

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-33." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating a 700-foot transition area at NALF Goliad Airport, Berclair, TX. The development of an instrument approach procedure to NALF Goliad Airport by the Department of Navy entails the designation of a transition area at Berclair, TX, at and above 700 feet above ground level

within which aircraft are provided air traffic control services. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under IFR and other aircraft operating under VFR. This proposed action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety. Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Berclair, TX [New]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the NALF Goliad Airport (latitude 28°36'30" N., longitude 97°36'33" W.) within 4 miles each side of the 315° radial of the Goliad TACAN (latitude 28°37'25" N., longitude 97°37'30" W.) extending from the 8.5-mile radius area to 11.5 miles northwest of the airport; excluding that portion that coincides with the Beeville, TX Transition Area.

Issued in Fort Worth, TX on August 14, 1987.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 87-19736 Filed 8-27-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 942**

[Docket No.]

Cordell Bank National Marine Sanctuary Regulations

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

ACTION: Proposed rule; notice of proposed designation; summary of draft management plan; and notice of public availability of draft management plan and draft environmental impact statement.

SUMMARY: The National Oceanic and Atmospheric Administration, by the proposed Designation Document contained in this notice, proposes to designate an area of marine waters encompassing a total of 101.10 square nautical miles surrounding Cordell Bank, which is located approximately 50 nautical miles west-northwest of San Francisco, California, as the Cordell Bank National Marine Sanctuary. By this notice, NOAA also proposes to issue regulations to implement the proposed designation and regulate activities in the sanctuary consistent with the provisions in the proposed Designation Document. The notice also summarizes the draft management plan prepared for the proposed sanctuary which details the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance, activities for the area. Finally, the notice announces the public availability of the draft management plan and the draft environmental impact statement prepared for the proposed designation, the proposed implementing regulations, and the draft management plan.

Before an area may be designated as a national marine sanctuary, section 303 of the Marine Protection, Research, and Sanctuaries Act, as amended (16 U.S.C.

1433) ("Act") requires that the Secretary of Commerce make a number of statutory findings and section 304 (16 U.S.C. 1634) requires that this subject notice be published in the *Federal Register* and that a variety of other actions to be taken.

The purpose of this notice is to comply with the provisions of section 304 with respect to a proposal to designate an area as a national marine sanctuary and to invite public comments on the proposal and the proposed rules, and to announce the availability of, and to request public comments on, the draft management plan and the draft environmental impact statement.

After the close of the comment period and consideration of the comments received, and review by the Congress and the consultations specified in section 304, the findings specified in section 303 will be made and the other actions specified in section 304 will be taken including the publication of a notice of designation together with final regulations implementing the designation, or a notice withdrawing the proposed designation will be published.

DATE: Comments will be considered if received by October 27, 1987.

ADDRESSES: Send comments to Vickie A. Allin, Acting Chief, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. Copies of the draft management plan and the draft environmental impact statement are available upon request to the Office of Ocean and Coastal Resource Management.

FOR FURTHER INFORMATION CONTACT: William W. Windom, 202/673-5122.

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

resource protection, scientific research, and public education; (3) designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and (4) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

Before the Secretary may designate an area as a national marine sanctuary, section 303 (16 U.S.C. 1433) requires him to make the above described statutory findings and section 304 (16 U.S.C. 1434) requires him to issue this subject notice in the *Federal Register* and take a variety of other actions including preparation of a draft management plan for the sanctuary and a draft environmental impact statement.

The authority of the Secretary to designate national marine sanctuaries and administer the other provisions of the Act have been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management in the National Oceanic and Atmospheric Administration (DOC/DOO 25-5A, section 301(z), August 25, 1985).

The waters surrounding Cordell Bank were nominated for status as a national marine sanctuary in July 1981. On June 30, 1983, NOAA declared the area an active candidate for further consideration as a national marine sanctuary. A public scoping meeting to gather information to determine the range and significance of issues related to sanctuary designation and management was held on April 25, 1984.

Cordell Bank and its surrounding waters, because of a rare combination of oceanic conditions and undersea topography, provide a highly productive marine environment in a discrete, well defined area. The prevailing California Current flows southward along the coast bringing nutrients to the upper levels of the Bank, while the upwelling of nutrient-rich, bottom waters stimulates the growth of planktonic organisms. These nutrients support the entire food chain from small crustaceans to the fish, marine mammals and seabirds that form the exceptionally vigorous, ecological community flourishing at Cordell Bank. Designation of the area as a national marine sanctuary is proposed for the purposes of protecting and conserving this special ecological community.

