

ward, NE, Seward Municipal, NDB RWY 24, Amdt. 1, Cancelled
 Willoughby, OH, Willoughby Lost Nation Muni, NDB RWY 9, Amdt. 8
 Memphis, TN, Memphis Intl, ILS RWY 36R, Amdt. 9
 Dallas-Fort Worth, TX, Dallas-Fort Worth International, NDB RWY 35R, Amdt. 8
 Dallas-Fort Worth, TX, Dallas-Fort Worth International, converging ILS RWY 35R, Amdt. 3
 Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 35R, Amdt. 5
 McKinney, TX, McKinney Muni, VOR/DME-A, Amdt. 3
 McKinney, TX, McKinney Muni, ILS RWY 17, Orig.
 Lyndonville, VT, Caledonia County, NDB RWY 2, Amdt. 2
 Lynchburg, VA, Lynchburg Regional/Preston Glenn Field, ILS RWY 3, Amdt. 13
 Appleton, WI, Outagamie County, LOC BC RWY 21, Amdt. 8, Cancelled
 Appleton, WI, Outagamie County, VOR/DME RWY 21, Orig.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

CFR Part 940

4910-AC94

Stellwagen Bank National Marine Sanctuary Regulations

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

ACTION: Final rule and summary of final management plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), consistent with the Designation Document contained in this document, issues final regulations to implement the Stellwagen Bank National Marine Sanctuary, as designated by the U.S. Congress on November 4, 1992, and which encompasses an area of ocean waters over and surrounding Stellwagen Bank, and the submerged lands thereunder including the Bank, in the southwestern Gulf of Maine. NOAA by this document issues final regulations to implement the designation by regulating activities affecting the Sanctuary

consistent with the provisions of the designation Document. The intended effect of these regulations is to protect the conservation, recreational, ecological, historical, research, educational, and esthetic resources and

qualities of the Stellwagen Bank National Marine Sanctuary.

Further, this document summarizes the final management plan for the Sanctuary, detailing the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities.

EFFECTIVE DATE: Pursuant to section 304(b) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) (16 U.S.C. 1434(b)), Congress has forty-five days of continuous session of Congress beginning on the day on which this document is published to review the designation and regulations before they take effect. At the completion of forty-five days, the designation (and any of its terms not disapproved by Congress through enactment of a joint resolution) and regulations will automatically become final and take effect. Announcement of the effective date of the final regulations will be published in the Federal Register.

ADDRESSES: Copies of the Final Environmental Impact Statement/Management Plan (FEIS/MP) prepared for the designation are available upon request to the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th Floor, Silver Spring, MD 20910, (301) 713-3125.
FOR FURTHER INFORMATION CONTACT: Ms. Sherrard C. Foster, (301) 713-3132.

SUPPLEMENTARY INFORMATION:

I. Background

On November 4, 1992, legislation was enacted reauthorizing and amending Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 ("MPRSA" or "Title III"), 16 U.S.C. 1431 *et seq.* (Pub. L. 102-587). The National Marine Sanctuaries Program Amendments of 1992 (Title II of Pub. L. 102-587, at section 2202) designates the Stellwagen Bank National Marine Sanctuary. Section 2202 additionally establishes a Sanctuary boundary; directs the Secretary of Commerce to issue a Sanctuary management plan in accordance with section 304 of the Act; prohibits the exploration for and mining of sand and gravel and other minerals in the Sanctuary; requires consultation with the Secretary of Commerce by Federal agencies proposing agency actions in the vicinity of the Sanctuary that may affect Sanctuary resources; authorizes funding levels for fiscal years 1993 and 1994; and directs the Secretary of Commerce to consider establishment of a satellite Sanctuary office in

Provincetown, Gloucester, or Hull, Massachusetts.

Stellwagen Bank is a submerged, glacially-deposited primarily sandy feature extending for approximately 20 miles in a southeast-to-northwest direction in the extreme southwestern Gulf of Maine, between Cape Ann, Massachusetts and the northern end of Cape Cod, Massachusetts, at the eastern edge of Massachusetts Bay. The combination of physical and oceanographic characteristics over and around the Bank feature result in two distinct peak productivity periods annually. This productivity supports a large variety of benthic, invertebrate and pelagic fishery resources, which have in turn supported generations of commercial fishermen. The Bank's productivity also provides important feeding and nursery grounds for an extraordinary number of large and small cetacean species. The accessibility of the Bank from land points has additionally resulted in an extensive commercial whalewatch industry, attracting more than 1.25 million visitors to the Bank annually. The combination of its productivity and accessibility also provides the base for a high level of scientific interest in the Stellwagen Bank area.

Pursuant to section 205(b)(1) of Public Law No. 100-627, NOAA published a draft environmental impact statement/management plan (DEIS/MP), including a proposed Designation Document and proposed regulations (56 FR 5282) for the proposed designation of Stellwagen Bank as a national marine sanctuary, on February 8, 1991. Public hearings to receive comments on the proposed designation, proposed regulations, and DEIS/MP were conducted in Portsmouth, NH; Gloucester, MA; Duxbury, MA; Provincetown, MA; and Washington, DC during March 11-18, 1991. All comments received by NOAA in response to the Federal Register notice, and at the public hearings were considered and, where appropriate, were incorporated. A summary of significant comments on the proposed regulations and the regulatory elements of the DEIS/MP and NOAA's responses to them follow. The comments are both presented and responded to in Appendix G of the FEIS/MP.

(1) *Comment:* A few commenters opposed any national marine sanctuary designation of Stellwagen Bank by NOAA. Generally, these commenters believe Sanctuary designation would create an additional layer of Federal authority and regulation over existing authorities affecting a variety of activities, involving both living and non-living resources of the Stellwagen

bank system. The commenters do not believe NOAA has provided an adequate justification for the need for additional management and/or regulation of the Stellwagen Bank area.

One commenter, the East Coast Tuna Association, recommended that Federal funds available for a Stellwagen Bank National Marine Sanctuary should be used instead to supplement planning and enforcement capabilities of existing authorities (presumably such as those of the National Marine Fisheries Service (NMFS) and the New England Fishery Management Council). The same commenter stated that Sanctuary designation would provide some organizations with a "menacing regulatory vehicle."

Response: Title III of the MPRSA, as amended by Congress on November 4, 1992 (Pub. L. 102-587, sec. 2202), designates the Stellwagen Bank National Marine Sanctuary. Designation of the Stellwagen Bank National Marine Sanctuary will create a supplementary authority to existing authorities in the Stellwagen Bank area. Sanctuary designation does not duplicate existing authority over fishing, dumping or otherwise. Designation of an ocean area as a national marine sanctuary recognizes the national significance of special marine systems, and provides for comprehensive and coordinated conservation and management of that system, to ensure the long-term viability of Sanctuary resources for compatible multiple uses. A necessary component of such management is the regulatory authority to address comprehensive resource protection from an ecosystem perspective.

In its consideration of the Stellwagen Bank proposal, NOAA has identified threats to the Bank environment against which there currently is either insufficient protection or no protection. For example, while NMFS and the New England Fishery Management Council attempt to address concerns of overfishing, the Sanctuary program can play an important supplementary role of protecting habitat and systems upon which fish species rely, without interfering with other regulatory regimes. A primary intent of a national marine sanctuary designation is to fill such existing regulatory gaps, and to enhance the existing regulatory authorities of other agencies.

(2) *Comment:* A large number of commenters supported designation of boundary alternative 3 (encompassing approximately 702 square nautical miles), over boundary alternative 2, identified as the preferred alternative in the DEIS/MP. Primary among the reasons stated for this position were the

desire to (a) provide the largest area possible for the protection of whales; and (b) encompass and control the activities of the Massachusetts Bay Disposal Site (MBDS).

Many commenters also supported boundary alternative 3 because it would include Tillies Bank (northeast of Stellwagen Bank), and southern portions of Jeffreys Ledge (north of Stellwagen Bank). These areas are also utilized by fishermen and cetaceans.

Response: Title III of the MPRSA, as amended by Public Law 102-587 (section 2202), establishes a boundary for the Stellwagen Bank National Marine Sanctuary. Prior to this Congressional action, NOAA gave careful consideration to the potential advantages and disadvantages of adopting boundary alternative 3 for Sanctuary designation. The several facets of this consideration were guided by the overall purpose of national marine sanctuary designation: to provide a comprehensive and integrated long-term management program for the Stellwagen Bank area, in order to ensure the continued vitality of the site's conservation, recreational, ecological, historical, research, educational, and esthetic values. The Sanctuary will provide a management plan designed to protect the habitats and ecosystems which collectively make this area nationally significant. Sanctuary boundaries, therefore, have not been determined on the basis of single or limited benefits.

Boundary alternative 3 includes additional important habitat areas for cetaceans, fish and invertebrates. These habitat areas are also important to commercial and recreational fishermen and whalewatchers. An additional feature of the boundary alternative 3 configuration is the increased potential for close coordination between NOAA and the Commonwealth of Massachusetts' Ocean Sanctuaries Program toward the common objective of comprehensive coastal ocean management and planning.

