary resources; 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; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director or designee 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. In addition, the Director or designee may consider such other factors as he or she deems appropriate.

(c) A permit issued pursuant to this section is nontransferable.

(f) The Director or designee may amend, suspend, or revoke a permit issued pursuant to this section or deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of the permit or of these regulations or for other good cause. Any such action shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

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

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

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

(j) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension, or revocation of the permit in accordance with the procedures set forth in § 943.13.

**§ 943.11 Certification of pre-existing leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.**

(a) The prohibitions set forth in § 943.5(a)(2) through (14) do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that:

(1) The holder of such authorization or right notifies the Director designee, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 943.11; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director or designee, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or of any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 943.5(a)(2) through (14) may conduct the activity without being in violation of § 943.5, pending final agency action on his or her certification request, provided the holder is in compliance with this § 943.11.

(c) Any holder of a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or any holder of a valid right of subsistence use or access in existence on the effective date of Sanctuary designation may request the Director or designee to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited under § 943.5(a)(2) through (14).

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut

Avenue NW., Washington, DC 20235. A copy of the lease, permit, license, approval or other authorization must accompany the request.

(e) The Director or designee may request additional information from the certification requester as or he deems necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the certification request.

(f) The Director or designee may amend any certification made under this section whenever additional information becomes available justifying such an amendment.

(g) The Director or designee shall communicate any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this section may be extended by the Director or designee for good cause.

(i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 943.13.

(j) Any amendment, renewal or extension not in existence on the effective date of Sanctuary designation of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 943.12.

**§ 943.12 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.**

(a) The prohibitions set forth in § 943.5(a)(2) through (14) do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal authority of competent jurisdiction, provided that:

(1) The applicant notifies the Director or designee, in writing, of the application for such authorization (and of any application for an amendment, renewal or extension of such authorization) within fifteen (15) days of the date of application or of the effective date of Sanctuary designation, whichever is later:

(2) The applicant complies with the other provisions of this § 943.12;

(3) The Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal or extension); and

(4) The applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for a lease, permit, license, approval or other authorization from any Federal authority (or for an amendment, renewal or extension of such authorization) may request the Director or designee to issue a finding as to whether the activity for which an application is intended to be made is prohibited by § 943.5(a) (2) through (14).

(c) Notification of findings should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235. A copy of the application must accompany the notification.

(d) The Director or designee may request additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, approval or other authorization (or to issuance of an amendment, extension or renewal of such authorization), or what terms and conditions are necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the application.

(e) The Director or designee shall notify, in writing, the agency to which application has been made of his or her review of the application and possible objection to issuance. After review of the application and information received with respect thereto, the Director or designee shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems necessary to protect Sanctuary resources and qualities. The Director or designee shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed necessary to protect Sanctuary resources and qualities.

(f) The Director or designee may amend the terms and conditions deemed

necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this section may be extended by the Director or designee for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the procedures set forth in § 943.13.

**§ 943.13 Appeals of administrative action.**

(a) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a § 943.10 National Marine Sanctuary permit, an applicant for, or a holder of, a section 310 of the Act Special Use permit, a § 943.11 certification requester, or a § 943.12 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designee:

(1) The grant, denial, conditioning, amendment, suspension, or revocation by the Director or designee of a National Marine Sanctuary or Special Use permit;

(2) The conditioning, amendment, suspension, or revocation of a certification under § 943.11; or

(3) The objection to issuance or the imposition of terms and conditions under § 943.12.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director or designee appealed and the reason(s) for the appeal, and be received within 30 days of the action(s) by the Director or designee. Appeals should be addressed to the Assistant Administrator, Office of Ocean and Coastal Resource Management, ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235.

(c) While the appeal is pending, appellants requesting certification pursuant to § 943.11 who are in compliance with such section may continue to conduct their activities without being in violation of the prohibitions in § 943.5(a) (2) through (14). All other appellants may not conduct their activities without being subject to the prohibitions in § 943.5(a) (2) through (14).

(d) The Assistant Administrator or designee may request the appellant to submit such information as the Assistant Administrator or designee

deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator or designee within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. The Assistant Administrator or designee may hold an informal hearing on the appeal. If the Assistant Administrator or designee determines that an informal hearing should be held, the Assistant Administrator or designee may designate an officer before whom the hearing shall be held. The hearing officer shall give notice in the **Federal Register** of the time, place, and subject matter of the hearing. The appellant and the Director or designee may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or designee.