With regard to a proposal to designate an area as a national marine sanctuary, section 304(a)(4) requires that the proposed designation include the geographic area proposed to be included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical,

research, educational or esthetic value; and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. As specified in section 304(a)(4), the terms of the designation may be modified only by the same procedures by which the original designation was made. Thus the designation serves as a constitution for the sanctuary.

The following proposed Designation Document, proposes to designate a 101.10 square nautical mile portion of the waters surrounding Cordell Bank, which is located approximately 50 nautical miles west-northwest of San Francisco, California, as the Cordell Bank National Marine Sanctuary.

Proposed Designation Document for The Cordell Bank National Marine Sanctuary

Under the authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 *et seq.*, the Cordell Bank and its surrounding waters offshore northern California, as described in Article 2, are hereby designated as a National Marine Sanctuary for the purposes of protecting and conserving the special ecological community residing therein.

Article 1. Effect of Designation

Within the area designated as the Cordell Bank National Marine Sanctuary (the Sanctuary) described in Article 2, the Act authorizes the promulgation of such regulations as are necessary and reasonable to protect the conservation, recreational, ecological, historical, research, educational, or esthetic values of the Sanctuary. Article 4 of this Designation Document lists those activities which have been identified as activities that may require regulation now or in the future in order to protect sanctuary resources. Listing, however, does not by itself imply that an activity will be regulated. Such restrictions may be imposed only by specific regulation. Activities not already listed may be regulated only by amending Article 4 by the same procedures through which the original Designation was made.

Article 2. Description of the Area

The Sanctuary consists of the Cordell Bank and the area of waters within 3 nautical miles beyond the 50 fathom depth contour surrounding The Bank. The Sanctuary encompasses 101.10 square nautical miles. The precise boundaries are defined by regulation.

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

Cordell Bank is characterized by a combination of oceanic conditions and diverse topography that provides for a highly productive environment in a discrete, well-defined area. The Bank consists of a series of steep-sided ridges and narrow pinnacles rising from the edge of the continental shelf. It lies on a plateau 300–400 feet (91 to 122 meters) deep and ascends to within about 115 feet (35 meters) of the surface. The prevailing California Current flows southward along the coast bringing nutrients to the upper levels of the Bank, while the upwelling of nutrient-rich, bottom waters stimulates the growth of planktonic organisms. These nutrients, combined with high light penetration in Bank waters and wide depth ranges in the vicinity, have led to a unique association of subtidal and oceanic species. The vigorous, biological community flourishing at Cordell Bank includes an exceptional assortment of algae, invertebrates, fish, marine mammals and seabirds.

Article 4. Scope of Regulation

Section 1.—Activities Subject to Regulation

To protect the Sanctuary's distinctive features, the following activities may be regulated within the Sanctuary and adjacent waters to the extent necessary and reasonable to ensure the protection of the Sanctuary's conservation, recreational, ecological, historical, research, education or esthetic values:

- a. Depositing or discharging any material or substance;
- b. Removing or damaging hydrocoral and other resources; and
- c. Hydrocarbon (oil and gas) activities will not be subject to regulation at this time but may be regulated in the future if deemed necessary for resource protection.

Section 2.—Consistency with International Law

The regulations governing activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3.—Emergency Regulations

Regulations are essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities, including those not listed in Section 1 of this Article, may be

regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1.—Fishing

The regulation of fishing is not authorized under Article 4. Fishing vessels, however, may be regulated with respect to discharges in accordance with Article 4, Section 1, paragraph (b). All regulatory programs pertaining to fishing, including Fishery Management Plans promulgated under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, will remain in effect. All permits, licenses, and other authorizations issued pursuant to the Magnuson Act shall be valid within the Sanctuary subject only to the activity regulations issued pursuant to Article 4.

Section 2.—Defense Activities

The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. All activities currently carried out by the Department of Defense within the area of the proposed Sanctuary are necessary for the national defense and, therefore, are not subject to Sanctuary prohibitions. Additional activities having the potential for significant environmental impact may be exempted after consultation between the Department of Commerce and the Department of Defense.

Section 3.—Other Programs

All applicable regulatory programs shall remain in effect, and all permits, licenses, and other authorizations issued pursuant to those authorities shall be valid, subject only to the regulation of activities pursuant to Article 4.

Article 6. Alterations to this Designation

This designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the Pacific Fishery Management Council, review by the appropriate Congressional committees, and approval by the Secretary of Commerce or his designee.

End of Designation Document.

Additional Information

Section 304 requires the Secretary to submit to the Committee on Merchant

Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the same day as this notice is published, a prospectus on the proposal which must contain, among other things, the terms of the proposed designation, the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the area, and a draft environmental impact statement. In accordance with section 304, the required prospectus has been submitted to the Congressional committees and the required draft management plan is summarized below. Copies of the draft management plan are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

Summary of Draft Management Plan

The draft management plan for the proposed sanctuary sets forth the sanctuary's location and provides details on the important resources and uses of the sanctuary. An action plan describes the resource protection, research, and interpretive programs and details the specific activities to be taken in each program. The administrative section of the plan includes a detailed breakdown, by program area, of agency roles and responsibilities. The sanctuary goals and objectives are:

Resource Protection

The highest priority management goal is to protect the marine environment and resources of the Cordell Bank National Marine Sanctuary. The specific objectives of resource protection efforts are to:

- Prevent injury to the resources by promulgating regulations to protect them from the adverse effects of harmful effluents and solid wastes and from being damaged or taken by divers;
- Establish cooperative agreements and other mechanisms for coordination among the agencies participating with NOAA in sanctuary management;
- Develop an effective and coordinated program for the enforcement of sanctuary regulations;
- Promote public awareness of, and voluntary user compliance with, regulations through an interpretive program stressing resource sensitivity and wise use; and
- Reduce threats to sanctuary resources raised by major emergencies through contingency and emergency-response planning.

Research

The purpose of sanctuary research activities is to improve understanding of the Cordell Bank environment and resources and to resolve specific management problems, some of which may involve resources common to both the Bank and the nearby Point Reyes-Farallon Islands National Marine Sanctuary. Research results will be used in interpretive programs for visitors and others interested in the sanctuary, as well as for resource protection. Specific objectives for the research program are to:

- Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improved management of the sanctuary;
- Gather baseline data on the physical, chemical and biological oceanography of the sanctuary;
- Initiate a monitoring program to assess environmental changes as they occur;
- Identify the range of effects on the environment that would result from predicted changes in human activity;
- Incorporate research results into the interpretive program in a format useful to the general public; and
- Encourage information exchange among all the organizations and agencies undertaking research in the sanctuary to promote more informed management.

Interpretation

The goal for interpretive programs is to improve public awareness and understanding of the significance of the sanctuary and the need to protect its resources. The management objectives designed to meet this goal are to:

- Provide the public with information on the sanctuary, its goals and objectives, with an emphasis on the need to use these resources wisely to ensure their long-term viability;
- Broaden support for the sanctuary and sanctuary management by offering programs suited to visitors with a range of diverse interests;
- Provide for public involvement by encouraging feedback on the effectiveness of interpretive programs, collaboration with sanctuary management staff in extension and outreach programs, and participation in volunteer programs; and
- Collaborate with other organizations to provide interpretive services complementary to the sanctuary program.

Visitor Use

The sanctuary goal for visitor management is to encourage commercial and recreational use of the sanctuary compatible with resource protection. Specific management objectives are to:

- Provide relevant information about sanctuary regulations, use policies and standards;
- Collaborate with public and private organizations in promoting compatible use of the sanctuary by exchanging information concerning the commercial and recreational potential of the sanctuary; and
- Assess the current levels of use and monitor use over time to identify and control potential degradation of resources and minimize potential user conflicts.

Executive Order 12291

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

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

The regulations proposed in this notice would prohibit only a narrow range of activities (depositing or discharging materials or substances in or near the proposed sanctuary which could injure the sanctuary and removing or damaging benthic organisms on the ridges and peaks of Cordell Bank) in a relatively small portion of the seas, would establish procedures whereby permits to conduct an otherwise prohibited activity could be applied for and obtained for a narrow range of purposes, and set forth the maximum per day penalty for conducting a prohibited activity. Thus, the proposed regulations, if adopted, are expected to have little or no direct or indirect economic impact and no adverse direct or indirect environmental effects.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified

to the Chief Counsel for Advocacy of the Small Business Administration that these proposed rules, if adopted, will not have a significant economic impact on a substantial number of small entities because the proposed regulations would have no effect on small business or small government jurisdictions. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. 96-511). The collection of information is necessary for the effective management of the proposed sanctuary. The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Comments from the public on the collection of information requirement are specifically invited and should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, