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Part IV

**Department of
Commerce**

**National Oceanic and Atmospheric
Administration**

**National Marine Sanctuary Program
Regulations**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 30321-44]

National Marine Sanctuary Program Regulations

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

ACTION: Final rule.

SUMMARY: These final regulations revise existing procedures for identifying and selecting marine sanctuary candidates, as well as for designating these sites as national marine sanctuaries. The regulations reflect a management-oriented approach to protecting special marine areas. They reflect the refinements and programmatic policies outlined in the Program Development Plan (PDP) for the National Marine Sanctuary Program (January 1982).

EFFECTIVE DATE: These regulations are effective June 30, 1983.

FOR FURTHER INFORMATION CONTACT: John Epting, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, NOAA, 3300 Whitehaven St., N.W., Washington, D.C. 20235; (202) 634-4236.

SUPPLEMENTARY INFORMATION:**I. Authority**

This notice of final rulemaking is issued under the authority of Title III of the Marine Protection, Research and Sanctuaries Act, as amended in 1980, 16 U.S.C. 1431-1434.

II. General Background

On September 7, 1982, NOAA published proposed revised regulations for continued implementation of the National Marine Sanctuary Program, pursuant to Title III of the Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431-1434 (The Act). Written comments on the proposed regulations were accepted until November 8, 1982. These comments have been considered in preparing these final regulations. In response to comments concerning the mission and goals, criteria for the site evaluation list (SEL) and Active Candidate selection, and sanctuary size, the regulations have been modified.

The final regulations further clarify the Program's mission and goals, revise the SEL and active candidate criteria, and further clarify the concept of

multiple use of sanctuary areas. These regulations supersede the previous regulations for the program (44 FR 44831 (1979)).

III. Refinements to the Regulations for the National Marine Sanctuary Program

The proposed regulations solicited comments on a number of programmatic refinements. These refinements are discussed at length in the Program Development Plan (PDP) for the National Marine Sanctuary Program (published in January 1982). The PDP describes the Program's mission and goals; changes in the site identification and selection criteria; modifications to the nomination and designation process; and the components and purposes of site-specific management plans.

A. Adoption of the Mission and Goals for the Program

The Mission and Goals are based on the statute which provides that sanctuaries may be designated for their "conservation, recreational, ecological, or esthetic values" (section 302(a)). Although broad in scope, they establish a framework within which specific program activities are conducted. The Mission Statement and Goals are adopted with several revisions by the final regulations (§ 922.1).

B. Revision of the Procedures for Initially Identifying Potential Sanctuary Candidates**(1) Elimination of the List of Recommended Areas**

In regulations published on July 31, 1979 (44 FR 44831), NOAA established the List of Recommended Areas (LRA) as a means of eliminating clearly inappropriate proposals, advising the public at large of recommended sites, cataloging potentially significant marine sites, and soliciting information on those sites. The LRA, however, did not totally fulfill these purposes. Since LRA site evaluation criteria were broad and allowed marginally acceptable nominations to qualify for further consideration, the procedure resulted in unnecessary controversy over the Program as a whole. A great number of nominations were received, many of which were minimally acceptable, in some instances incorporating large areas of Outer Continental Shelf waters and encompassing thousands of square miles. This caused substantial confusion and concern over the status of sites on the LRA and the likelihood of further action. Even though the majority of the listed sites would never become active candidates, the LRA has often been perceived as the blueprint for the

national marine sanctuary program. These revised regulations eliminate the LRA process from the Program, and replace it with the Site Evaluation List procedure.

(2) Establishment of a Site Evaluation List

The Site Evaluation List (SEL) process, described in subpart B of the regulations, will eliminate the problems created by the LRA.

The PDP established the policies and procedures for the SEL process (see Chapter III of the PDP). Regional resource evaluation teams, selected by NOAA and using NOAA-developed identification criteria (see Appendix 1), were to identify high natural resource and human use value sites. NOAA began implementing the site identification process in February 1982. NOAA used regional resource evaluation teams, comprised of knowledgeable scientists with regional research experience, to identify, evaluate, and recommend sites suitable for sanctuary consideration in accordance with site identification criteria in Appendix 1. By actively seeking sites based on sound criteria, resource data and input from marine scientists, and by assuring early public review at the regional level, highly-qualified marine sanctuary sites can be identified. The teams' initial lists of sites were circulated for public comment in the summer and fall of 1982. Based on these comments and applying the identification criteria in Appendix 1, each regional team developed a final list recommending 3-to-5 sites per region. These sites were submitted to NOAA in early February 1983. After a preliminary analysis of the sites based on the criteria in Appendix 1, NOAA will publish a notice of the availability of potential sites for the SEL in the *Federal Register*. These sites will be subject to a ninety-day comment period. At the conclusion of the comment period, and after the effective date of the national marine sanctuary regulations, NOAA will publish a final SEL, based on the selection criteria as set forth in these regulations (see § 922.20(b)) and the public comments.

It should be noted that the identification of potential sites for listing on the draft SEL meets the requirements of NOAA's existing regulations (see 44 FR 44831, Subpart B (1979)).

After the SEL is adopted, NOAA will review an additional site for listing on the SEL only if it is an important new discovery or if there is substantial new information indicating that a known site merits such consideration. NOAA will

determine, in consultation with appropriate scientists and resource managers, whether such sites meet the selection criteria specified in Appendix 1. If such a determination is made, the sites will be placed on the Site Evaluation List for further evaluation as national marine sanctuaries, consistent with the procedures in §§ 922.20 through 922.22.

C. Selection of Active Candidates and the Actual Designation of Marine Sanctuaries

Selection from the SEL as an active candidate is the second step in evaluating a site for potential designation. Subpart C contains the criteria by which NOAA selects active candidates. A site-specific management plan is prepared as part of the designation process. The environmental impact statement evaluates the impacts of sanctuary designation and management plan implementation. Only a limited number of sites at a time will be selected as active candidates and evaluated by NOAA for sanctuary designation.

D. Enforcement Activities

The enforcement section (subpart D) has been revised to incorporate by reference NOAA-wide civil procedures and seizure and forfeiture procedures which will apply to all proceedings under this Act. These procedures are set forth, respectively, at 46 FR 61643(1981) (to be codified at 15 CFR 904.100 through 904.273) and 46 FR 31648 (1981) (to be codified at 50 CFR Part 219).

IV. Summary of Significant Comments on the Proposed Regulations and NOAA's Responses

NOAA received comments from 23 sources. Commenters included members of Congress, Federal and state agencies, representatives of the oil and gas industry, and environmental and public interest groups. All comments received are on file at the Sanctuary Programs Division, Office of Ocean and Coastal Resource Management. The comments are available at that office for review upon request. Each of the major issues raised by commenters has been summarized and NOAA's responses provided under the relevant subheading in this section.

General

Executive Order 12291 and the Regulatory Flexibility Act. Several commenters suggested that the regulations be reevaluated in light of Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354).

Response: These regulations provide general standards for the future designation and subsequent implementation of national marine sanctuaries by NOAA. As regulations for a particular sanctuary are proposed they will be reviewed pursuant to Executive Order 12291 and the Regulatory Flexibility Act, and necessary analyses prepared. This has been done in the past by NOAA. For example, regulatory impact analyses were prepared for portions of the regulations implementing both the Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries.