(e) The Assistant Administrator or designee shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director or designee and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator or designee shall notify the appellant of the final decision and the reason(s) therefor in writing. The Assistant Administrator or designee's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in or established under this section other than the 30 day limit for filing an appeal may be extended by the Assistant Administrator, designee, or hearing officer for good cause.

**Appendix I to Part 943—Flower Garden Banks National Marine Sanctuary Boundary Coordinates**

The boundary coordinates are based on geographic positions of the North American Datum of 1927 (NAD 27).

Point No.	Latitude	Longitude
East Flower Garden Bank		
E-1.....	27°52'52.13"	93°37'40.52"
E-2.....	27°53'33.81"	93°38'22.33"
E-3.....	27°55'13.31"	93°38'39.07"
E-4.....	27°57'30.14"	93°38'32.26"
E-5.....	27°58'27.79"	93°37'42.93"
E-6.....	27°59'00.29"	93°35'29.56"



Point No.	Latitude	Longitude
E-7	27 58 59.23"	93 35 09.91"
E-8	27 55 20.23"	93 34 13.75"
E-9	27 54 03.35"	93 34 18.42"
E-10	27 53 25.95"	93 35 03.79"
E-11	27 52 51.14"	93 36 57.59"
West Flower Garden Bank		
W-1	27 49 09.24"	93 50 43.35"
W-2	27 50 10.23"	93 52 07.96"
W-3	27 51 13.14"	93 52 50.68"
W-4	27 51 31.24"	93 52 49.79"
W-5	27 52 49.55"	93 52 21.89"
W-6	27 54 59.08"	93 49 41.87"
W-7	27 54 57.08"	93 48 38.52"
W-8	27 54 33.46"	93 47 10.36"
W-9	27 54 13.51"	93 46 48.96"
W-10	27 53 37.67"	93 46 50.67"
W-11	27 52 56.44"	93 47 14.10"
W-12	27 50 38.31"	93 47 22.86"
W-13	27 49 11.23"	93 48 42.59"

Appendix II to Part 943—Coordinates for the Department of the Interior Topographic Lease Stipulations for OCS Lease Sale 112

East Flower Garden Bank

Block A-366  
SE 1/4, SW 1/4;  
S 1/2, NE 1/4, SE 1/4; SE 1/4, NW 1/4, SE 1/4; S 1/2, SE 1/4

Block A-367  
W 1/2, NW 1/4, SW 1/4; SW 1/4, W 1/4, SW 1/4.

Block A-374  
W 1/2, NW 1/4, NW 1/4; W 1/2, SW 1/4, NW 1/4;  
SE 1/4, SW 1/4, NW 1/4;  
SW 1/4, NE 1/4, SW 1/4; W 1/2, SW 1/4; W 1/2,  
SE 1/4, SW 1/4; SE 1/4, SE 1/4, SW 1/4.

Block A-375  
E 1/2;  
E 1/2, NW 1/4, NW 1/4, SW 1/4, NW 1/4, NW 1/4;  
E 1/2, SW 1/4, NW 1/4; NW 1/4, SW 1/4, NW 1/4,  
SW 1/4;

Block A-388  
NE 1/4;  
E 1/2, NW 1/4; E 1/2, NW 1/4, NW 1/4; NE 1/4,  
SW 1/4, NW 1/4; E 1/2, SW 1/4; E 1/2, NE 1/4,  
SW 1/4; NW 1/4, NE 1/4, SW 1/4; NE 1/4, NW 1/4,  
SW 1/4; NE 1/4, SE 1/4, SW 1/4;  
NE 1/4; NE 1/4, SE 1/4; W 1/2, NE 1/4, SE 1/4; NW 1/4,  
SE 1/4; NW 1/4, SW 1/4, SE 1/4;

Block A-389  
NE 1/4, NW 1/4; NW 1/4, NW 1/4; SW 1/4, NW 1/4;  
NE 1/4, SE 1/4, NW 1/4; W 1/2, SE 1/4, NW 1/4;  
N 1/2, NW 1/4, SW 1/4.