During its consideration of boundary alternatives, NOAA also determined that the disposal of dredged materials within a national marine sanctuary is essentially incompatible with the purposes of Sanctuary designation and MPRSA policy. (See additional discussion following NOAA response to comment #6 regarding disposal activities at the MBDS.) The MBDS will be regulated by the Environmental Protection Agency (EPA) and the Army Corps of Engineers (COE).

Under EPA regulations, the presence of a designated national marine sanctuary in close proximity to an

existing disposal site requires a higher level of research and monitoring to prevent harm to Sanctuary resources. NOAA will cooperate with EPA and COE to prevent harm to Sanctuary resources and qualities through existing permit processes. In addition, Title III of the MPRSA, as amended (Pub. L. 102-587) requires consultation with the Secretary of Commerce by EPA and COE regarding proposed disposal activities prior to the issuance of disposal permits. Thus, NOAA has authority under Title III to protect Sanctuary resources and qualities. Therefore, it is not necessary to include the MBDS within Sanctuary boundaries in order to protect Sanctuary resources and qualities from possible negative effects of disposal activities.

The preferred boundary alternative, depicted in the FEIS/MP as boundary alternative 5 and described at the following 15 CFR 940.2 is consistent with the Sanctuary boundary mandated in Public Law 102-587, at section 2202(b). The boundary includes the natural resources found in boundary alternative 3, but excludes the MBDS, as currently proposed for permanent designation by EPA. The adoption of boundary alternative 5 will both encompass identified habitat areas important to the living and non-living resources of the Stellwagen Bank area, and exclude incompatible disposal activities at the MBDS site.

(3) *Comment:* A few commenters, including the New England Fishery Management Council, Gloucester Fishermen's Program, Gloucester Fishermen's Wives Association, and two fishing vessel captains, supported boundary alternative 4, encompassing 330 square nautical miles, and marked by LORAN-C lines. Commenters stated that LORAN-C is the prevailing means utilized by most vessel captains to locate and navigate; and that latitude/longitude coordinates are not useful to vessel operators.

Response: Boundary alternative 4 would establish a Sanctuary area sufficient to provide protection and management of the Bank feature itself. However, boundary alternative 4, like alternative 1, would not fully encompass important habitat areas for invertebrate, fish and cetacean species; thus, system protection and management would not be fully possible with the adoption of boundary alternative 1 or 4.

NOAA agrees with commenters that identification of the Sanctuary boundary should be provided in a way that is useful to both on- and off-site Sanctuary users, as well as to Sanctuary management. To facilitate identification

of the Sanctuary boundary, NOAA has therefore provided both LORAN-C lines and latitude/longitude coordinates for the Sanctuary.

(4) *Comment:* Several commenters, including the New England Fishery Management Council, Massachusetts Executive Office of Environmental Affairs, and the U.S. Coast Guard, commented that the Sanctuary regulation proposed in the DEIS/MP prohibiting discharge from vessel bilge pumps would preclude smaller vessels (recreational or charterboat) from routine pumping activities necessary to maintain vessel buoyancy. Additionally, some commenters stated that discharge from commercial ship bilge pumps is already prohibited by MARPOL's "50-mile rule", which prohibits any such discharge within 50 nautical miles of shore.

Response: The regulatory language regarding discharge from vessel bilge pumps has been clarified to indicate NOAA's intended consistency with existing Coast Guard requirements. With regard to regulation of water discharges associated with vessel operation, the Sanctuary will permit discharge of cooling water, deck wash down and "graywater" (as defined by section 312 of the Federal Water Pollution Control Act, as amended). Discharge of oily wastes from vessel bilges will be prohibited in the Sanctuary, consistent with existing Coast Guard requirements. The prohibitions do not apply to emergency situations where life, property or the environment are threatened (see following language at 15 CFR 940.5(c)).

(5) *Comment:* A large number of commenters were generally opposed to the construction, placement and operation of the Massachusetts Water Resources Authority (MWRA) municipal outfall, and stated their concerns about possible adverse effects of the outfall on the Sanctuary's water quality and living resources.

Several commenters stated that if the MWRA outfall is constructed, the Sanctuary should have oversight responsibility for its operations. A similar comment was that joint monitoring of the outfall's effect on Sanctuary resources should be established.

Response: The new wastewater treatment facility is currently being constructed on Deer Island, which when completed will include an ocean outfall pipe discharging secondary treated wastewater at a point approximately 12 nautical miles from the proposed Sanctuary.

Sanctuary regulations protect resources and qualities from such

activities by prohibiting discharges either directly into the Sanctuary, or discharges outside the Sanctuary which subsequently enter the Sanctuary and cause harm to its resources or qualities. Moreover, in coordination with the Massachusetts Bays Program (MBP), the Sanctuary will provide a larger contextual framework for far-field monitoring to determine possible effects from the MWRA outfall. In this manner, NOAA intends to be involved in continuing investigations necessary to ensuring the protection of Sanctuary resources and qualities. In the event that outfall effluent enters the Sanctuary and harms its resources, then the NWRA outfall would be in violation of Sanctuary regulations, and subject to Title III actions.

NOAA agrees with commenters that joint monitoring should be considered to determine any possible effects resulting from the MWRA outfall. The MWRA has stated its commitment to ongoing study and monitoring of the outfall's impacts on Massachusetts Bay, and to its active participation in the Massachusetts Bays Program. Additionally, EPA and NMFS will study potential effects of MWRA outfall activities. The Sanctuary plans to be involved in these efforts by coordinating with EPA and NMFS to ensure protection of Sanctuary resources and qualities.

(6) *Comment:* A large number of commenters stated their belief that the Massachusetts Bay Disposal Site (MBDS) should be included in the Sanctuary, so that NOAA would have greater control over disposal activities and the future of the disposal site itself. Included in this group are the NMFS, Nantucket Land Council, Environment Department of City of Boston, Barnstable County Assembly of Delegates, Center for Coastal Studies, International Wildlife Coalition, New England Aquarium, Cetacean Research Unit, Atlantic Cetacean Research Center, Conservation Law Foundation, Center for Marine Conservation, Stellwagen Bank Coalition, and Urban Harbors Institute/University of Massachusetts at Boston.

An additional comment was that the MBDS should be included within the Sanctuary so that NOAA, through the Sanctuary, could shut down the disposal site if environmental harm resulting from disposal activities is demonstrated.

Response: Ocean disposal activities within a sanctuary are generally not compatible with the purposes of sanctuary designation and the policies of the MPRSA. Sanctuary boundaries should primarily be based upon the

existence of nationally significant resources. Protection of Sanctuary resources does not require the inclusion of ocean disposal sites. EPA/COE regulations are designed to avoid the designation and use of areas which are rich in resources. EPA/COE regulations are also designed to prevent harm to Sanctuary resources. Sanctuary regulation prohibit disposal activities outside the Sanctuary which result in the entry of disposed materials into the Sanctuary and injury to Sanctuary resources or qualities. NOAA and EPA agree that dredged material disposal permits should not be authorized if there is a potential for those materials to cause harm to Sanctuary resources or qualities. The COE may issue permits for disposal of dredged materials under § 103 of the MPRSA only with EPA concurrence. In addition, the MPRSA mandates consultation with the Secretary of Commerce prior to COE issuance of MBDS permits. NOAA/NOS intends to participate in the existing consultation process utilized between NOAA/NMFS and the COE so that concerns with regard to Sanctuary resources and compatible uses of the Sanctuary are raised in a timely fashion. This process is articulated in the 1992 Memorandum of Agreement between the Department of the Army and the Department of Commerce, pursuant to Clean Water Act section 404(g). This will also facilitate a coordinated NMFS/NOS NOAA position being presented on disposal site permits. There is therefore no need to include the MBDS site within the Sanctuary boundary.

Following designation of the Sanctuary, future proposed uses of the MBDS will be reviewed by NOAA to ensure that disposal activities are consistent with the purposes of the Sanctuary. If NOAA finds that harm to Sanctuary resources or qualities has occurred or is likely to occur as a result of disposal activities, then the Sanctuary will take additional management measures, as are appropriate.

(7) *Comment:* A few commenters, including the Massachusetts Association of Conservation Commissions, stated that use of the MBDS should be phased out, or that the site should be closed.

Response: Sanctuary designated will preclude ocean disposal in the Sanctuary. Certification of ocean disposal outside the Sanctuary is not necessary because studies indicate disposed materials do not enter the Sanctuary and injure Sanctuary resources or qualities. NOAA will cooperate with EPA and COE to ensure no injury to Sanctuary resources or

qualities will result from such dredging activities.

(8) *Comment:* A few commenters suggested that the MBDS should be moved to a location further away from the Sanctuary, to avoid possible conflicts.

Response: NOAA agrees that there should be appropriate distance between ocean dumping sites and sanctuaries to avoid possible conflicts and to ensure resource protection. The MBDS, like other ocean disposal sites, is designated by EPA under title I of the MPRSA. Subsequent permitting of dredged material disposal activities at such sites is the responsibility of the COE, in conformance with EPA guidelines. As part of its current designation process under NEPA, EPA has considered alternative locations for a permanent dredged materials disposal site in its Final Environmental Impact Statement published in July 1992. As indicated in response to comments (7) and (9), studies demonstrate that dredged materials disposed at the MBDS do not enter the Sanctuary and cause injury to Sanctuary resources. Further, NOAA plans to work with EPA and COE to ensure that ocean disposal does not harm Sanctuary resources or qualities.