Section-by-Section Analysis

Subpart A—General

Section 922.1(a)—Mission and Goals

(1) Several reviewers suggested that the Mission be revised to allow sanctuary designation only where the marine area is threatened by existing or potential activities. They suggest that the research goals (§ 922.1(b)(2)) and public awareness goals (§ 922.1(b)(3)) are not in themselves necessary reasons for creating a sanctuary.

Response: While NOAA agrees that an existing or probable threat to a site is an important factor in whether to designate a marine sanctuary, the prime factor to be considered is the area's natural resource and human use values compared to other sites of national significance. The Act provides two criteria for sanctuary designation—preservation and restoration of marine areas for their "conservation, recreational, ecological, or esthetic values." While the Act allows NOAA to restore areas which have been subject to man's impacts, the Act also directs NOAA to preserve special marine areas before they are threatened or harmed by man's activities. Thus, the threat to the area's conservation, recreational, ecological, or esthetic values is only one test NOAA uses in designating sanctuaries.

NOAA also agrees that the research goals and public awareness goals are not by themselves sufficient reasons for establishing a sanctuary. The prime reason for sanctuary designation is always to protect the site's conservation, recreation, ecological, and esthetic values. Sites having such values, however, often provide substantial opportunities for research and public awareness.

(2) Other reviewers suggested that the mission and goals in the proposed regulations represented a major shift in the Program toward giving human use "improper priority" over the protection

of an area for its conservation, recreational, ecological or esthetic values. One reviewer stated that the replacement of "preserving or restoring such areas for their conservation, recreational, ecological or esthetic values" (Act, section 302(a)) with "comprehensive management of special marine areas for the long-term benefit and enjoyment of the public" and placing "optimum compatible public and private use" on an equal footing with enhanced resource protection represents a drastic departure from existing regulations and from the spirit of the Act.

Response: As noted in our above response, protection of the area's important natural resource values remains the Program's primary purpose. The mission and goals represent an attempt to balance resource protection with legitimate human uses of the marine environment.

(3) One commenter recommended that the mission and goals section contain a provision stating that the existing regulations of other Federal agencies be incorporated into the National Marine Sanctuary Program. For example, the Department of the Interior regulations governing oil and gas development activities on the Outer Continental Shelf should be the basis for the regulation of such activities located within a marine sanctuary.

Response: Existing regulations of federal and state authorities are considered in determining whether to designate marine sanctuaries and in developing the management framework for such sanctuaries. NOAA has, in many instances, and on a site specific basis, relied upon existing federal and state regulations to preserve or restore a sanctuary's natural resource and human use values when such regulations have been judged to meet the purposes and policies established by Congress in the Act. For example, NOAA has relied upon existing federal and state regulations to control fishing activities within a sanctuary when it has been determined that the interests of other federal and state agencies in managing these activities "are parallel to the interests of NOAA in managing the sanctuary, preserving the stocks and their habitats" (45 FR 65200). Similarly, NOAA has decided not to regulate a variety of activities, ranging from anchoring (46 FR 7942) and safeguarding waterfowl (46 FR 7839) to recreational boating (45 FR 65201) and instead relied upon existing authority. With respect to the few remaining preexisting oil and gas leases within the boundaries of the Channel Islands National Marine

Sanctuary. NOAA relies upon the regulatory authority of several federal and state agencies to fulfill the purposes of sanctuary designation under the Act (15 CFR 935.6). New regulations are promulgated only when necessary to control activities within the sanctuary (section 302(f)).

(4) *Multiple Use.* Several reviewers suggested that NOAA encourage multiple compatible use of sanctuary areas based on the capacity of the marine resource to assimilate various human and natural impacts. One reviewer specifically recommended that the regulations recognize, to the greatest extent possible, that multiple use is one of the objectives of the Sanctuary Program.

Response: NOAA intended to convey that multiple use is encouraged in sanctuaries to the greatest extent possible, as long as such use is compatible with the purposes of the sanctuary. Goals 1 and 4 of the Program has been refined to reflect this intent (§ 922.1(b) (1) and (4)).

Section 922.2—*Definitions.* (1) Several commenters suggested that "regional resource evaluation team" be defined. NOAA was also asked to describe the procedure by which the teams were chosen. One reviewer noted that since the regional teams are discussed in Chapter III.B.1 of the PDP, this discussion should either be restated or referenced in the regulations.

Response: Regional resource evaluation teams represent the teams of scientists chosen by NOAA to make the initial selection of sites based on NOAA's criteria in Appendix 1.

In developing the list of individuals for each regional team, NOAA consulted with federal agencies, universities, and private organizations including oil and gas industry representatives for recommendations on appropriate scientists. The final team members and their affiliations are:

North Atlantic

- Dr. Maurice Lynch—Leader, College of William and Mary, P.O. Box 125, Gloucester Point, VA 23062
 Dr. H. Perry Jeffries, Graduate School of Oceanography, University of Rhode Island, Narragansett, RI 02881
 Dr. Walter Adey, Dir., Marine Systems Laboratory, W3-6 Natural History Museum Bldg., Smithsonian Institution, Washington, D.C. 20560
 Dr. Jeffrey Levinton, Dept. of Ecology & Evolution, State University of New York, Stony Brook, NY 11794

Great Lakes

- Dr. A. M. Beeton—Leader, Dir., Great Lakes & Marine Waters Center, Univ.

- of Michigan, 4103 I.S.T. Bldg., 2200 Bonnistee Blvd., Ann Arbor, MI 48109
 Dr. Charles Herdendorf, Dir., OSU Sea Grant Program, Ohio State Univ., 484 W. 12th Ave., Columbus, OH 43210
 Dr. Bud Harris, College of Environmental Sciences, Univ. of Wisc., Room E5105, Green Bay, WI 54302
 Ms. Carol E. Cimmings, Standard Oil of Indiana, Mail Code 3804, 200 E. Randall Dr., Chicago, IL 60607

South Atlantic

- Dr. Vernon Henry, Jr.—Leader, Skidaway Institute of Oceanography, University of Georgia, P.O. Box 13687, Savannah, GA 31406
 Dr. Dirk Frankenberg, Dir., Marine Science Program, University of North Carolina, 12-5 Venable Hall, Mail Stop 045A, Chapel Hill, NC 27514
 Dr. F. John Vernberg, Dir., Belle Baruch Inst. for Marine Biology, University of South Carolina, Columbia, SC 29208
 Dr. Harold Wanless, University of Miami RSMAS, 4600 Rickenbacker Causeway, Miami, FL 33149

Gulf

- Dr. Thomas Bright—Leader, Dept. of Oceanography, Texas A&M, College Station, TX 77843
 Dr. William McIntire, Center for Wetland Resources, Louisiana State University, 1234 Highland Park Dr., Baton Rouge, LA 70808
 Dr. David Gettleton, Continental Shelf Association, P.O. Box 3609, Tequesta, FL 33458
 Dr. James Ray, Shell Oil, P.O. Box 4320, Houston, TX 77210

Caribbean

- Dr. Manuel Hernandez-Avila—Leader, Dir., Dept. of Marine Sciences, University of Puerto Rico, College Station, Mayaguez, PR 00708
 Dr. John Ogden, West Indies Laboratory, Fairleigh Dickinson University, P.O. Box 4010, Christiansted, St. Croix, U.S.V.I. 00820

East Pacific

- Dr. Paul Rudy—Leader, Dir., Inst. of Marine Biology, University of Oregon, Stillwater Cove, Jenner, CA 95450
 Dr. Joel W. Hedgpeth, 5660 Montecito Avenue, Santa Rosa, CA 95404
 Dr. Elizabeth Venrick, Assoc. Research Oceanography, Code A-001, Scripps Inst. of Oceanography, La Jolla, CA 92093
 Dr. June Lindstedt-Siva, Atlantic Richfield, 515 S. Flower St., Los Angeles, CA 90071
 Dr. P. Dee Boersma, Actg. Dir., Inst. of Environmental Studies (FM-12),

University of Washington, Seattle, WA 98195

Alaska

- Dr. Vera Alexander—Leader, Inst. of Marine Sciences, Univ. of Alaska, Fairbanks, AK 99701
 Dr. Lewis J. Halderson, Asst. Prof., School of Fisheries, University of Alaska, Juneau, AK 99803
 Dr. Donald F. Keen, ARCO Alaska, Inc., P.O. Box 360, Anchorage, AK 99510
 Dr. Robert Weeden, Prof., Resource Management, University of Alaska, Fairbanks, AK 99701

West Pacific

- Dr. Roy Tsuda—Leader, Dean of Graduate Research, University of Guam, UOG Station, Mangilao, Guam 96913
 Dr. E. Alison Kay, Prof., Dept. of Zoology, University of Hawaii at Manoa, Honolulu, HI 96822
 Dr. Richard C. Wass, Office of Marine Resources, P.O. Box 3730, Pago Pago, American Samoa 96795.

Specific reference is also made to the description of the teams in the PDP at § 922.20(b) (see "comment").

(2) One commenter recommended adding a definition of "marine areas" which incorporates the language of section 320(a) of the Act.

Response: The recommended definition has been added at § 922.2(g).

Subpart B—Site Evaluation List

(1) Several reviewers noted with approval that this section formally abolishes the List of Recommended Areas (LRA). Such reviewers believe that the SEL has the potential to be a much more responsible mechanism for selecting potential sites. The final regulations should make clear, however, that none of the former LRA sites will receive any further consideration for sanctuary status unless renominated as part of the SEL process. It was also requested that the regulations expressly state that listing on the SEL and later selection as an Active Candidate do not impose any sanctuary regulatory controls.

Response: Sites formally on the LRA receive no sanctuary consideration unless they have been reselected by NOAA and placed on the SEL through the site evaluation process as specified in § 922.20(a). The effect of listing on the SEL or Active Candidate List is described at § 922.21.

(2) Several commenters recommended specific criteria for use in selecting sites for the SEL; the criteria were recommended to ensure that high resource and human use value sites are

selected for the SEL. These commenters noted that if comprehensive and precise SEL criteria are included in the regulations, Appendix 1 can be deleted.

Response: NOAA has incorporated Appendix 1, as revised, into the regulations (see § 922.20(b)). Appendix 1 contains the criteria used initially by the teams and then by NOAA to comprise the SEL. These criteria are quite specific and reflect the range of values intended to be protected by the Act.

It must be noted that more comprehensive and precise criteria than those presented in Appendix 1 are not applicable to the SEL. There is simply not enough information available at the time of SEL selection to analyze in detail other factors besides natural resource and human use values. SEL selection should provide a list of high resource and human use value sites that provide the basis for further consideration.

Other concerns are factored in progressively at later stages in the designation process. For example, active candidate criteria are much more specific, focusing not only on natural resource and human use values (see § 922.30(b)).

(3) Another reviewer suggested that the regulations include a specific timetable for selecting sites from the SEL to ensure that sites do not remain on the SEL indefinitely.

Response: While a precise timetable for selection of sites from the SEL cannot be established, § 922.22(a) provides that sites considered but not designated are not replaced on the SEL. Thus, the number of sites on the SEL is reduced over time. All sites remaining on the SEL after 5 years will be reevaluated.

(4) In terms of adding new sites after the SEL is established, several reviewers noted that the regulations should not assume that the selection and designation of marine sanctuaries is a one-time effort. They point out that the program is mandated by Congress "for the purpose of preserving or restoring such [marine] areas for their conservation, recreational, ecological or esthetic values." The reviewers state that the regulations should identify the process that will be followed in designating a marine sanctuary, without implying that this will only happen once or that the program is limited to a set number of sites.

For instance, one reviewer suggested that NOAA periodically review site evaluation lists and recommendations made by federal, state, and local agencies or the interested public. Similarly, another reviewer suggested that once the original SEL is established, regional resource evaluation teams of

knowledgeable scientists should periodically determine whether there have been any newly discovered sites that would qualify for inclusion on the list.

Finally, another reviewer suggested a change in the procedures for selecting sites for SEL consideration. In addition to considering for the SEL sites which are important new discoveries, it was suggested that known sites be reconsidered if substantial new information arises which establishes the need to reassess a particular site.

Response: NOAA's intent is to allow new sites to be added to the SEL only if they represent significant new discoveries, or if there is substantial new information establishing the national significance of a known site, which was previously unavailable to the regional resource evaluation teams (see § 922.22(c)).

As noted in the previous above response, any sites remaining on the SEL after 5 years will be reevaluated. If additional sites are required for further sanctuary consideration, § 922.22(b) provides a procedure for initiating a new identification process.

Subpart C—Selection of Active Candidates and the Designation of National Marine Sanctuaries

Active Candidates. (1) One reviewer questioned the relationship between the criteria used for SEL selection and Active Candidate selection. It was suggested that non-ecological factors be taken into account at the SEL selection stage, rather than subsequently at the Active Candidate stage. This would eliminate one step in the process.

Response: SEL selection and Active Candidate selection serve distinct purposes. SEL selection is geared toward choosing sites of high natural resources and human use value. Since sites on the SEL already have a certain requisite level of value, the Active Candidate criteria also take other factors into consideration, including the results of public and agency review and comment during preliminary consultation (§ 922.30(c) and (d)).

(2) Another reviewer suggested that the criteria for Active Candidate selection in the existing regulations (15 CFR Part 922.21, 44 FR 44831 *et seq.* (1979)) be used. Another reviewer suggested revised criteria based partially on those in the original regulations.

Response: More specific criteria for Active Candidate selection have been developed in the regulations. The criteria embodied in the original regulations are not entirely applicable because they do not take the new SEL

process and the criteria in Appendix 1 into consideration.

(3) One reviewer suggested publishing notice of preliminary consultation not only in the **Federal Register**, but also in newspapers of general circulation.

Response: Notice of preliminary consultation will be published in newspapers in the local area(s) of concern.

(4) One reviewer suggested that prior to preliminary consultation, and before actual selection of a site as an Active Candidate, that the Assistant Administrator (AA) should request comments for "the appropriate Regional Technical Advisory Groups formed under the Department of the Interior's Outer Continental shelf Advisory Committee."

Response: Since a notice of preliminary consultation is published in the **Federal Register** and in the local area(s) of concern, it is not necessary to specify the Regional Technical Advisory Groups in the regulations. The Department of the Interior is formally provided with opportunities to comment throughout the process.

(5) One reviewer recommended that the regulations be revised to provide that if a potential site is considered for formal designation and designation, "and be approved through the same administrative procedures leading to the original designation. . . ."

Response: This section reflects the terms of the Act (section 302(f)(1)). Sites meeting the identification and selection criteria in Appendix 1 have national significance under the Act. The Act provides that sanctuaries are to be designated based on their conservation, recreation, ecological, and esthetic values. The criteria in Appendix 1 focus on these values; sites selected for the SEL based on these values are therefore deemed to be of national significance. As in the past, activities will be subject to sanctuary regulation only if the regulations are necessary to protect the area's values. Regulatory changes, for activities listed as subject to regulation in the Designation Document, may be made so long as they remain consistent with the Designation and the Administrative Procedures Act. Such changes do not require reapproval by the Secretary of Commerce and the President. Likewise, revisions to the Management Plan can be made as long as they are consistent with the Designation Document.

(4) One reviewer noted that the geographical area encompassed by a proposed site should only include the area necessary to provide adequate protection.

Response: This is fully NOAA's intent.

(5) Several reviewers suggested that the regulations discuss size considerations in more detail in the body of the regulations. An other reviewer suggested that Section III.E.1 of the PDP, discussion NOAA's expectations with respect to maximum size, should be incorporated into the site identification criteria.

Response: Although no maximum or minimum size limits are established, NOAA expects that the Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries, covering 1,252 and 948 square nautical miles respectively, are likely to represent the upper end of the sanctuary size spectrum and that future sanctuaries will be no larger. Size considerations are addressed under the Mission and Goals (§ 922.1(d) and the Active Candidate Criteria (§ 922.30(b)(4)). A reference has also been added to the appropriate discussion in the PDP ("Comment" to § 922.1(d)).

(6) One commenter recommended that in developing sanctuary-specific regulations relating to activities under the jurisdiction of one or more Federal agencies, these regulations should be developed in consultation with the appropriate Federal agency.

Response: Such coordination has always been done as a part of the preliminary consultation process and environmental impact statement development under the National Environmental Policy Act. To emphasize such cooperation further, § 922.31(b) has been modified explicitly to include this cooperation.

(7) One reviewer suggested that while there is a time limit (90 days) from initiation of preliminary consultation to the date when the AA must select a site as an Active Candidate, there is no limit on the time in which the AA must initiate preliminary consultation. The reviewer claims that without a specific timetable for each step in the designation process, areas would be tied up for an indefinite period of time. It is claimed that this problem is made especially serious if the legal effect of such listing is not clarified. The reviewer requests that a specific time limit within which NOAA must initiate preliminary consideration of areas included on the SEL be established. A related concern is that the regulations do not specify the amount of time within which the AA must either select an Active Candidate for designation or remove it from the SEL.

Response: As noted above, the regulations clarify that such listing imposes no regulatory controls on the use or development of these areas. Thus,

the claim that the use of the areas of the SEL will be tied up for indefinite periods is without merit. It is also not possible for NOAA to set precise time limits on when sites from the SEL will be selected as active candidates. NOAA can only consider a few sites at a time, but cannot realistically determine in advance which sites will be selected first and in what order for consideration.

The regulations, at § 922.22(a), do clarify that the entire SEL will be reevaluated in 5 years. As sites on the SEL are selected for preliminary consultation and active candidacy, the SEL will be reduced. Sites selected for active candidate consideration, but later rejected, will not be returned to the SEL, but dropped with a written rationale.

It is also important to point out the advantages of the SEL. It provides a clear picture of the only sites that NOAA can consider for national marine sanctuaries during the lifetime of the SEL (except for the narrow exception specified in § 922.22(c) (concerning new discoveries or new information)). Because the sites on the SEL do not have regulatory status and can be selected for active candidacy and further consideration as a marine sanctuary only after NOAA's careful scrutiny in applying the active candidate criteria, preparing an EIS, and seeking public input, NOAA finds that the overall implementation of the designation process will be much more predictable than past procedures. It provides a clear presentation of the sites that can be considered and numerous opportunities for public review.

(8) One reviewer recommended that there be a notice and opportunity for a public hearing before any interim emergency regulations can become effective.

Response: This provision can only be invoked when, consistent with the Administrative Procedure Act, notice and comment are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)). Specific procedures for implementing such emergency regulations will be detailed in the site-specific regulations.

(9) One commenter recommended that a Federal mediation process was necessary to handle a situation where several Federal agencies disagree on sanctuary designation or the regulatory requirements which should be imposed.

Response: NOAA has determined that a formal mediation process unique to marine sanctuaries is not needed. If interagency disputes do arise over designation or implementing regulations, the Executive Office of the President can mediate.

(10) With respect to § 922.31(d) and 922.31(a)(2), one reviewer suggested that the term "public" be inserted into these sections to ensure that the meetings are in fact "public meetings."

Response: This has been done.

(11) With respect to § 922.32(e), one reviewer suggested it would be helpful if this section briefly indicated the purpose of the public hearing, as indicated in section 302(e) of the Act.

Response: An explanation has been added.

(12) One reviewer requested that the regulations reflect that the designation of a sanctuary be consistent with an affected state's approved coastal management program.

Response: This has been done, see § 922.32(a)(1).

(13) One reviewer suggested that specific provisions be added for withdrawal of designation.

Response: NOAA does not have sufficient guidance, either in the statute or from the legislative history, on which to base a process for withdrawing sanctuary designation since the statute and legislative history only speak to designating national marine sanctuaries.

APPENDIX 1—Several commenters suggested detailed changes to this Appendix.

Response: Appendix 1 has been revised and is incorporated into the regulations § 922.20(b). Appendix 2 has been deleted.

V. Other Actions Associated with the Notice of Final Rulemaking

(A) Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major "rules" within Section 1(b) of Executive Order 12291 because they will *not* result in:

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

The final rules amend existing procedures by providing greater selectivity and specificity in initially identifying and processing potential national marine sanctuaries in accordance with the Program Development Plan for the National Marine Sanctuary Program. These rules establish a revised process for

identifying, designating, and managing national marine sanctuaries. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts. They are intended to reduce delay and uncertainty in the site selection and approval process.

(B) Regulatory Flexibility Act Analysis

A Regulatory Flexibility Analysis is not required for this notice of proposed rulemaking. The regulations set forth procedures for identifying, selecting, and, if designated, managing national marine sanctuaries. These rules do not directly affect "small government jurisdictions" as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and the rules will have no direct effect on small businesses.

(C) Paper Work Reduction Act of 1980 (Pub. L. 96-511)

These regulations will impose no information collection requirements of the type covered by Pub. L. 96-511.

(D) National Environmental Policy Act

NOAA has concluded that publication of these rules does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Environmental protection, Marine resources, Natural resources.

(Federal Domestic Assistance Catalog Number 11.419 Coastal Zone Management Program Administration)

Dated: May 24, 1983

K. E. Taggart,

(Acting) Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, it is proposed that 15 CFR Part 922 be revised as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM

Subpart A—General

Sec.

