

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 937

The St. Thomas National Marine Sanctuary

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

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration proposes the designation of the St. Thomas National Marine Sanctuary located southeast of St. Thomas, United States Virgin Islands. Presidential approval of the designation is required. After designation, necessary and reasonable regulations to control activities within the Sanctuary will be promulgated. These proposed regulations define permissible activities within the Sanctuary, the procedures by which persons may obtain permits for prohibited activities and the penalties for committing prohibited acts without a permit.

DATE: Comments due July 16, 1981.

ADDRESS: Send comments to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, NOAA, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Lindelof, Gulf and Caribbean Project Manager, Sanctuary Programs Office, Office of Coastal Zone Management, NOAA, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634-4236.

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

The Office of Coastal Zone Management proposes to designate a

9.27 square nautical miles marine sanctuary adjacent to the southeast St. Thomas, United States Virgin Islands. The area contains the most significant stand of mangroves in the Virgin Islands, extensive coral reef communities, coral caves, and several shipwrecks. The area also supports numerous conch, and lobster habitats, and nesting and feeding areas for endangered turtle and fish species.

In May 1979, the Virgin Islands Department of Conservation and Cultural Affairs (DCCA) recommended this area as a National Marine Sanctuary. In July 1979 NOAA and DCCA distributed an Issue Paper and on August 8, 1979, held a public workshop in St. Thomas.

Following the workshop, DCCA and NOAA began preparation of a draft environmental impact statement (DEIS), which is being published concurrently with these regulations (a copy can be obtained by writing to the contact identified above). The DEIS describes the impacts of the marine sanctuary proposal including its ability to focus on the particularly valuable marine areas and to provide comprehensive management. It discusses marine sanctuary management including the administrative arrangement between NOAA and DCCA for onsite management, the rationale for the designation and for the regulatory system as well as alternative approaches to establishing a sanctuary.

OCZM will receive public comments on the proposal, hold a public hearing in St. Thomas, Virgin Islands, and prepare a final EIS which will incorporate and respond to the comments received. Only after final consultation with the appropriate Federal agencies, and with the approval of the Governor of the Virgin Islands and the President, can the Secretary designate the Sanctuary and promulgate regulations.

NOAA's General Marine Sanctuary Regulations (15 CFR Part 922) provide that the regulatory system for marine sanctuary will be established by two documents, a Designation document and the regulations issued pursuant to Section 302(f) of the Act. The Designation will serve as a constitution for the Sanctuary, setting forth, among other things, the purposes of the Sanctuary, the types of activities that may be subject to regulation within it, and the extent to which other regulatory programs will continue to be effective and relied upon to protect the resources of the Sanctuary.

As proposed, the St. Thomas Marine Sanctuary Designation would provide as follows:

Draft Designation Document of the St. Thomas Marine Sanctuary

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92-532, (the Act) certain waters off St. Thomas, U.S. Virgin Islands, are hereby designated a Marine Sanctuary for the purposes of preserving and protecting their unique and fragile ecological and recreational resources.

Article 1. Effect of Designation

The designation of the St. Thomas National Marine Sanctuary (the Sanctuary), described in Article 2, establishes the basis for cooperative management of the area by the Virgin Islands and the National Oceanic and Atmospheric Administration (NOAA).

Within the area designated as the Sanctuary described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary.

On _____, 1981, the Virgin Islands issued regulations controlling those activities which may threaten the values of the Sanctuary, all of which are located within territorial waters. NOAA has determined that these regulations are adequate to protect the values of the Sanctuary. Therefore, this Designation authorizes NOAA to adopt these regulations as set forth in Article 5 and to issue additional regulations only in the event that an activity is found not to be subject to the jurisdiction of the Virgin Islands.

Article 4 of the Designation lists those activities which may require regulation, but the listing of an activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulations, and activities not listed in Article 4 may be regulated only after amending Article 4, or in cases of emergency, as specified in Article 4, Section 2.

Article 2. Description of the Area

The Sanctuary consists of an area of approximately 9.27 square nautical miles of the waters of the territorial sea of the U.S. Virgin Islands located off southeast St. Thomas. The precise boundaries are defined by regulation.