(9) *Comment:* Two commenters, the Environmental Protection Agency (Region I) and the U.S. Army Corps of Engineers (New England Division), stated that current management of the MBDS is adequate to protect Sanctuary resources and qualities, and that NOAA has not demonstrated the need for certification of disposal permits under Title III.

Response: Title I and its regulations establish a comprehensive framework for the management and regulation of dredged material disposal activities, and are designed to avoid harm to Sanctuary resources. However, NOAA's stewardship and comprehensive management responsibilities under title III provide an appropriate supplementary role for protecting Sanctuary resources and qualities, as well as addressing problems between conflicting uses of the Sanctuary. Current studies indicate the dredged materials disposed at MBDS do not enter the Sanctuary or harm Sanctuary resources. Therefore, NOAA certification of COE disposal permits does not appear necessary at this time. NOAA will cooperate with EPA and COE to ensure that these disposal activities do not harm the Sanctuary. NOAA will also scrutinize the current COE proposal to dispose contaminated sediments at MBDS, as part of a capping demonstration project for Boston Harbor. NOAA and EPA agree that

permits for disposal of dredged materials at the MBDS should not be issued if there is a potential for those materials to cause harm to Sanctuary resources or qualities. Additionally, the COE must consult with the Secretary of Commerce if proposed Federal agency actions at the MBDS are likely to harm Sanctuary resources.

(10) *Comment:* Many commenters stated that offshore oil and gas, or hydrocarbon, activities should be prohibited in the Sanctuary. The sentiment was also voiced that hydrocarbon activities are inappropriate inside any national marine sanctuary. Some commenters believed that reliance on the current Presidential moratorium (extending to the year 2000) for protection of resources at Stellwagen Bank is inadequate, because such moratorium could be altered or negated immediately, leaving the area available for exploration, development and production activities. Commenters voiced support for a permanent prohibition on such activities, rather than listing the activity as "subject to regulation" in the proposed Sanctuary's regulations.

Response: NOAA agrees that oil and gas development is usually an incompatible use of a national marine sanctuary. NOAA has considered the effects of and the need for imposing a prohibition on hydrocarbon activities within the Sanctuary. Among the factors considered by NOAA were the historically low industry interest in the Stellwagen Bank area, based upon low estimates of recoverable oil and gas resources; the current Presidential moratorium on such activities; and the ability of NOAA to protect the Sanctuary's living and non-living resources by listing the activity as "subject to regulation" at the time of Sanctuary designation. Moreover, the general regulatory prohibitions against alteration of, or construction on, the seabed and discharges into the Sanctuary would prohibit most of the activities involved in exploration, development and production of hydrocarbon resources.

Based upon these considerations, there appears to be little or no reason to specifically prohibit oil and gas activities in the Sanctuary at this time. Should proposals be forwarded in the future for hydrocarbon activities involving the Stellwagen Bank area, NOAA will be able to analyze the need specifically to prohibit or otherwise restrict such activities at that time, by initiating a rulemaking process, which is open to public review and comment. Listing this activity as "subject to regulation" provides NOAA with the

ability to take such actions should the necessity arise in the future. In order to prevent the necessity of repeating the entire Title III designation process to institute a new Sanctuary regulation in the future, NOAA must identify this type of activity as "subject to regulation" at the time of Sanctuary designation, which it has done.

(11) *Comment:* Many commenters expressed concern that lightering activities (transfer of petroleum products from one vessel to another) to allow smaller vessels to transport such products into Boston Harbor could cause harm to Sanctuary resources or qualities.

Response: Prior to development of the FEIS/MP document, NOAA was unaware that lightering ever occurred in proximity to the proposed Sanctuary. Investigation into the occurrence of this activity has indicated that lightering may occasionally occur outside the entrance to Boston Harbor area. Because there is apparently at least some incidence of lightering occurring infrequently in the general area of the proposed Sanctuary, and because of the threat of harm to sanctuary resources from spillage, NOAA agrees with commenters that lightering should not be permitted within the Sanctuary boundary. NOAA has thus prohibited lightering in the Sanctuary.

(12) *Comment:* Many commenters supported a prohibition on any mariculture-related activities within the Sanctuary. Several reasons were stated for this position, including: Potential conflict with vessel traffic; possible adverse impacts on marine mammals and seabirds resulting from entanglement in nets; and possible negative effects on water quality generally. Commenters supporting a prohibition on mariculture activities in the Sanctuary included: Urban Harbors Institute/University of Massachusetts at Boston; Town of Dennis; Center for Marine Conservation; Stellwagen Bank Coalition; Cape Ann Vessel Association Atlantic Cetacean Research Center; Massachusetts Marine Educators; Save the Harbor/Save the Bay; Gloucester Fishermen's Program; Gloucester Fishermen's Wives Association; Cetacean Research Unit; New England Aquarium; American Cetacean Society; and two fishing vessel captains. Additionally, many individual citizens commented in support of prohibiting this activity in the Sanctuary.

Some commenters also raised objections to mariculture activities because they constitute a "private use" of public waters within the Exclusive Economic Zone, thereby preventing other uses, such as fishing.

Response: NOAA has listed this activity as subject to Sanctuary regulation. Both the existing permit requirements for construction and operation of an offshore mariculture facility, and the current status of the American Norwegian Fish Farm, Inc. proposal for establishment of two mariculture facilities have resulted in NOAA's determination that the granting of permits for conducting this activity in a national marine sanctuary is extremely unlikely. This determination is based upon COE guidance related to permits for fish pen mariculture operations, which prohibits fish farms in Congressionally, Presidentially or Federally established natural resource areas, such as national seashores, wilderness areas, wildlife refuges, parks or other areas designated for similar purposes (e.g., national marine sanctuaries).

By listing this potential activity as subject to Sanctuary regulation, NOAA reserves the ability to determine the need for regulation, including prohibition, should the establishment of a mariculture operation within the Sanctuary boundary be proposed in the future. General prohibitions against discharge or deposit of matter into the Sanctuary may be sufficient to prevent this activity from harming Sanctuary resources.

(13) *Comment:* Several commenters, including the New England Fishery Management Council, NMFS, Massachusetts Audubon Society, Gloucester Fishermen's Program, two fishing vessel captains, Gloucester Fishermen's Wives Association, Cetacean Research Unit, the New England Aquarium, and many private individuals, supported a Sanctuary prohibition on ocean incineration activities.

Response: NOAA agrees and this activity is prohibited within the Sanctuary or outside the Sanctuary if there is a discharge or deposit which enters the Sanctuary and harms Sanctuary resources. Under current existing authorities, ocean incineration activities may only occur pursuant to "interim" or "research" permits, issued by EPA under Title I of the MPRSA. To date, no ocean incineration sites have been designated by EPA. In designating such sites, EPA is required by Title I regulations to avoid sensitive areas, such as national marine sanctuaries. It is therefore unlikely that an ocean incineration site would be designated within a designated national marine sanctuary.

NOAA agrees that incineration activities should not occur in national marine sanctuaries. Although the

environmental effects of such activities may not be well understood currently, at a minimum, the esthetic impacts are negative to Sanctuary qualities. In its consideration of alternatives, NOAA determined that the Sanctuary regulation prohibiting discharge or deposit of matter within the Sanctuary boundary will preclude any future designation of incineration sites within the Sanctuary, and leave no question regarding the possible occurrence of future incineration activities. Thus, although ocean incineration is generally prohibited by existing law, identifying ocean incineration as discharge and deposit activities prohibited by Sanctuary regulation will provide supplemental enforcement authority and penalties for violators.

(14) *Comment:* Several commenters voiced opposition to the construction, placement and operation of the fixed artificial platforms, or "islands", of the type previously proposed for Stellwagen Bank (known as "Gugel's Arabian Nights"), within the Sanctuary boundary. Among the concerns raised are conflict with vessel traffic lanes, interference with fishing areas, increased hazards to marine mammals from resulting additional vessel traffic and noise, potential entanglement for marine mammals and seabirds, degradation of water quality, and privatization of Federal waters.

Response: The current status of the proposed artificial platform remains very uncertain, pending the satisfactory response by the applicant to numerous additional questions raised by COE, including the identification of financial support for this project. However, regardless of the applicant's successful completion of necessary applications, NOAA shares the concerns of commenters regarding this project. In general, the presence of an artificial fixed platform over or around Stellwagen Bank is not an activity which reasonably could be described as "compatible with the primary objective of resource protection." Construction and placement of man-made structures within the Sanctuary may alter natural ecosystem functions, as well as the esthetics of the Sanctuary. Notwithstanding conditions which might be placed on the design, construction and operation of a fixed artificial platform, the potential impacts on both living and non-living resources within the Sanctuary are significant.

NOAA's prohibition on alteration of, construction on, placement on, or abandonment of any structure, material or other matter on the seabed effectively precludes the possibility of any fixed

artificial platform being established within the Sanctuary.

(15) *Comment:* A few commenters raised concerns regarding the proposed prohibition on any alteration of, or construction on, the seabed. In particular, commenters were concerned about the effects of this proposed prohibition on "traditional fishing activities" in the Sanctuary, e.g., those current fisheries involving dredge gear.