922.1 Mission and Goals.

922.2 Definitions.

922.10 Effect of National Marine Sanctuary Designation.

Subpart B—Site Evaluation List (SEL)

922.20 Purpose of the Site Evaluation List.

922.21 Effect of Placement on the SEL or Selection as an Active Candidate.

922.22 SEL Time Frame and Consideration of New Sites.

Subpart C—Selection of Active Candidates and the Designation of National Marine Sanctuaries

Sec.

922.30 Selection of Active Candidates.

922.31 Designation Process.

922.32 Coordination with States.

Subpart D—Enforcement

922.40 Applicable Procedures.

Appendix 1—National Marine Sanctuary Site Identification and Selection Criteria.

Authority: Title III, Public Law 95-532, as amended (16 U.S.C. 1431-1434).

Subpart A—General

§ 922.1 Mission and goals.

(a) The mission of the National Marine Sanctuary Program (Program) is the establishment of national marine sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values. Designated sanctuaries should be illustrative of the nation's marine areas. Decisions to designate areas as national marine sanctuaries are based on an evaluation of the area's intrinsic natural resource and human use values and the impacts of various activities on these values.

Note.—Section 302(a) of the Act permits the Secretary of Commerce, with the approval of the President, to designate ocean areas as marine sanctuaries for "the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values." Decisions to designate an area are therefore based on the area's intrinsic values. For purposes of analysis, these regulations use the term "natural resource and human use values" to equate to the statutory language of "conservation, recreation, ecological, or esthetic values." The term "natural resource" value is synonymous with the "ecological" values referred to in the statute. The statute's terms "conservation," "recreational," and "esthetic" values are covered in the regulations as "human use values." The criteria for sanctuary identification and selection which are categorized into natural resource and human use values, are therefore based on the statute's terms "conservation, recreational, ecological, or esthetic values."

(b) The goals of the Program are to carry out this mission by designating national marine sanctuaries to:

(1) Enhance resource protection through the implementation of a comprehensive, long-term multiple use management plan tailored to the specific resources;

(2) Promote and coordinate research to expand scientific knowledge of significant marine resources to improve management decisionmaking in marine sanctuaries;

(3) Enhance public awareness, understanding, and wise use of the

marine environment through public interpretive and recreational programs; and

(4) Provide for multiple compatible public and private use of special marine areas.

(c) The National Marine Sanctuary Program will seek maximum public participation throughout all the stages that may lead to the designation of a sanctuary.

(d) Sanctuary size, while highly dependent on the nature of the site's resources, will be no larger than necessary to ensure the sanctuary's effective management. Sanctuaries will be limited to relatively small, geographically discrete marine areas. NOAA intends that the maximum size will not exceed that of the largest existing marine sanctuary at the time of the effective date of these regulations.

Note.—The criteria for active candidate selection explicitly includes size considerations in § 922.30(b)(4). The SEL selection criteria also includes size considerations under "Management Concerns" (Appendix 1.A. IV.).

§ 922.2 Definitions.

(a) "Act" means Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434.

(b) "Active Candidate" means a site selected by NOAA from the Site Evaluation List for further consideration leading to sanctuary designation.

(c) "Affected State" means any State in which a proposed marine sanctuary includes waters lying within the territorial limits of that State or superjacent to the subsoil and seabed within the seaward boundary of that coastal State.

(d) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration, United States Department of Commerce.

(e) "Assistant Administrator" (AA) means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, United States Department of Commerce, or his/her successor or designee.

(f) "Human use values", as used in these regulations, equates to the statutory language of "conservation," "recreational," and "esthetic" values (section 302(a)).

(g) "Marine areas" means those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention of the Continental Shelf (15 U.S.T. 74; TIAS 5578), of other coastal waters where the

tide ebbs and flows, or of the Great Lakes and their connecting waters.

(h) "National marine sanctuary" means a marine area, as defined above in paragraph (g), which is designated for the purpose of preserving or restoring such area for its conservation, recreational, ecological or esthetic values, as provided by section 302(a) of the Marine Protection, Research, and Sanctuaries Act of 1972.

(i) "Natural resource values" refers to the "ecological" values specified in the Act (section 302(a)).

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

(k) "Secretary" means the Secretary of the United States Department of Commerce.

(l) "Site Evaluation List" (SEL) means that list of high natural resource and human use value sites established by the AA as qualifying for further evaluation as national marine sanctuaries.

§ 922.10 Effect of national marine sanctuary designation.

The designation of a national marine sanctuary, and the management plan implementing it (including regulations, if applicable), are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of the United States, and the management plan implementing it applies to foreign citizens only to the extent consistent with recognized principles of international law or otherwise authorized by international agreement.

Subpart B—Site Evaluation List (SEL)

§ 922.20 Purpose of the Site Evaluation List.

(a) The List of Recommended Areas (LRA) is abolished. Sites on the prior LRA have no further status under these regulations, unless the site has been reselected and placed on the Site Evaluation List (SEL), as provided in § 922.22.

(b) In place of the LRA, the Assistant Administrator (AA) will establish a Site Evaluation List comprising the most highly qualified marine sites identified and recommended by the regional resource evaluation teams in accordance with the Program's mission and goals set forth in § 922.1 and the site identification and selection criteria

described in Appendix 1, which is incorporated into these regulations.

Note.—Procedures for SEL site identification and description of the regional resource evaluation teams (teams) are discussed in Chapter III.E of the Program Development Plan (PDP). The site identification criteria used by the teams and the criteria for SEL selection by NOAA are the same and are provided in Appendix 1. The teams' identification of sites for the SEL was based primarily on the area's natural resource values and human use values (See Appendix 1.A I and II). Sites recommended to NOAA for inclusion on the SEL were accompanied by a written analysis of the sites' natural resources and human use values. Sites from the Alaskan region are not included in the current SEL. NOAA's selection of sites for the SEL will be based on the area's natural resource and human use values, the potential activity impacts, and management concerns, including to the extent feasible, a preliminary consideration of the economic effects of sanctuary designation. (See Appendix 1.A. III and IV).

(c) After a preliminary analysis of the sites based on the criteria in Appendix 1, NOAA will publish a notice of availability of sites proposed for listing on the SEL in the Federal Register. These sites will be subject to a ninety-day comment period. At the conclusion of the comment period, NOAA will publish the final SEL in the Federal Register, based on the selection criteria and the public comments. For each site on the SEL, NOAA will prepare a written analysis of the site describing its values relative to the selection criteria in Appendix 1. Such analysis becomes part of the administrative record for that site.

(d) The SEL serves as NOAA's working list for future marine sanctuary sites; only sites on the SEL may be considered for subsequent review as active candidates for designation. Thus, the SEL provides a pool from which potential sanctuaries are considered.

§ 922.21 Effect of placement on the SEL or selection as an active candidate.

Placement of sites on the SEL or selection for further consideration as active candidates does not subject such sites to any regulatory controls under Federal law. Such regulations may only be established after designation, as provided under § 922.31.

§ 922.22 SEL time frame and consideration of new sites.

(a) As sites are designated as marine sanctuaries or rejected from further consideration, they will be removed from the SEL. Rejected sites will not be replaced on the SEL. Sites remaining on the SEL after a 5 year period will be reevaluated.

(b) If after the 5-year reevaluation, it is determined that a new SEL is necessary, notice of the initiation of a new SEL identification process will be published in the Federal Register at least twelve (12) months in advance. NOAA will reevaluate the prior SEL process, including the team approach, and determine, after public comment, how to design and implement a new site selection process.

(c) Unless a new identification process is established as provided in paragraph (b) of this section, the AA will consider future recommendations of potential sanctuary sites only if such sites are important new discoveries or if substantial new information previously unavailable establishes the national significance of a known site. NOAA will determine, in consultation with appropriate scientists, resource managers, and other interested parties, and after public review, whether such sites meet the selection criteria specified in Appendix 1. Qualified sites will be placed on the Site Evaluation List for further evaluation as national marine sanctuaries, consistent with the procedures set forth in these regulations.

Subpart C—Selection of Active Candidates and the Designation of National Marine Sanctuaries

§ 922.30 Selection of active candidates.

(a) Only a limited number of sites at one time will be selected from the SEL as active candidates and further evaluated for sanctuary designation.

(b) The AA will select sites from the SEL for Active Candidate consideration based on the evaluation contained in the written analysis developed in accordance with § 922.20(c), as well as the following additional factors:

(1) A primary reason for considering a site for marine sanctuary designation is the area's high natural resource and human use values. When selecting an active candidate, NOAA considers the site's relative contribution to the Program's mission and goals;

(2) A consideration of the immediacy of need for sanctuary designation based on the present or potential threats to resources, and the vulnerability of the resources. Consideration will also will be given to the cumulative effect of various human activities that individually may be insignificant.

(3) An evaluation of the benefits to be derived from sanctuary designation, including an assessment of the site's natural resource and human use values, the adequacy of existing management or regulatory regimes for protecting these resources, and the effectiveness of

NOAA's proposed management program.

(4) A consideration of the present feasibility of sanctuary designation in light of the sanctuary's size, requirements for managing the site, program staffing, and fiscal constraints; and

(5) An initial consideration of the economic impacts and benefits of sanctuary designation, including a consideration of the range of public and private uses which may be consistent with sanctuary designation.

(c) Before selecting a site as an active candidate, the AA shall undertake preliminary consultation on the considerations described in paragraph (b) of this section with relevant local, state, and Federal government agencies and appropriate regional fishery management councils. The AA also shall request comments from the public and any relevant international agencies. NOAA's written analysis described in § 922.20(c) will be provided for review. Notice of such preliminary consultation shall be published in the *Federal Register* and in newspapers in the area(s) of local concerns.

(d) Within 180 days of initiating preliminary consultation, the AA shall determine whether to select the site as an active candidate and publish a notice of this determination in the *Federal Register*. If the site is not selected, a short statement of the reasons for the negative determination shall be specified in the notice.

§ 922.31 Designation process.

(a) After selecting a site as an active candidate, the AA shall prepare a draft designation document, including the terms of the designation, and draft management plan to implement the designation in consultation with relevant Federal, state, and local agencies, Regional Fishery Management Council members, and other interested persons. Management plans generally shall include sections on: Goals and objectives, management responsibilities, resource studies, interpretive and educational programs, public and private uses consistent with sanctuary designation, and regulations (where applicable). A draft environmental impact statement (DEIS) will be prepared on the designation document and management plan, including draft regulations if applicable. The Plan and the EIS will be prepared in as timely a manner as possible allowing for maximum public input. The time period between active candidate selection and recommendation of the site to the Secretary for designation is not to exceed three (3) years, unless the AA

determines that additional time is needed for public discussion.

(b) The terms of designation shall include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, or esthetic values; and the types of activities that will be subject to regulation in order to protect those characteristics. The terms of the designation may be modified only by the same procedures through which the original designation was made. If regulations are promulgated, they shall be consistent with and implement the terms of the designation. Regulations relating to activities under the jurisdiction of one or more other Federal agencies will be developed in consultation with these agencies. All amendments to these regulations must remain consistent with the designation.

(c) Early in the development of the sanctuary documents and the DEIS, public meetings shall be held in the area or areas most affected to solicit public and government agency input on the significant issues related to the proposed action.

(d) The AA will publish the draft designation document and a summary of the management plan including the draft regulations, where applicable, in the *Federal Register*. The *Federal Register* notice shall be published concurrently with the Environmental Protection Agency (EPA) Notice of Availability of the DEIS. Not less than 30 days after publication of the applicable documents, the AA shall hold at least one public hearing in the area or areas most affected by the proposed designation in accordance with section 302(e) of the Act.

Note.—Section 302(e) of the Act provides that before a sanctuary is designated, public hearings must be held in the coastal areas which would be most directly affected by such designation. The purpose of the hearings is to receive and give proper consideration to the views of any interested party.

(e) After publication of a final environmental impact statement, and final consultation with all appropriate Federal agencies, including the Departments of State, Defense, the Interior, Transportation, Energy, and the Environmental Protection Agency, the Secretary shall transmit the proposed designation to the President for approval. Where sites include state waters, the applicable documents will be sent to the Governor of the State for final consultation, as provided under paragraph (h) (1) of this section.

(f) The AA shall announce the designation of a Sanctuary and publish the designation document and

implementing regulations in the *Federal Register*.

(g) A designation shall become effective unless either: (1) The governor of any affected State, as defined in § 922.2(c) certifies to the Secretary, before the end of the sixty-day period beginning on the date of the publication of the designation, that the designation or any of its terms described in paragraph (b), of this section are unacceptable to the state, in which case those terms certified as unacceptable will not be effective in the waters described in § 922.2(c) until the Governor withdraws his/her certification of unacceptability; or

(2) Both Houses of Congress adopt a concurrent resolution consistent with section 302(h) of the Act, within sixty calendar days of continuous session of Congress after the date on which the designation was transmitted, which disapproves the designation or any of its terms described in paragraph (b) of this section.

(h) After the designation becomes effective, and where essential to prevent immediate, serious and irreversible damage to the resources of a sanctuary, activities other than those listed in the designation may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which time an appropriate amendment of the terms of the Designation will be sought by the Secretary.

Note.—Specific emergency procedures will be provided in the regulations implementing individual sanctuaries.

§ 922.32 Coordination with States.

(a) The AA shall make every effort to consult and cooperate with affected states throughout the entire national marine sanctuary review and designation process. In particular the AA shall:

(1) Consult with the relevant state officials prior to selecting any site on the SEL as an Active Candidate, pursuant to § 922.30, especially concerning the relationship of any site to state waters and the consistency of the proposed designation with an approved State Coastal Zone Management Program. For purposes of consistency review by States with federally-approved coastal management programs, designation of a national marine sanctuary is deemed to be a Federal activity which directly affects the State's coastal zone and must be undertaken in a manner consistent to the maximum extent practicable as provided by section 307(c)(1) of the Coastal Zone Management Act of 1972,

as amended, and implementing regulations at 15 CFR Part 930 *et seq.*

(2) Ensure that any relevant state agency is consulted prior to holding any public meeting pursuant to § 922.31(d) or public hearing pursuant to § 922.31(e).