Article 3. Characteristics of the Area Which Give it Particular Value

The Sanctuary contains hundreds of species of marine organisms, including Caribbean corals, hawksbill and leatherback turtles, significant mangrove stands, and diverse tropical fauna and floral communities. The area provides exceptional recreational experiences and scientific research opportunities and generally has unique value as an ecological, recreational, and esthetic resource.

Article 4. Scope of Regulation

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

(a) Removing, breaking or otherwise harming coral or other bottom formations or plants, except incidental to other fishing operations.

(b) Anchoring by all vessels, operations of vessels other than fishing vessels, and operations of fishing vessels along designated underwater trails.

(c) Construction on, dredging of, or altering the seabed.

(d) Discharging or depositing any substance or object.

(e) Using poisons, electric charges or explosives.

(f) Conducting all activities including fishing along designated underwater trails.

(g) Removing or harming cultural or historical resources.

(h) Removing or damaging navigation aids, markers, or fishing traps or gear.

(i) Conducting activities affecting or likely to affect marine mammals, turtles or other endangered species.

Section 2. *Emergency Regulations.* Where essential to prevent immediate, serious and irreversible damage to the ecosystem of the Sanctuary, activities other than those listed in Section 1 of this Article may be regulated within the limits of the Act on an emergency basis for a period not to exceed 120 days, during which an appropriate amendment of this Article may be proposed in accordance with the procedures specified in Article 6. In order to invoke this section, the Secretary of Commerce must first make a finding of emergency, which determination shall be transmitted in writing to the Virgin Islands.

Section 3. *Consistency with International Law.* The regulations governing the activities listed in Section 4 of this Article will be applied to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principals of international law or as otherwise authorized by international agreement.

Article 5. *Relation to Other Regulatory Programs*

Section 1. *Virgin Islands Program.*

(a) The Virgin Islands' regulations described in Article 1 effectively protect the resources of the Sanctuary and shall constitute the primary regulatory regime for it. NOAA may adopt the Virgin Islands' regulations under the following conditions:

(1) No alteration or modification of any Sanctuary regulation shall become effective without the written concurrence of both the Virgin Islands and NOAA; and

(2) The Virgin Islands shall be responsible for enforcing all of the Sanctuary regulations to ensure protection for the values of the Sanctuary. NOAA will engage in enforcement activities only if requested by the Virgin Islands or if there has been a significant failure to provide adequate enforcement as determined under this section.

(b) Where the Virgin Islands shall propose any alteration or modification of the regulations described in Article 1, such alteration or modification shall be submitted to NOAA for simultaneous proposal in the Federal Register. Such alteration or modification shall be finally adopted unless, based on the comments received on the Federal Register proposal and after

consultation with the Virgin Islands, NOAA determines that the regulations with the proposed amendments do not provide reasonable and necessary protection for the values of the Sanctuary.

(c) Should NOAA preliminarily determine that there has been a significant failure to provide adequate enforcement, it shall notify the Virgin Islands of this deficiency and suggest appropriate remedial action. If, after consultation, NOAA and the Virgin Islands are unable to agree either that a deficiency exists or on appropriate remedial action, NOAA may issue a final determination in writing specifying the deficiency and the appropriate action together with the reasons therefor. No less than 60 days prior to issuing a final determination that calls for NOAA to take enforcement action, NOAA shall submit the proposed determination to the Governor of the Virgin Islands. If the Governor finds that NOAA enforcement is unnecessary to protect the values of the Sanctuary NOAA shall give such finding presumptive weight in making its final determination.

Section 2. *Fishing.* The regulation of fishing is not authorized under Article 4 except with respect to the removal or damage of coral or other bottom formations (paragraph (a)), the use of certain techniques (paragraph (e)) and along underwater trails (paragraph (f)). In addition, fishing vessels may be regulated with respect to discharges (paragraph (d)) and anchoring (paragraph (b)).

Section 3. *Defense Activities.* The regulation of those activities listed in Article 4 shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be conducted consistently with such regulations to the maximum extent practicable. All other activities of the Department of Defense are subject to Article 4.

Article 6. *Alterations to this Designation*

This Designation can be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and Virgin Islands agencies and approval by the Governor of the Virgin Islands and by the President of the United States.

Article 7. *Funding*

In the event that a reduction in the funds available to administer the Sanctuary necessitates a reduction in the level of enforcement provided by the Virgin Islands, the resulting reduced level of enforcement shall not, by itself, constitute a basis for finding a deficiency under Article 5, Section 1.

(End of Designation)

The proposed Designation establishes a cooperative management regime which will rely upon the Virgin Islands' regulations to protect the resources of the Sanctuary, all of which is located within territorial waters (See particularly Articles 1 and 5). Along with the designation, we are publishing regulations under consideration by the Virgin Islands for comment on their adoption as NOAA regulations. This

procedure will ensure adequate review and comment on the substantive regulations at the national level. Once these regulations are finally promulgated by the Virgin Islands and approved by NOAA, they will be adopted as NOAA regulations for enforcement purposes.

The purpose of the regulations is to ensure protection of the mangroves, coral and other resources of the area as well as its general recreational and esthetic value. Activities which may threaten these features are prohibited including: taking or damaging coral [Sec. 937.4(A)(1)], anchoring on coral reefs [937.4(A)(2)], dredging and other activities altering the seabed except in certain limited areas or for public service cables and pipes when permitted by the Virgin Islands [937.4(A)(3)], polluting activities [Sec. 937.4(A)(4)] removing or damaging shipwrecks or other historical or other cultural features [937.4(A)(6)] and harassing or disturbing marine mammals or endangered species.

Other Matters:

Executive Order 12291 (E.O. 12291) defines a "major rule" as "any regulation that is likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets. The economic activity supported by the area under consideration for marine sanctuary designation consists of a diversity of commercial and recreational activities. The total annual commercial harvest of fish from the proposed Sanctuary waters is about 71,000 pounds and has a current value of around \$330,000. Commercial diving tour operators make approximately 5,256 trips at dive sites within the proposed Sanctuary, most of which will be protected rather than prohibited by the Sanctuary. This proposed rule would continue the Sanctuary. Those restrictions imposed, for example, on anchoring, on discharges and on fishing at underwater dive trails will have no economic impact and are designed to enhance the long term recreational value of the area. The Acting Administrator, therefore has determined that this is not a "major rule" under E.O. 12291.

On the same basis the Acting Administrator, also has determined that the proposed rules will not have a

significant economic impact on small entities in the proposed Sanctuary under the Regulatory Flexibility Act. This action will have a significant impact on the environment and copy of the draft environmental impact statement is available for review at the address above.

Public Review and Comment

NOAA will be reviewing the comments submitted to the Virgin Islands. A public hearing is scheduled on June 3, 1981, 7:30 PM at the St. Thomas Hotel and Marina, St. Thomas, U.S. Virgin Islands.

NOAA invites public review and comment on its proposed adoptions of these regulations. Written comments should be submitted to Dr. Nancy Foster, Deputy Director, Sanctuary Programs Office, 3300 Whitehaven Street N.W., Washington, D.C. 20035.

Robert W. Knecht,

Acting Assistant Administrator for Coastal Zone Management.

Accordingly, it is proposed to add Part 937 to 15 CFR as follows:

PART 937—THE ST. THOMAS NATIONAL MARINE SANCTUARY REGULATIONS

Sec.

937.1 Authority

937.2 Purpose.

937.3 Boundaries.

937.4 Regulated Activities.

937.5 Penalties for Commission of Prohibited Acts.

Authority: Section 302(a) and 302(f)(2) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434.

§ 937.1 Authority.

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

§ 937.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the diverse natural and cultural resources of the waters off southeast St. Thomas, U.S. Virgin Islands and to ensure the continued availability of the area for public educational purposes and as an ecological, research and recreational resource.

§ 937.3 Boundaries.

The Sanctuary consists of an area of 9.27 square nautical miles of the waters

of the territorial sea of the U.S. Virgin Islands located off southeast St. Thomas. The precise boundaries are:

Beginning at the shoreline of Stalley Bay at Latitude 18°18'29" Longitude 64°52'49" to a point southwest of Packet Rock at Latitude 18°18'03" Longitude 64°53'36", to a point southwest of Buck Island at Latitude 18°16'26" Longitude 64°54'11", thence northeast to a point off Dog Rocks at Latitude 18°17'36" Longitude 64°49'42", then to the shoreline of Cabrita Point at Latitude 18°19'36" Longitude 64°49'56".