Two commenters objected to this proposed prohibition, as well as the proposed prohibition on installation or placement of cables and pipelines in the Sanctuary, because they would be precluded from the possibility of placing electrical transmission cables through the Sanctuary. Commenters stated this activity is environmentally safe, and that an outright prohibition is inappropriate, because there is no demonstration of possible adverse effects.

Response: The regulation prohibiting alteration of, or construction on, the seabed specifically exempts vessel anchoring, traditional fishing operations, and installation of navigation aids. These activities do not appear to harm Sanctuary resources; and fishing operations are regulated by NMFS.

NOAA does not agree with commenters that the installation of electrical transmission cables poses no potential for environmental damage. Significant concerns with the installation of cables or pipelines include possible leaks, disruption of spawning areas, conflicts with fishing gear or the movement of bottom-dwelling species, and disturbance or damage to archaeological sites. A NOAA objective is the maintenance of a natural habitat, and therefore the avoidance of facilitating man-made permanent structures in the Sanctuary.

(16) *Comment:* A number of commenters stated that speed limits should be established for charterboats and recreational vessels operating in the Sanctuary. Limiting vessel speed inside the Sanctuary to between 15 and 18 knots was suggested by the Cape Ann Vessel Association, Atlantic Cetacean Research Center, Gloucester Fishermen's Program, Gloucester Fishermen's Wives Association, two vessel captains, and the Cetacean Research Unit. Additionally, a large number of individual commenters, as well as other organizations, supported generally Sanctuary regulation of recreational and other small vessel speeds. All comments reflected the concern for potential vessel collisions with marine mammals, particularly cetaceans. One commenter supported a

prohibition on all private boating activities in the Sanctuary, with an exception being provided for commercial fishing vessels.

Response: Existing NMFS whalewatch guidelines applicable to all vessels operating in proximity to cetaceans address vessel speeds generally when vessels are intentionally engaged in whalewatching activity. While whalewatch vessel operators appear to adhere generally to these guidelines, other recreational vessels often are unaware of the guidelines.

Pending national whalewatch regulations will address vessel speeds in proximity to cetaceans, and will be enforceable, as opposed to the NMFS guidelines. While NOAA/NOS agrees with commenters that vessel collisions with cetaceans may be a problem, it does not believe the imposition of regulatory speed limits on charterboats or recreational vessels is presently necessary. Among the Sanctuary's research and educational objectives will be the quantifiable identification, via coordination with NMFS and other involved organizations, of vessel/cetacean interactions and the further education of the recreational boating public. If these investigations demonstrate the need for vessel speed restrictions to reduce marine mammal/vessel interactions, then NOAA will propose a Sanctuary regulation restricting vessel speeds. The activity of vessel operation is therefore listed as "subject to Sanctuary regulation."

(17) *Comment:* A few commenters stated that NOAA should limit the speed of commercial ships in the Sanctuary, either on a year-round basis, or during the seasons when cetaceans are present. Concern was also raised, however, by the U.S. Coast Guard (USCG), that any future Sanctuary regulation limiting commercial vessel speed or changing vessel traffic patterns affecting "safe navigation of vessels on the high seas" must be first approved by both the USCG and, with respect to foreign vessels, the International Maritime Organization (IMO).

Response: NOAA is listing the operation of all vessels in the Sanctuary as an activity "subject to regulation." This action will allow NOAA to propose specific regulation of commercial ship operation in the future, if the need to do so is demonstrated.

The reduction of commercial vessel collision-related cetacean mortalities is identified as a priority objective in the Draft Right Whale Recovery Plan (NMFS, 1990). Two recommendations are made to address this objective: (a) Collection and analysis of additional data on the areas and seasons of

potential vessel/cetacean conflict; and (b) investigation into strategies for reduction of ship/cetacean collisions. Among specific actions being considered to obtain this objective is the restriction of vessel speed in "high risk" areas during "high risk" seasons. In addition, the possibility of on-board lookouts; shifts in traffic lanes; on-board acoustical warning devices; detection technologies (such as side-scan sonar); alternative vessel designs; and satellite-tracking of transmitter-tagged cetaceans are also discussed in the Right Whale Recovery Plan. Although this plan focuses only on the Northern Right Whale, the objective of reducing vessel collisions with any marine mammal is clearly an objective to be pursued by both NMFS and the Sanctuary.

The Sanctuary intends to work with NMFS in the implementation of measures identified in the Northern Right Whale Recovery Plan, the Humpback Whale Recovery Plan, and other measures identified to reduce vessel collision-related injury and mortality of cetaceans. NOAA will also work with the Coast Guard and the IMO in addressing the problem to cetaceans as well as to vessel traffic.

(18) *Comment:* A few commenters, including DOI, stated that the proposed Sanctuary prohibition on the taking of seabirds potentially conflicts with certain provisions of the Migratory Bird Treaty Act, which allow for licensed hunting of migratory birds, including sea ducks.

Additionally, some commercial fishermen voiced concern at public hearings on the proposed Sanctuary that seabirds caught incidentally in fishing nets would constitute a violation of the proposed Sanctuary prohibition on taking.

Response: NOAA is unaware of the Sanctuary area being used for hunting of sea ducks; however, NOAA has changed the wording of its prohibition on taking of seabirds to exclude any such taking which has been authorized pursuant to the provisions of the Migratory Bird Treaty Act. Additionally, the Migratory Bird Treaty Act has been included in NOAA's discussion of existing Federal authorities. Consultation with DOI's Regional Fish and Wildlife Service office has provided indication that the Migratory Bird Treaty Act makes no provision for incidental take of migratory birds, and thus any such unpermitted incidental take in fishing nets is a violation of the MBTA. However, the number of such incidentally caught birds appears to be extremely low, and no endangered species appear to be involved.

Seabirds are Sanctuary resources which should be protected from harm or destruction. NOAA would not pursue a natural resource damage civil suit for incidental take which results in only negligible harm to the Sanctuary or species. NOAA will coordinate with the Fish and Wildlife Service (FWS), of the U.S. Department of the Interior (DOI) in any enforcement activities involving endangered or threatened seabird species, or related to MBTA violations.

(19) *Comment:* The DOI commented that NOAA's proposed prohibition on sand and gravel extraction activities within the Sanctuary is inappropriate and not necessary at this time. The DOI states that NOAA's proposed prohibition on development of industrial materials (e.g., sand and gravel) is not based on "an analysis of how or whether such activities would harm the specific resources that influenced the selection of this area [Stellwagen Bank] as a proposed NMS." The DOI suggests that potential sand and gravel extraction activities be examined on a "case-by-case" basis by NOAA to determine any necessary controls or prohibitions in instances where mitigation of harmful effects would "prove difficult."

Response: Title III of the MPRSA, as amended by on November 4, 1992 (Pub. L. 102-587, at section 2202(d)), prohibits the exploration for and mining of sand and gravel and other minerals in the Sanctuary. Moreover, NOAA does not agree that the extraction of sand and gravel resources from within the Sanctuary should be permitted on a case-by-case basis. Notwithstanding the fact that no specific proposals to conduct sand and gravel extraction activities are presently being considered by DOI (through the Minerals Management Service), and that "extensive geological, geomorphic, physical, oceanographic, and environmental factors" would have to be analyzed before actual mining activities could commence, sufficient documentation has been presented regarding the negative environmental impacts of such operations on Stellwagen Bank and its surrounding ecosystems as to warrant a prohibition on this activity. Moreover, sand mining would remove the Sanctuary resource which is at the core of the designation of this sanctuary: Protecting the Bank feature and its ecosystem.

Negative impacts of sand and gravel extraction activities include alteration of the Stellwagen Bank feature, which may affect continuation of seasonal upwelling cycles caused by the Bank's presence, which in turn supports the biological productivity of the

Stellwagen Bank ecosystem. Potential associated impacts include alterations and disruptions in population and migratory patterns (involving fish, invertebrate, and cetacean species) resulting from introduction of pollutants or undesirable nutrients; degradation of water quality; vessel noise; disruption or destruction of spawning areas (especially those of *Ammodytes americanus*, or sand lance, primary prey for humpback and fin whales); and loss of food sources and habitat for planktonic, invertebrate and fish species (including the copepod, *Calanus finmarchicus*, primary prey for northern right whales). Ultimately, the commercial, recreational and scientific importance of the Bank system would be adversely and permanently affected by sand and gravel mining activities.

Statements that "mitigating measures" could be undertaken to minimize the environmental effects of sand and gravel extraction do not address the significance of the Bank feature, and thus the intent of this national marine sanctuary designation. National marine sanctuaries are designated to recognize and provide long-term protection for nationally significant, discrete marine systems which in this case is the Stellwagen Bank feature and its ecosystem. While one of Title III's goals is to facilitate multiple uses of sanctuary areas, the nature and effects of such uses must be in conformance with the primary statutory objective of resource protection. Sand and gravel are basic elements of the Stellwagen Bank feature and are thus of primary importance to the continued biological productivity made possible by the Bank's presence. Alteration or removal of this core Sanctuary resource undermines and conflicts with the purposes of designation. "Mitigating measures" to lessen the adverse impacts of sand and gravel extraction would still result in an ecosystem permanently altered by human activities manipulating natural habitats and ecosystem processes.