(3) Provide the Governor an opportunity to certify the designation as unacceptable as specified in § 922.31(h)(1).

(b) In accordance with section 302(f)(4) of the Act, where the need arises and a state agency possesses appropriate law enforcement capabilities that could assist the AA in carrying out the Act's responsibilities, state law enforcement officers may be deputized as Federal law enforcement agents and authorized to enforce those provisions of the Act and applicable regulations for the specific sanctuary.

Subpart D—Enforcement

§ 922.40 Applicable procedures.

NOAA will apply to all enforcement matters under the Act the consolidated civil procedure regulations, set forth at 46 FR 61643 (1981) (to be codified at 15 CFR 904.100 through 904.273), and the seizure, forfeiture, and disposal procedure regulations set forth at 46 FR 31648 (1981) (to be codified at 50 CFR Part 219).

Appendix 1—National Marine Sanctuary Site Identification and Selection Criteria

During the summer of 1981, the National Marine Sanctuary Program draft Site Identification and Selection Criteria were reviewed and refined by three marine scientists: Drs. Walter H. Adey, Rezneat M. Darnell, and G. Carlton Ray. Taking their recommendations into consideration, the criteria presented below were developed.

The criteria are directly related to the Program's mission and goals, see § 922.1. The criteria are grouped into four categories: (1) Natural resource values; (2) human use values; (3) potential activity impacts; and (4) management concerns. The criteria under each category reflect concerns significant to the Program.

The site identification and selection process is discussed in detail in the PDP, chapter III. The regional resource evaluation teams (teams), convened to recommend to NOAA areas for SEL consideration, focused on the (1) natural resource value and (2) human use value criteria (represented in sections I and II, below). These criteria are designed to insure that sites recommended to NOAA for SEL consideration have high natural resource and human use values.

In selecting sites for the SEL, NOAA also considers to the extent such information on the site is available, potential activity impacts and management concerns (as presented in sections III and IV, below). NOAA's selection of sites for the SEL is only the first of several determinations before sanctuary designation or subsequent rejection of a site as not qualified for

sanctuary status. [At the SEL stage NOAA's prime focus is on the site's natural resource and human use values.] The presence of such high values is a requisite or "minimum" requirement for NOAA's further consideration since the Act requires that sanctuaries be designated based on the site's "conservation, recreational, ecological, or esthetic values" (section 302(a)). Other, more specific issues are factored into NOAA's decision whether to select a site as an active candidate (see Subpart C of the regulations).

I. Natural Resource Values

A. Subregional Representation

The area under consideration is representative of the biogeographic subregion in which it is located (Reference: Sanctuary Program Classification System in the PDP).

Examples: This criterion would apply to an area containing species assemblages which are especially characteristic of the Oregonian subregion of the British Columbian region. Another example would be an area containing species assemblages which are especially characteristic of the Floridian or American Atlantic Antillean subregion of the West Indian region.

B. Community Representation

The area under consideration is significant in relation to the ecological communities which are found within the specified habitat type or within the biogeographic region or subregion (i.e., on a macroscale, communities as assemblages of species populations within a prescribed area or habitat).

Examples: (1) The wide spectrum of marine habitats in the Channel Islands National Marine Sanctuary in California created by accentuated bottom relief, varied bottom substrates, and gradation in water depth from island shorelines to deep coastal basins support a variety of ecological communities.

(2) Coral reef, grass bed, soft bottom, and open-bay habitat areas in the Key Largo National Marine Sanctuary support a variety of ecological communities associated with the east Florida reef tract.

C. Biological Productivity

The area under consideration is significant in relation to its level of primary and/or secondary production.

Examples: (1) East Breaks at the edge of the outer continental shelf off Corpus Christi, Texas, is characterized by intense local upwelling, high primary productivity, and exceptional fish production.

(2) In the Gray's Reef National Marine Sanctuary, much production may be imported; outcroppings of limestone rocks may serve to entrap, conserve, and circulate detritus and plankton which provide energy sources for reef invertebrates, which in turn support marine fisheries and sea turtles.

(3) In the Channel Islands National Marine Sanctuary, the cold waters of the California Current flowing south meet the warm waters of the California Counter Current flowing north to create upwellings of cold nutrient-rich waters that enhance the biological productivity of the area.

Note.—This example also meets Criterion I.F.)

(4) In many cases, coral reefs are not only energetically self-sustaining (i.e., they

produce locally enough food to support the community), but they are also specifically organized to entrap, hoard, and recycle materials received from the surrounding waters (i.e., products that are imported and conserved).

D. Biotic Character/Species Representation

The area under consideration is of special interest because it supports:

- (1) Ecologically limited species;
- (2) Ecologically important species; or
- (3) Unique species associations or biological assemblages.

Examples: (1) This criterion would apply to marine habitat areas upon which ecologically limited species (e.g., threatened, endangered, rare, depleted, endemic, or peripheral species) are dependent during all or part of their lives.

(2) This criterion would apply to marine areas containing species which contribute in a significant way to the maintenance of a specified ecosystem found in the region or subregion, such as the Channel Islands National Marine Sanctuary which supports one of the largest and most varied assemblages of marine mammals and seabirds in the world.

(3) The waters of Point Lobos, California, support a unique assemblage of kelp, sea urchin, abalone, and sea otters.

(4) Submarine canyons support unusual biological communities of soft corals, crustaceans, and fish, and are known as "pueblo villages."

(5) This criterion would also apply to wide sandy bottom areas which are characterized by low productivity, but unique species composition, such as certain areas off central Texas.

E. Species Maintenance

The area under consideration is important to life history activities, including special feeding, courtship, breeding, birthing/nursery, resting/wintering, and migration areas.

Examples: (1) The waters off the Point Reyes-Farallon Islands provide deep and shallow water feeding areas for a wide variety of marine organisms, including seabirds, marine mammals, and marine fisheries. The Farallon Islands support the largest seabird rookeries in the contiguous United States and are used, along with the mainland, by California lions, harbor seals, and elephant seals for hauling out and pupping purposes. Whales, including several endangered species, and porpoise pass through the sanctuary on annual migrations.

(2) The waters around certain Hawaiian Islands are important wintering, birthing/nursery, and perhaps courtship/breeding areas for endangered whales.

(3) Spiny lobster migration routes off Florida are important for the "off shelf" movement of this species.

(4) The mouth of the Mississippi River is an important brown shrimp over-wintering ground.

F. Ecosystem Structure/Habitat Features

The area under consideration is characterized by special chemical, physical, and/or geological habitat features.

Examples: (1) The Florida Middle Grounds on the Gulf of Mexico continental shelf represent an unusual geological formation—a drowned Pleistocene reef—which supports rich and diverse reef communities.

(2) Transition zones occur where two different marine systems converge—such as at coastal/marine system interfaces, shelf/slope interfaces, soft bottom/hard bottom ecotones, or cold water/warm water current convergence zone. These areas of mixing often have unique physical and ecological characteristics, high production, and species diversity/population densities which are often greater than in areas flanking them. For example, a transition zone is formed near Cape Hatteras where cold northern waters of the Labrador Current mix with warm water eddies of Gulf Stream/Florida Current and as a result, northern and southern species mix and co-exist with species endemic to the area.