§ 937.4 Regulated Activities.

All activities carried on in the Sanctuary are subject to all prohibitions, restrictions and conditions imposed by any other authority. Any violation of the restrictions, prohibitions, or conditions imposed by Section 912 of the Virgin Islands Coastal Zone Management Act (VICZMA) and regulations issued pursuant thereto shall constitute a violation of these Federal regulations rendering the violator liable for the civil penalty described in § 937.5 in addition to any penalty prescribed by the Virgin Islands. The applicable Virgin Islands regulations are as follows:

(a) *Prohibited Activities.* Except as may be necessary for the national defense, in accordance with Article 5, section 2 of the Designation, or as may be necessary to respond to an emergency threatening life, property or the environment, the following activities are prohibited within the Sanctuary unless permitted by the Commissioner of the Virgin Islands Department of Conservation and Cultural Affairs in accordance with section B of these regulations.

(1) Taking and Damaging Natural Resources.

(i) No person shall break, cut, or similarly damage or destroy any coral, bottom formation or any marine plant, except dead shells. There shall be a presumption that any items listed in this paragraph found in the possession of a person within the sanctuary have been collected or removed from the sanctuary.

(ii) Only traditional fishing methods shall be permitted within the sanctuary. No person shall use poisons, electrical charges, explosives or similar methods to take any marine animal or plant.

(2) Operation of Vessels.

(i) No person shall anchor on coral reefs or in any manner that damages coral or other natural or cultural resources. All practicable efforts shall be taken to drop anchors on sand flats, rock and rubble bottoms, and other areas without extensive coral formations. When anchoring dive boats, the first diver down shall inspect the

anchor to ensure that it is placed off the corals and will not shift in such a way as to damage corals. No further diving is permitted until the anchor is placed in accordance with these requirements.

(ii) No person shall anchor in areas where mooring buoys have been placed by the Government of the Virgin Islands or NOAA.

(iii) No vessel under power shall approach closer than 200 feet to a fishing vessel or a vessel displaying a diving flag except at a maximum speed of three knots.

(iv) No vessel or person shall interfere with any fishing activity.

(v) All vessels from which diving operations are being conducted shall fly, in a conspicuous manner, the international code flag alpha "A."

(3) Alteration of the Seabed and Construction.

(i) No person shall dredge, fill or otherwise alter the seabed in any manner nor construct any structure other than a navigation aid except as permitted by this section.

(ii) The following activities are allowed subject to the limitations and conditions imposed by the applicable permits and licenses issued under Chapter 21, Title 12, VICZMA:

(A) Construction of piers, docks, moorings, and similar structures, except in the Mangrove Lagoon (defined as an area from Bovoni Cay west to the shoreline of St. Thomas);

(B) Dredge and fill activities necessary for public service purposes, including but not limited to the burying and maintenance of cables and pipes; and

(C) Channel dredging within the area of Benner Bay and Bovoni Passage (defined as an area from the northwest point of Bovoni Cay; northeast to Benner Bay and in Benner Bay from a line drawn from the northeast corner of Bovoni Cay south to the northwest point of Grotto Cay, north to Compass Point) provided such activity can be clearly demonstrated to be in the public interest.

(4) *Discharging of Polluting Substances.* No person shall litter deposit or discharge any materials or substances of any kind except:

(i) Indigenous fish or fish parts.

(ii) Effluent from marine sanitation devices allowable under Coast Guard standards.

(iii) Municipal sewage from the existing outfall consistent with U.S. Environmental Protection Agency standards.

(5) Underwater Trails.

(i) No person shall spearfish or fish at the underwater trails, except bait fishing.

(ii) No person shall mark, deface, or injure in anyway, or displace, remove, or tamper with underwater trails signs, markers or bouys.

(6) *Removing or Damaging Cultural Resources.* No person shall remove, damage, or tamper with, any historical or cultural feature, including archeological sites, historic structures, shipwrecks and artifacts.