West Flower Garden Bank

Block A-383  
E 1/2, SE 1/4, SE 1/4; SW 1/4, SE 1/4, SE 1/4.

Block A-384  
W 1/2, SW 1/4, NE 1/4; SE 1/4, SW 1/4, NE 1/4; S 1/2,  
SE 1/4, NE 1/4;  
SE 1/4, NW 1/4;  
E 1/2, SW 1/4; E 1/2, NW 1/4, SW 1/4; SW 1/4,  
NW 1/4, SW 1/4; SW 1/4, SW 1/4;  
SE 1/4

Block A-385  
SW 1/4, SW 1/4, NW 1/4;  
N 1/4, SW 1/4; NW 1/4, SW 1/4, SW 1/4.

Block A-397  
W 1/2, W 1/2, NW 1/4;  
W 1/2, NW 1/4, SW 1/4; NW 1/4, SW 1/4, SW 1/4.

Block A-398  
Entire block

Block A-399  
E 1/2;  
SE 1/4, NE 1/4, NW 1/4; E 1/2, SE 1/4, NW 1/4;  
E 1/2, NE 1/4, SW 1/4; SW 1/4, NE 1/4, SW 1/4;  
NE 1/4, SE 1/4, SW 1/4.  
Block A-401  
NE 1/4, NE 1/4; N 1/2, NW 1/4, NE 1/4; NE 1/4, SE 1/4,  
NE 1/4

Block A-Block 134  
That portion of the block north of a line connecting points 17 and 18, defined under the universal transverse mercator grid system as follows: Point 17: X = 1,378,080.00'; Y = 10,096,183.00'; Point 18: X = 1,376,079.41'; Y = 10,096,183.00';

Block A-135  
That portion of the block northwest of a line connecting points 16 and 17, defined under the universal transverse mercator grid system as follows: Point 16: X = 1,383,293.84'; Y = 10,103,281.93'; Point 17: X = 1,378,080.00'; Y = 10,096,183.00';

[FR Doc. 91-29108 Filed 12-4-91; 8:45 am]  
BILLING CODE 3510-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 284, and 380

[Docket No. RM90-1-003]

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities

Issued November 26, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of technical conference.

SUMMARY: On September 20, 1991, the Federal Energy Regulatory Commission (Commission) issued a Final Rule in Order No. 555 (56 FR 52330, October 18, 1991) adopting new regulations that govern the construction and operation of natural gas pipeline facilities. The Commission is convening a technical conference on the non-environmental aspects of the final rule. All persons are invited to attend and participate.

DATES: The conference will be held on Tuesday, January 7, 1992, beginning at 10 a.m.; notices of intent to participate should be filed by December 31, 1991.

ADDRESSES: The conference will be held at the Commission's offices at 810 First Street, NE., Washington, DC; notices of intent to participate should be filed with the Secretary of the Commission, 825 N. Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary of the Commission, (202) 208-0400.

SUPPLEMENTARY INFORMATION: Order No. 555 adopted a final rule governing the construction and operation of natural gas pipeline facilities. (Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs. ¶ 30,928 (1991)). The rule was published in the Federal Register on October 18, 1991 (56 FR 52330). By order issued on November 13, 1991, the Commission postponed the effective date of the final rule until 30 days after publication in the Federal Register of an order on rehearing.

A transcript will be made of the technical conference. All persons intending to make a presentation should include in their notice of intent to participate the amount of time desired for presentation. Participants will be restricted to lesser periods of time if necessary to afford each participant an opportunity to speak.

Lois D. Cashell,  
Secretary.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 91-95]

Customs Regulations Amendments Relating to User Fees

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On April 15, 1991, T.D. 91-33 was published in the Federal Register (56 FR 15036) setting forth interim amendments to the Customs Regulations to reflect changes to the Customs user fee statute (19 U.S.C. 58c) effected by section 111 of the Customs and Trade Act of 1990, as amended by section 10001 of the Omnibus Budget Reconciliation Act of 1990. This document adopts those interim regulations as a final rule without change.

EFFECTIVE DATE: December 5, 1991.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Harry Carnes, Office of Inspection and Control (202-566-8648); Legal Aspects: William Rosoff, Office of Regulations and Rulings (202-566-5856).