Finally, NOAA's analysis of this issue presents information that the projected need for these materials does not indicate that extraction of sand and gravel from Stellwagen Bank is even necessary. None of the large public works projects currently underway in the Boston metropolitan area (Massachusetts Water Resources Authority wastewater treatment facility in Boston Harbor, Massachusetts Department of Public Works (MDPW) Central Artery project, and MDPW Third Harbor Tunnel project) has identified a need for sand and gravel resources from Stellwagen Bank.

Moreover, completion of these projects will not, according to a recent report to the New England Governors Conference, create a shortage of sand and gravel resources. To the extent sand and gravel are subsequently needed for construction projects, there are alternate sources on land and sea, including the use of dredged material. Use of dredged material for construction aggregate would further the missions of DOI and COE without threatening a disturbance of the natural balance at Stellwagen Bank. On balance, therefore, the prohibition on sand and gravel extraction activities is a warranted and supportable means of ensuring the long-term protection mandated by Title III.

(20) *Comment:* The New England Fishery Management Council (NEFMC), as well as several individual commercial fishermen's organizations, commented that regulation of fisheries in the Sanctuary should remain entirely the responsibility of NMFS and the NEFMC. In particular, the NEFMC stated that NOAA should permanently exempt fishing activities from any Sanctuary regulation. Additionally, the NEFMC stated its belief that the Magnuson Fishery Conservation and Management Act (MFCMA) provides exclusive authority for fisheries management within the Exclusive Economic Zone to NMFS and Regional Fishery Management Councils.

Additionally, the NEFMC commented that the regulatory language in the proposed Sanctuary Designation Document (Article V of App. A to the DEIS/MP) contradicts the intent of the MFCMA, by providing that "if any valid regulation issued by any Federal, State, or local authority * * * conflicts with a Sanctuary regulation, the regulation deemed by the Director [of OCRM] to be more protective of Sanctuary resources and qualities shall govern."

Response: NOAA agrees that the MFCMA provides comprehensive authority for management, including regulation, over fisheries to Regional Fishery Management Councils and NMFS. Moreover, NOAA/NOS agrees with the Council's determination, made in response to NOAA's consultation early in the Sanctuary designation process, that adequate legal mechanisms exist to provide appropriate management of fisheries in general, and thus no supplementary fishing regulations currently appear necessary to address Sanctuary resource protection concerns.

During the process of its consideration of Stellwagen Bank for Sanctuary designation, NOAA/NOS has identified fisheries as a resource of national significance, and is therefore

obligated under Title III of the MPRSA to ensure adequate mechanisms exist to properly manage and protect the long-term viability of this resource within the Sanctuary. In meeting this obligation, NOAA/NOS has further defined and discussed the current status of fishery stocks and the present fisheries management structure in the Sanctuary area.

NOAA/NOS has determined that while the regulatory structure for management of fisheries is adequate, current implementation of that structure is not fully attaining the objectives mandated under MFCMA. The NEFMC and NMFS are currently responding to a Court order to revise the FMP's for groundfish species, so as to design a rebuilding program for those stocks. NOAA/NOS believes this is an appropriate mechanism to address the current problems related to groundfish stocks. In addition, Congress is developing legislation to address this problem. Therefore, NOAA/NOS is neither regulating fishing nor listing fishing as an activity subject to Sanctuary regulation. NOAA/NOS intends to work closely with the NEFMC and NMFS to establish, via the Sanctuary, a broad forum representing multiple sources of possible assistance to the NEFMC and NMFS in the attainment of mutual objectives; and will also work with those entities on the impacts of fishing upon other Sanctuary resources and other Sanctuary users.

NOAA does not agree that the regulatory language in the Sanctuary Designation Document (Article V) contradicts the intent of the MFCMA, or that the MFCMA precludes the regulation of fishing within sanctuaries under Title III of the MPRSA. The intent of the Designation Document language is that the Sanctuary shall be governed by valid regulations which are the most protective of Sanctuary resources and qualities. This is wholly consistent with Title III and does not conflict with the MFCMA.

(21) *Comment:* Comments from some individual fishermen and the Stellwagen Bank Commercial Fisheries Cooperative stated that the proposed Sanctuary Advisory Committee should be "heavily-seated" with representatives of historic user groups.

Response: A Sanctuary Advisory Committee will be established in accordance with section 315 of Title III, which provides authority to the Secretary of Commerce to appoint up to fifteen individuals as Committee members. Recommendations for Committee membership will be developed by the Office of Ocean and Coastal Resource Management and

forwarded to the Secretary of Commerce. NOAA intends that appropriate user groups be fully represented on a Sanctuary Advisory Committee. Following designation of the Sanctuary, NOAA will solicit recommendations from the public for membership on the Advisory Committee.

(22) *Comment:* A few commenters stated that the Sanctuary Advisory Committee should be directly involved in management of the Sanctuary.

Response: The primary function of a Sanctuary Advisory Committee is to provide the on-site Sanctuary Manager with assistance on a variety of issues or programs, in order to ensure better management overall of the Sanctuary. To accomplish this objective, it is appropriate to bring together interested individuals with particular interests and expertise, to assist the Sanctuary Manager and the rest of NOAA in making necessary determinations for sound management. NOAA anticipates that the Sanctuary Advisory Committee would form subcommittees, to focus on particular issues. While the work of the Advisory Committee is vitally important to the attainment and maintenance of Sanctuary objectives, it is only advisory in nature, as final Sanctuary policies are determined by NOAA. As trustee for the Sanctuary's resources and qualities, NOAA must retain full management authority over the Sanctuary and its operation.

II. Designation Document

Section 304(a)(4) of the Act requires that the terms of designation set forth 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 those characteristics. This section also specifies that the terms of the designation may be modified only the same procedures by which the original designation was made. Thus the terms of designation serve as a charter for the Sanctuary.

The Designation Document for the Stellwagen Bank National Marine Sanctuary follows:

Designation Document for The Stellwagen Bank National Marine Sanctuary

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act" or "MPRSA"), 16 U.S.C. 1431 *et seq.*, and as mandated by Public Law 102-587 (section 2202), the waters over

and surrounding Stellwagen Bank and the submerged lands thereunder including the Bank, as described in Article II, are hereby designated as the Stellwagen Bank National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of 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 the Stellwagen Bank National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities of the type that either are to be regulated, or may have to be regulated subsequently in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the procedures outlined in section 304(a) of the MPRSA.

Article II. Description of the Area

The Stellwagen Bank National Marine Sanctuary (the "Sanctuary") boundary encompasses a total of approximately 638 square nautical miles (approximately 2181 square kilometers) of ocean waters, and the submerged lands thereunder, over and surrounding the submerged Stellwagen Bank and additional submerged features, offshore the Commonwealth of Massachusetts. The boundary encompasses the entirety of Stellwagen Bank; Tillies Bank to the northeast of Stellwagen Bank; and southern portions of Jeffreys Ledge, to the north of Stellwagen Bank. Portions of the Sanctuary are adjacent to three coastal ocean areas designated by the Commonwealth of Massachusetts as Ocean Sanctuaries. The northwestern border coincides with the North Shore Ocean Sanctuary. The southern border coincides with the seaward limit of Commonwealth jurisdictional waters adjacent to the Cape Cod Bay Ocean Sanctuary; and is also tangential to the Cape Cod Ocean Sanctuary. The western border of the Stellwagen Bank Sanctuary occurs approximately 25 miles east of Boston, Massachusetts. Appendix I to this Designation

Document sets forth the precise Sanctuary boundary.

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

Stellwagen Bank is a glacially-deposited, primarily sandy feature measuring nearly twenty miles in length, occurring in a roughly southeast-to-northwest direction between Cape Cod and Cape Ann, Massachusetts. It is located at the extreme southwestern corner of the Gulf of Maine, and forms a partial "gateway" to Cape Cod Bay, situated shoreward and southwest of the Bank.

The presence of the Bank feature contributes to a particular combination of physical and oceanographic characteristics which results in two distinct peak productivity periods annually, when overturn and mixing of coastal waters with nutrient-rich waters from deeper strata produce a complex system of overlapping mid-water and benthic habitats. From the time of Colonial settlement, this area has supported an abundant and varied array of fisheries, which continue to provide livelihoods for an active commercial fleet. Important fisheries include bluefin tuna, herring, cod, haddock, winter and summer flounder, silver hake, pollack, ocean pout, lobster, shrimp, surf clam and sea scallop. The commercial value of fish caught (exclusive of bluefin tuna) within Sanctuary waters exceeded \$15 million in 1990.

The biological productivity of the Bank also attracts a seasonal variety of large and small cetaceans, several of which are classified as endangered species. The Stellwagen Bank environment provides feeding and nursery areas of humpback, fin, and northern right whales, the latter being the most critically-endangered of all large cetacean species. The photo-identification at Stellwagen Bank of 100 or more individual right whales from a total North Atlantic population estimated in 1990 at approximately 300 to 350 indicates the importance of the Bank to this species. The predictable seasonal presence of these and other cetacean species has generated a growing commercial whale-watch industry involving more than 40 vessels (over 1.5 million passengers), and producing revenues in excess of \$17 million in 1988.

A vessel traffic separation scheme (VTSS) crosses directly over Stellwagen Bank, and accommodates approximately 2,700 commercial vessels annually in and out of Boston, Massachusetts. Existing or potential additional human activities involving the Stellwagen Bank environment include dredged material

disposal; sand and gravel extraction; offshore mariculture development; and offshore fixed artificial platform construction.

The uniqueness of the Stellwagen Bank environment as well as its accessibility draws the continuing interest of area scientific institutions, including the Center for Coastal Studies, Cetacean Research Unit, University of Massachusetts, Woods Hole Oceanographic Institution, Marine Biological Laboratory, Manomet Bird Observatory, New England Aquarium, University of Rhode Island and the National Marine Fisheries Service (NOAA). In light of the increasing levels of human activities, several issues such as: interactions between marine mammals and commercial/recreational vessels; immediate, long-term and cumulative impacts on marine mammals from whale-watching vessel activity; and the immediate, long-term and cumulative effects of discharge/disposal operations on the Bank's resources and qualities require coordinated and comprehensive monitoring and research.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation under the Act, 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. Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter;
- b. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter;
- c. Exploring for, developing or producing oil, gas or minerals (e.g., clay, stone, sand, gravel, metalliferous ores, nonmetalliferous ores or any other solid material or other matter of commercial value ["industrial materials"]) within the Sanctuary;
- 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. Development or conduct in the Sanctuary of mariculture activities;
- f. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of, a marine mammal, marine reptile, seabird, historical resource or other Sanctuary resource;

g. Transferring of petroleum-based products or materials from vessel-to-vessel, or "lightering", in the Sanctuary;

h. Operation of a vessel (i.e., water craft of any description capable of being used as a means of transportation) in the Sanctuary;

i. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected or harvested, that, if it had been found within the Sanctuary, would be a Sanctuary resource;

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. 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 activity, including those not listed in section 1 of this Article, is subject to immediate temporary regulation, including prohibition.

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

If any valid regulation issued by any Federal, State or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, or his or her designee to be 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, State or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her 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 (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purpose for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approving: (1) The exploration for, development of, or production of industrial materials

within the Sanctuary; or (2) the disposal of dredged material within the Sanctuary (except by a certification, pursuant to section 940.10, of valid authorizations in existence on the effective date of Sanctuary designation). Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alteration of this Designation

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the procedures outlined in section 304(a) of the MPRSA, including public hearings, consultation with interested Federal, State and local agencies, review by the appropriate Congressional committees, and Governor of the Commonwealth of Massachusetts, and approval by the Secretary of Commerce or designee.

End of Designation Document

III. Summary of the Final Management Plan

The FEIS/MP for the Stellwagen Bank National Marine Sanctuary recognizes the need for a balanced approach to management which reflects the multiple-use character of the area as well as the paramount need to protect its resources and qualities. 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 education/interpretation and details agency administrative roles and responsibilities.

Resource Protection

The highest priority management goal is to protect the marine environment, resources and qualities of the Sanctuary. The specific objectives of this goal are to:

- (1) Coordinate policies and procedures among the agencies sharing responsibilities for resource protection and management;
- (2) Encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (e.g., monitoring and emergency-response programs);
- (3) Develop an effective and coordinated program for the enforcement of Sanctuary regulations;
- (4) Enforce Sanctuary regulations in addition to other regulations already in place;
- (5) Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives, through

educational/interpretive programs assessing resource sensitivity and wise use;

- (6) Ensure that Sanctuary water quality is maintained at a level consonant with Sanctuary designation;
- (7) Establish mechanisms for coordination among all agencies participating in Sanctuary management;
- (8) Ensure the incorporation of research results and scientific data into effective resource protection strategies; and
- (9) Reduce threats to Sanctuary resources and qualities.

Research Program

Effective management of the Sanctuary requires the initiation of a Sanctuary research program that addresses management issues. The Sanctuary research program will be directed at improving knowledge of the Stellwagen Bank area environment, resources and qualities, and to resolving specific management problems, some of which may involve resources common to both the Bank and to surrounding areas. Research results will be used in interpretive programs for visitors and others interested in the Sanctuary, as well as for protection and management of resources and qualities. To avoid duplication of effort and achieve maximum benefits from the research, NOAA will coordinate its research efforts with those of other agencies and organizations.

Specific objectives of the research program are to:

- (1) Establish a framework and procedures for administering research to ensure that research projects are responsive to management of the Sanctuary;
- (2) Incorporate research results into the interpretive/education program in formats useful to the general public;
- (3) Focus and coordinate data collection efforts on the physical, chemical, geological and biological oceanography of the Sanctuary;
- (4) Encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes;
- (5) Initiate a monitoring program to assess environmental changes as they occur due to natural and human processes;
- (6) Identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; and
- (7) Encourage information exchange among all organizations and agencies conducting management-related research in the Sanctuary to promote more informed management.

Education Program

The goal of the Sanctuary's education programs is to improve public awareness, understanding and appreciation of the value of the Sanctuary and the need to protect its resources and qualities.

Management objectives designed to meet this goal are to:

- (1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability;
- (2) Broaden support for Sanctuary management by offering public programs suited to visitors with a diverse range of interests;
- (3) Provide for public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extensions and outreach programs, and participation in other volunteer programs; and
- (4) Collaborate with other organizations to provide educational services complementary to the Sanctuary program.

Visitor Use

The Sanctuary Program's goal for visitor management is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of Sanctuary resources which are not prohibited pursuant to other authorities.

Specific management objectives are to:

- (1) Provide relevant information about Sanctuary regulations, use policies and standards;
- (2) Collaborate with public and private organizations in promoting compatible uses of the Sanctuary;
- (3) Encourage the public using the Sanctuary to respect sensitive Sanctuary resources and qualities; and
- (4) Monitor and assess the levels of use to identify and control potential degradation of resources and qualities, and to minimize potential user conflicts.

The Sanctuary will be managed initially by NOAA Sanctuaries and Reserves Division staff located in Plymouth, Massachusetts. Pursuant to Public Law 102-587, NOAA will also consider establishment of a Sanctuary satellite office in Provincetown, Gloucester, or Hull, Massachusetts.

IV. Summary of Regulations

The regulations set forth the boundary of the Sanctuary; prohibit a relatively narrow range of 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 940 to title 15, Code of Federal Regulations.

Section 940.1 sets forth as the purpose of the regulations to implement the designation of the Stellwagen Bank 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.

Section 940.2 and appendix I following § 940.12 set forth the boundary of the Sanctuary.

Section 940.3 defines various terms uses in the regulations. Other terms appearing in the regulations are defined at 15 CFR 922.2 and/or in the MPRSA.

Section 940.4 allows all activities except those prohibited by § 940.5 to be undertaken subject to the requirements of any emergency regulation promulgated pursuant to § 940.6, subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act.

Section 940.5 prohibits a variety of activities and thus makes it unlawful for any person to conduct them or cause them to be conducted. However, any of the prohibited activities except for the exploration for, development of, or production of industrial materials within the Sanctuary; and the disposal of dredged material within the Sanctuary (except by a certification, pursuant to § 940.10, of valid authorizations in existence on the effective date of Sanctuary designation), 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 § 940.9; or authorized by a Special Use permit issued under section 310 of the Act.

(2) With regard to the Department of Defense activities: The activity is exempted after consultation between the Director of the Office of Ocean and Coastal Resource Management or designee and the Department of Defense. The regulations require that the Department of Defense carry out its activities in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities and that the Department of Defense, 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 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. The final regulation regarding Department of Defense activities differs from the proposed regulation principally by:

(i) Adding the requirement to avoid to the maximum extent practicable any adverse impacts; and

(ii) Adding the requirement of prompt coordination, in the event of an untoward incident, for the purpose of taking appropriate actions.

(3) The activity is authorized by a certification by the Director or designee under § 940.10 of a valid lease, permit, license or other authorization issued by any Federal, State or local 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 or designee as he or she deems necessary to achieve the purposes for 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 § 940.11, the applicant complies with the requirements of § 940.11, 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 first activity prohibited is discharging or depositing, from within

the Sanctuary, any material or other matter except

(1) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(2) Biodegradable effluent 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, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(3) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping; and

(4) Engine exhaust.

The prohibition is necessary in order to protect the Sanctuary resources and qualities from the effects of pollutants discharged or deposited into the Sanctuary, including, but not limited to, the effects of incineration activities occurring from onboard vessels.

The second activity prohibited is discharging or depositing from beyond the boundary of the Sanctuary, any material or other matter, except for the exclusions discussed above for the first prohibited activity, that subsequently enter the Sanctuary and injure a Sanctuary resource or quality. The intent of this prohibition is to protect the Sanctuary resources and qualities from the harmful effects of discharged or deposited pollutants.

The third activity prohibited is exploring for, developing or producing industrial materials in the Sanctuary. This prohibition is necessary to preserve the physical structure of the Bank feature, which is causal in providing seasonal upwelling events supporting the Bank system's biological productivity. The prohibition additionally will prevent the negative effects of physical and possible chemical disturbances associated with extraction activities, e.g., destruction of benthic biota; resuspension of fine sediments; interference with filtering, feeding and respiratory functions of marine organisms; loss of food sources and habitats; and lowered photosynthesis and oxygen levels.

The fourth activity prohibited is drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as incidentally resulting from:

(1) Anchoring vessels;

(2) Traditional fishing operations; or

(3) Installation of navigation aids.