Note.—This example also meets Criterion I.C.)

(3) Easternmost coastal areas of Maine—with unique bay-heads and rocky coasts, varied substrates derived from glacial materials, extensive sub-fjord character, and numerous offshore islands—are matched by few areas in the world in habitat types and species diversity.

II. Human-Use Values

A. Fishery Resources of Recreational Importance

The area under consideration contains fish and shellfish species, species groups (e.g., snapper-grouper complex), or fishery habitats which are important to the recreational fishing industry/community and for which conservation and management are in the public interest.

B. Fishery Resources of Commercial Importance

The area under consideration contains fish and shellfish species, species groups (e.g., snapper-grouper complex), or fishery habitats which are important to the commercial fishing industry and for which conservation and management are in the public interest.

C. Ecological/Esthetic Resources of Importance for Recreational Activities Other Than Fishing

The area under consideration contains exceptional natural resources and features which, because of their importance to nature watching and other nonconsumptive recreational activities, enhance human appreciation, understanding, and enjoyment of nature.

Examples: (1) Rocky shorelines, shallow nearshore waters, and intertidal pools in the Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries have rich and varied plant and animal life which attract many persons interested in photography and nature study.

(2) The prominent topography around the Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries provides outstanding ocean vistas.

(3) The spectacular spur-and-groove coral reef formation in the Looe Key National Marine Sanctuary attracts SCUBA and

snorkeling enthusiasts from all over the world.

(4) The waters off Maui, Hawaii, are popular for humpback whale watching.

D. Research Opportunity

The area under consideration provides exceptional opportunities for research in marine science and resource management.

Examples: (1) The Gray's Reef National Marine Sanctuary serves as a natural laboratory or control area for research in live bottom ecology.

(2) The Key Largo National Marine Sanctuary is amenable to onsite research activities for many reasons, including the diversity of resources available, the past history of scientific research and education in the area, the compatibility with similar research efforts in adjacent John Pennekamp State Park and Biscayne National Park, and the proximity of the site to user groups. In addition, the Carysfort Reef Lighthouse provides a unique research base from which to launch studies concerning the sanctuary environment.

(3) The Channel Islands National Marine Sanctuary offers a special opportunity to coordinate research with the Channel Islands National Park. Such coordination will contribute to a better scientific understanding of the marine environment and to more effective management by answering questions such as those related to fisheries, marine mammals, seabirds and those related to development and use of marine resources.

E. Interpretive Opportunity

The area under consideration provides an excellent opportunity to interpret the meanings and relationships of special marine resources in order to enhance general understanding, appreciation, and wise use of the marine environment.

Examples: (1) Through a variety of interpretive media, including aquaria displays, narrated slide shows and glassbottom boat tours, a visitor to the Key Largo National Marine Sanctuary is exposed to a variety of marine and coastal ecosystems, including open ocean, fringing coral reefs, patch reefs, mangroves, open bay, and barrier islands.

(2) The Channel Islands National Marine Sanctuary provides an exceptional opportunity to interpret marine and insular ecosystem features through the use of various interpretive "hands on" techniques that go beyond traditional educational tools, such as brochures and pamphlets.

F. Historical, Archaeological or Paleontological

The area under consideration contains (or is likely to contain) submerged remnants of past life that are of special historical, cultural or paleontological value.

Examples: (1) This criterion would apply to marine areas where known or possible shipwrecks, armaments, or other maritime relics occur and where protection is desirable to conserve or restore esthetic values and to advance the goal of the United States antiquities laws to protect historical resources.

(2) This criterion would apply to marine areas containing, or suspected of containing,

remnants of historic human occupation by Indians, Eskimos, early Americans, or other peoples.

(3) This criterion would apply to marine areas containing fossils and geological formations whose study would reveal clues to the Earth's geologic history, the characteristics of ancient environments and the relationship of ancient plants and animals to the Earth's evolutionary history.

Additional Factors in Site Identification and Selection

III. Potential Activity Impacts

Many marine areas are subject to human use, some of which bring adverse pressures to bear on the natural resources. Where applicable, initial identification of potential marine sanctuary areas includes a summary of existing and potential human activities in these areas as well as a preliminary assessment of environmental impacts. To the extent such information is available, NOAA's selection of sites for the SEL will consider impacts of human activities on the area's natural resource and human use values, as well as the impacts of site selection on human activities already taking place within the site.

IV. Management Concerns

A. Relationship to Other Programs

While some sanctuaries may be designated to protect resources not currently managed by other existing programs (e.g., the U.S.S. MONITOR on the continental shelf off North Carolina), most recommendations involved cooperation with some other Federal, State, local agency or organization. The ability of existing regulatory mechanisms to protect the values of the area and the contribution of the Sanctuary Program to that existing management effort may be an important factor in selecting sanctuary candidates. Depending on the location, the resource, and the existing system, the Program could either complement the status quo by filling specific gaps or form a management umbrella over a fragmented system to help coordinate and strengthen diverse, but related efforts. At different sites, NOAA may work to complement other programs' efforts such as estuarine sanctuaries, national parks, wildlife refuges, or state preserves, among others. There may be instances where NOAA's primary contribution to protection of special marine areas will be in the form of enhanced public awareness through interpretive and research programs.

B. Management of a Conservation Unit

Optimum size of a marine sanctuary is an issue to be considered in potential sanctuary sites. The size or extent of a marine sanctuary should be a cohesive conservation unit amenable to effective management given fiscal and staff constraints of the managing entities.

C. Accessibility

Since national marine sanctuaries are to be readily available for public use, when use is compatible with the sanctuary's goals and objectives, consideration should be given to

factors which limit or enhance public access to a particular site.

D. Surveillance and Enforcement

Another issue to be considered when evaluating a potential sanctuary site is the degree to which the area lends itself to adequate enforcement and surveillance and the capabilities of responsible agents (e.g., U.S. Coast Guard, state law enforcement divisions, or the like). This depends on the location, its size, and the types of resources involved. Consideration is also given to: (1) Degree of surveillance/enforcement presence needed in the area—light, medium, or heavy; (2) schedule—routine, prescribed, or case-by-case basis; and (3) logistics—vessels, aircraft, manpower, equipment, and budgetary requirements.

E. Economic Considerations

The designation of a national marine sanctuary may have economic effects at both local and national levels. Prior to the development of a management plan for a particular site which describes the uses and activities which may take place within a sanctuary, it is difficult to calculate fully the economic impact of sanctuary designation. It is also difficult to determine, at the SEL stage, the economic benefits of the sanctuary to society as a whole based on such considerations as public use, and research and interpretive values which will also be fully described in a management plan. Sanctuary designation may, in some cases, enhance economic value by insuring long-term protection for commercially significant

resources, such as commercial or recreational fish stocks, vital habitats, and resources which generate tourism. Conversely, a designated marine sanctuary may have negative economic impacts if management regulations unduly restrict commercial activities.

To the extent, feasible, a decision to include a proposed site on the SEL will take into consideration the economic effects of sanctuary designation. As consideration of a particular site progresses through the designation process, more information will be developed and analyzed concerning the economic efforts to sanctuary designation.

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