(7) *Marine Mammals and Endangered Species.* No person shall harass, disturb, harm or in any way injure any marine mammal or other species classified as endangered by the Federal or Virgin Islands Government.

(8) *Damage to Fish Traps.* No person shall disturb, harm, or tamper with any legal fish gear, nets, traps, or pots.

(b) *Permit procedures and criteria.*

(1) Permits for those activities allowed under section A.3.b. shall be issued in accordance with the procedures and criteria set forth in section 910 of the VICZMA.

(2) Permits for those activities prohibited by section A may be issued by the Commissioner of the Virgin Islands Department of Conservation and Cultural Affairs in accordance with the VICZMA and with this section provided such activity is either (i) research related to the resources of the sanctuary or (ii) to preserve and protect the recreational and educational value of the sanctuary or (iii) for salvage or recovery operations.

(A) In addition to any other requirements under Section 912 of the VICZMA, in considering whether to grant a permit, the Commissioner shall evaluate such matters as (1) the general professional and financial responsibility of the applicant; (2) the appropriateness of the methods envisioned to the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as an ecological, recreational, education of scientific resource; (4) whether the end value of the activity satisfies the criteria of this section; (5) and such other matters as deemed appropriate.

(B) At least 30 days prior to issuing any permit under this section, the Commissioner shall notify the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W. Washington, D.C. 20235, of the application and shall include a description of all activities proposed, the equipment, methods and personnel involved (particularly describing relevant experience) and a timetable for completion of the proposed activity.

(C) The Commissioner may seek and consider the views of any other person or entity, within or outside the Federal Government.

(D) NOAA's Assistant Administrator for Coastal Zone Management or designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity.

(E) All information obtained pursuant to a permit issued under this section shall be made available to the public.

§ 937.5 Penalties for Commission of Prohibited Act.

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

[FR Doc. 81-19023 Filed 6-29-81; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

National Forest Timber Sales; Advertisement and Bids; Proposed Rulemaking

AGENCY: Forest Service, USDA.

ACTION: Proposed Policy.

SUMMARY: Proposed is a revision of Secretary of Agriculture's Regulation 36 CFR 223.5, Advertisement and Bids. The primary purpose of the revision will be to waive the formal advertising requirement for sales in which the appraised value exceeds \$10,000, when such action is necessary to meet the objectives for research or formal demonstration projects.

No other alternatives were considered except the no action alternative. This would be to continue to formally advertise all sales with an appraised value of over \$10,000.

No scoping process was used.

DATES: Comments must be received by: August 31, 1981.

Send Written Comments to: R. Max Peterson, Chief (2400), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Emil M. Sabol, Timber Management

Staff, Room 3216, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, Telephone: (202) 447-4051.

SUPPLEMENTARY INFORMATION:

Secretary's Regulations regarding the sale and disposal of National Forest timber have long made provision for the sale of timber without advertisement, when necessary to facilitate research on demonstration projects. This authority was omitted from regulations adopted in 1977 to implement the National Forest Management Act of 1976. Authority for disposal of timber, by sale or otherwise, related to research and demonstration projects is provided in Section (14)(f) of the National Forest Management Act of 1976 (16 U.S.C. 472a).

To effect this change, the following language is proposed to be added following the last sentence in § 223.5(a): "The formal advertising requirement for sales in which the appraised value exceeds \$10,000 may be waived when such action is necessary to meet the objectives for research or formal demonstration projects."

USDA has made a preliminary determination that the proposed revision is not "major" and does not require a regulatory analysis under Executive Order No. 12291 and the Department's instructions.

John R. Block,
Secretary.

June 24, 1981.

[FR Doc. 81-19249 Filed 6-29-81; 8:48 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[Gen. Docket No. 80-603]

Inquiry into the Development of Regulatory Policy in Regard To Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule and Policy Statement; Extension of reply comment period.

SUMMARY: The Commission is extending time in which to file reply comments relating to permanent regulatory policies for direct broadcast satellites in Docket No. 80-603 (published at 46 FR 30124). The action is being taken in response to a motion from the Citizens