The intent of this prohibition is to protect the resources and qualities of the

Sanctuary from the harmful effects of activities such as, but not limited to, archaeological excavations, drilling into the seabed, strip mining, laying or placing of pipelines or cables, and offshore commercial development, which may disrupt and/or destroy sensitive marine benthic habitats, invertebrate populations, fish habitats, and marine mammal feeding areas.

The fifth activity prohibited is moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. Historical resources in the marine environment are fragile, finite and non-renewable. This prohibition is designed to protect these resources so that they may be researched and information about their contents and type made available for the benefit of the public. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

The sixth activity prohibited is taking any marine reptile, marine mammal or seabird in or above the Sanctuary, except as permitted by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.* The term "taking" includes all forms of harassment. The MMPA, ESA and MBTA prohibit the taking of species protected under those Acts. The prohibition overlaps with the MMPA, ESA and MBTA but also extends protection for Sanctuary resources on an environmentally holistic basis and provides a greater deterrent with civil penalties of up to \$100,000 per taking. The prohibition covers all marine mammals, marine reptiles and seabirds in or above the Sanctuary.

The seventh activity prohibited is lightering, or the at-sea transfer of petroleum products from one vessel to another, in the Sanctuary. The intent of this prohibition is to protect Sanctuary resources and qualities from the adverse effects of spillage which may occur, particularly in the absence of any direct monitoring of lightering activities.

Both the eighth and ninth prohibitions are intended to facilitate enforcement actions for violations of Sanctuary regulations. The eighth prohibition is the possession within the Sanctuary of any historical resource, marine mammal, marine reptile or seabird, regardless of where the resource was taken, except when taken in compliance with the ESA, MMPA and MBTA. The ninth prohibition is interfering with, obstructing, delaying or preventing investigations, searches,

itures or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 940.6 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 940.7 sets forth the maximum statutory civil penalty for violating a regulation—\$100,000. Each day of a continuing violation constitutes a separate violation.

Section 940.8 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 §§ 940.7 and 940.8 is to notify the public of the liability for violating a Sanctuary regulation or the Act.

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.

Section 940.9 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. A permit 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 have only negligible short-term adverse effects on Sanctuary resources and qualities and 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 is 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 is authorized to consider any other factors he or she deems appropriate.

Section 940.10 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 paragraphs (a)(1)–(2) and (4)–(8) of § 940.5. Pursuant to paragraph (f) of § 940.5, the prohibitions in paragraphs (a)(1)–(2) and (4)–(8) of § 940.5 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, State or local 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 § 940.10 (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 he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

Section 940.10 allows the holder 90 days from the effective date of Sanctuary regulations to request certification. The holder is allowed to conduct the activity without being in violation of paragraphs (a)(1)–(2) and (4)–(8) of § 940.5 pending final agency action on his or her certification request, provided the holder has complied with all requirements of § 940.10.

Section 940.10 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 he or she 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 § 940.12.

Any amendment, renewal or extension not in existence as of the date of Sanctuary regulations of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 940.11.

Section 940.11 states that consistent with paragraph (g) of § 940.5, the prohibitions of paragraphs (a)(1)–(2) and (4)–(8) of § 940.5 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, State or local 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 regulations, whichever is later, that the applicant is in compliance with the other provisions of § 940.11, 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 940.11 allows the Director or designee 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 § 940.12.

An application for an amendment to, an extension of, or a renewal of an authorization is also subject to the provisions of § 940.12.

Section 940.12 sets forth 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 section 940.9 or a Special Use permit under Section 310 of the Act;

(2) The granting, denial, conditioning, amendment, suspension or revocation of a certification under section 940.10; or

(3) The objection to issuance or the imposition of terms and conditions under section 940.11.

Prior to conditioning the exercise of existing leases, permits, licenses, approvals, other authorizations or

rights, or conditioning or objecting to proposed authorizations, NOAA intends to consult with relevant issuing agencies as well as owners, holders or applications. NOAA's policy is to encourage best available management practices for the Sanctuary.

V. Miscellaneous Rulemaking Requirements

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 pre-existing 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 collection of information requirements subject to the requirements of the Paperwork Reduction Act (Pub. L. 96-511). The collection of information requirements contained in the rule have been reviewed by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act and have been approved under OMB Control No. 0648-0141. Comments from the public on the collection of information requirements contained in this rule are 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

A Federalism Assessment (FA) was prepared for the proposed designation, draft management plan and proposed implementing regulations. The FA concluded that all were fully consistent

with the principles, criteria and requirements set forth in sections 2 through 5 of Executive Order 12612, *Federalism Considerations in Policy Formulation and Implementation* (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

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 boundary alternatives of the area proposed to be designated, and the existing and potential uses and resources of the area. Copies of the DEIS/MP were made available for public review on February 8, 1991, with comments due on April 9, 1991. Public hearings were held in Portsmouth, New Hampshire, Gloucester, Massachusetts, Duxbury, Massachusetts, Provincetown, Massachusetts, and Washington, DC between March 11 and 18, 1992. All comments were reviewed and, where appropriate, incorporated into the FEIS/MP and these regulations. Copies of the FEIS/MP are available upon request (see address section).

Executive Order 12630

This rule does not have takings implications within the meaning of Executive Order 12630 sufficient to require preparation of a Takings Implications Assessment under that order. This rule would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation. While the prohibition on the exploration, development and production of industrial materials from the Sanctuary might have a takings implication if it abrogated an existing lease for extraction of such material within the Sanctuary or an approval of an exploration or development and production plan, no leases related to industrial materials exploration, development or production have been sold for tracts within the Sanctuary and no exploration or production and development plans have been filed or approved.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

List of Subjects in 15 CFR Part 940

Administrative practice and procedure, Coastal zone, Education, environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: October 8, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR chapter IX is amended as set forth below.

A new part 940 is added to subchapter B to read as follows:

PART 940—STELLWAGEN BANK NATIONAL MARINE SANCTUARY

- Sec.
- 940.1 Purpose.
 - 940.2 Boundary.
 - 940.3 Definitions.
 - 940.4 Allowed activities.
 - 940.5 Prohibited activities.
 - 940.6 Emergency regulations.
 - 940.7 Penalties for violations of regulations.
 - 940.8 Response costs and damages.
 - 940.9 National Marine Sanctuary permits—application procedures and issuance criteria.
 - 940.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity.
 - 940.11 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.
 - 940.12 Appeals of administrative action.

Appendix I to Part 940—Stellwagen Bank National Marine Sanctuary Boundary Coordinates

Authority: 16 U.S.C. 1431 *et seq.*

§ 940.1 Purpose.

The purpose of the regulations in this Part is to implement the designation of the Stellwagen Bank 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.

§ 940.2 Boundary.

The Stellwagen Bank National Marine Sanctuary consists of an area of approximately 638 square nautical miles of Federal marine waters and the submerged lands thereunder, over and around Stellwagen Bank and other submerged features off the coast of Massachusetts. The boundary

compasses the entirety of Stellwagen Bank; Tillies Bank, to the northeast of Stellwagen Bank; and portions of Jeffreys Ledge, to the north of Stellwagen Bank. The Sanctuary boundary is identified by the following coordinates, indicating the most northeast, southeast, southwest, west-northwest, and north-northwest points: 42°45'59.83" N x 70°13'01.77" W (NE); 42°05'35.51" N x 70°02'08.14" W (SE); 42°07'44.89" N x 70°28'15.44" W (SW); 42°32'53.52" N x 70°35'52.38" W (WNW); and 42°39'04.08" N x 70°30'11.29" W (NNW). The western border is formed by a straight line connecting the most southwest and the west-northwest points of the Sanctuary. At the most west-northwest point, the Sanctuary border follows a line contiguous with the three-mile jurisdictional boundary of Massachusetts to the most north-northwest point. From this point, the northern border is formed by a straight line connecting the most north-northwest point and the most northeast point. The eastern border is formed by a straight line connecting the most northeast and the most southeast points of the Sanctuary. The southern border follows a straight line between the most southwest point and a point located at 42°06'54.57" N x 70°16'42.7" W. From that point, the southern border then continues in a west-to-east direction along a line contiguous with the three-mile jurisdictional boundary of Massachusetts until reaching the most southeast point of the Sanctuary. The boundary coordinates of the Sanctuary, provided in latitude/longitude and LORAN, appear in appendix I of this part.

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

(5) *Effective date of Sanctuary designation* means the enactment date of Public Law 102-587, 108 Stat. 5039, 5048 (November 4, 1992).

(6) *Fish wastes* means waste materials resulting from commercial fish processing operations.

(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. Historical resources also include "historical properties", as defined in the National Historic Preservation Act, as amended (16 U.S.C. 470 *et seq.*), and implementing regulations, as amended.

(8) *Industrial material* means clay, stone, sand, gravel, metalliferous ore, nonmetalliferous ore or any other solid material or other matter of commercial value.

(9) *Injure* means to 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.

(10) *Lightering* means the at-sea transfer of petroleum-based products, materials or other matter from vessel to vessel.

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

(12) *Sanctuary* means the Stellwagen Bank National Marine Sanctuary.

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

(14) *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, the substratum of the Stellwagen Bank, other submerged features and the surrounding seabed, phytoplankton, zooplankton, invertebrates, fish, marine reptiles, marine mammals, seabirds, and historical resources.

(15)(i) *Take or taking* means the following:

(A) For any marine reptile, marine mammal or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, the term means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect

or injure, or to attempt to engage in any such conduct;

(B) For any other marine reptile, marine mammal or seabird, the term means to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct.

(ii) For the purpose of both paragraphs (a)(15)(i) (A) and (B) of this section, the term includes, but is not limited to, any of the following activities: collecting any dead or injured marine reptile, marine mammal or seabird, or any part thereof; restraining or detaining any marine reptile, marine mammal or seabird, or any part thereof, no matter how temporarily; tagging any marine reptile, marine mammal or seabird; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any marine reptile, marine mammal or seabird.

(16) *Traditional fishing* means those commercial or recreational fishing methods which have been conducted in the past within the Sanctuary.

(17) *Vessel* means a watercraft of any description capable of being used as a means of transportation in/on 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.*

§ 940.4 Allowed activities.

All activities except those prohibited by § 940.5 may be undertaken subject to any emergency regulations promulgated pursuant to § 940.6, subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act (see § 940.8).

§ 940.5 Prohibited activities.

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

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

(i) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(ii) Biodegradable effluent 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, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(iii) Water generated by routine vessel operations (e.g., cooling water, deck

wash down and graywater as defined by Section 312 of the FWPCA) excluding oily wastes from bilge pumping; or

(iv) Engine exhaust;

(2) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(1) (i) through (iv) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(3) Exploring for, developing or producing industrial materials within the Sanctuary.

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

(i) Anchoring vessels;

(ii) Traditional fishing operations; or

(iii) Installation of navigation aids.

(5) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

(6) Taking any marine reptile, marine mammal or seabird in or above the Sanctuary, except as permitted by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(7) Lightering in the Sanctuary.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, marine reptile or seabird taken in violation of the MMPA, ESA or MBTA.

(9) 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.

(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)(1), (2), and (4) through (9) of this section do not apply to any activity necessary to respond to an emergency threatening life, property or the environment.

(d)(1) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

Department of Defense military activities may be exempted from the prohibitions in paragraphs (a)(1), (2), and (4) through (8) 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 avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (d)(1).

(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 the Department of Defense, the Department of Defense 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.

(e) The prohibitions in paragraphs (a) (1), (2), and (4) through (8) 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 § 940.9 or a Special Use permit issued pursuant to Section 310 of the Act.

(f) The prohibitions in paragraphs (a) (1), (2), and (4) through (8) 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, State or local 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 § 940.10 and with any terms and conditions on the exercise of such 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.

(g) The prohibitions in paragraphs (a) (1), (2), and (4) through (8) 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 and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 940.11, 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. Amendments, renewals or extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(h) Notwithstanding paragraphs (e) and (g) of this section 940.5, in no event may the Director or designee issue a permit under § 940.9, or under Section 310 of the Act, authorizing, or otherwise approving, the exploration for, development or production of industrial materials within the Sanctuary, or the disposal of dredged material within the Sanctuary (except by a certification, pursuant to § 940.10, of valid authorizations in existence on the effective date of Sanctuary designation) and any leases, licenses, permits, approvals or other authorizations authorizing the exploration for, development or production of industrial materials in the Sanctuary issued by other authorities after the effective date of Sanctuary designation shall be invalid.

§ 940.6 Emergency regulations.

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

§ 940.7 Penalties for violations of regulations.

(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 \$100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the 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.

§ 940.8 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 to the United States for response costs and damages resulting from such destruction, loss, or injury.

§ 940.9 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 940.5(a)(1), (2), and (4) through (8) if conducted in accordance with the scope, purpose, manner, terms and conditions of a permit issued under this § 940.9.

(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, 1305 East-West Highway, Silver Spring, Maryland 20910. 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 Sanctuary 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 § 940.5(a)(1), (2), and (4) through (8), if the Director or designee finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director or designee may 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.

(e) A permit issued pursuant to this § 940.9 is nontransferable.

(f) The Director or designee may amend, suspend or revoke a permit issued pursuant to this § 940.9 for good cause. The Director or designee may deny a permit application pursuant to this § 940.9, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of these regulations or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in 15 CFR part 904, subpart D.

(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 data or 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 status, 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 § 940.12.

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

(a) The prohibitions in § 940.5 (a)(1), (2), and (4) through (8) 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, State or local 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 or designee, in writing, within 90 days of the effective date of Sanctuary regulations, 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 § 940.10; 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 owner or 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, State or local 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 § 940.5, (a) (1), (2), and (4) through (8) may conduct the activity without being in violation of § 940.5, pending final agency action on his or her certification request, provided the holder is in compliance with this § 940.10.

(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, State or local 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 (a) (1), (2), and (4) through (8).

(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, 1305 East-West Highway, Silver Spring, Maryland 20910. 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 he or she 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 § 940.10 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 § 940.10, in writing, to both the holder of the certified lease, permit, license, approval, other authorization or right, and 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 § 940.10 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 § 940.12.

(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 § 940.11.

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

(a) The prohibitions set forth in § 940.5(a) (1), (2), and (4) through (8) 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, State or local 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 regulations, whichever is later;

(2) The applicant complies with the other provisions of this § 940.11;

(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, State or local 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 § 940.5(a) (1), (2), and (4) through (8).

(c) Notification of filings of applications and requests for 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, 1305 East-West Highway, Silver Spring, Maryland 20910. 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 § 940.11 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 provisions set forth in § 940.12.

§ 940.12 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see 15 CFR part 904, subpart D, for applicable procedures), an applicant for, or a holder of, a § 940.9 National Marine Sanctuary permit, an applicant for, or a holder of, a Section 310 of the Act Special Use permit, a § 940.10 certification requester or a § 940.11 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 § 940.10; or

(3) The objection to issuance or the imposition of terms and conditions under § 940.11.

(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 receipt of notice of the action 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 Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, Maryland 20910.

(c) While the appeal is pending, appellants requesting certification pursuant to § 940.10 who are in compliance with such section may continue to conduct their activities without being in violation of the prohibitions in § 940.5(a) (1), (2), and (4) through (8). All other appellants may not conduct their activities without being subject to the prohibitions in § 940.5(a) (1), (2), and (4) through (8).

(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 § 940.12 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 940—STELLWAGEN BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Appendix Based on North American Datum of 1927]
638 Square Nautical Miles

Pt.	Latitude	Longitude	Loran	
			9960W	9960X
E1	42 45 59.83	70 13 01.77	13,607.19	25,728.57
E2	42 05 35.51	70 02 08.14	13,753.39	25,401.78
E3	42 06 18.25	70 03 17.55	13,756.72	25,412.48
E4	42 06 29.53	70 04 03.36	13,760.30	25,417.53
E5	42 07 02.70	70 05 13.61	13,764.52	25,427.27
E6	42 07 13.80	70 06 23.75	13,770.54	25,434.45
E7	42 07 35.95	70 07 27.89	13,775.08	25,442.51
E8	42 07 42.33	70 08 26.07	13,780.35	25,448.27
E9	42 07 59.94	70 09 19.78	13,784.24	25,455.02
E10	42 08 04.95	70 10 24.40	13,790.27	25,461.28
E11	42 07 55.19	70 11 47.67	13,799.38	25,467.56
E12	42 07 59.84	70 13 03.35	13,806.58	25,474.95
E13	42 07 46.55	70 14 21.91	13,815.52	25,480.62
E14	42 07 27.29	70 15 22.95	13,823.21	25,484.05
E15	42 06 54.57	70 16 42.71	13,833.88	25,487.79
E16	42 07 44.89	70 28 15.44	13,900.14	25,563.22
E17	42 32 53.52	70 35 52.38	13,821.60	25,773.51
E18	42 33 30.24	70 35 14.96	13,814.43	25,773.54
E19	42 33 48.14	70 35 03.81	13,811.68	25,774.28
E20	42 34 30.45	70 34 22.98	13,803.64	25,774.59
E21	42 34 50.37	70 33 21.93	13,795.43	25,770.55
E22	42 35 16.08	70 32 32.29	13,787.92	25,768.31
E23	42 35 41.80	70 31 44.20	13,780.57	25,766.25
E24	42 36 23.08	70 30 58.98	13,772.14	25,766.14
E25	42 37 15.51	70 30 23.01	13,763.69	25,768.12
E26	42 37 58.88	70 30 06.60	13,758.09	25,771.07
E27	42 38 32.46	70 30 06.54	13,755.07	25,774.58
E28	42 39 04.08	70 30 11.29	13,752.75	25,778.35

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Moorman Manufacturing Co. The supplemental NADA provides for the use of an additional concentration of monensin Type A medicated article (80 grams of monensin per pound of product) to be used as currently approved to make Type C medicated blocks for free choice administration to pasture cattle.

EFFECTIVE DATE: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Warner J. Caldwell, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1638.

SUPPLEMENTARY INFORMATION: Moorman Manufacturing Co., Quincy, IL 62301, has filed a supplement to NADA 115-581, providing for the use of an 80-gram-per-pound monensin Type A medicated article in addition to the currently approved 60-gram-per-pound article. The Type A medicated article is to be used as currently approved in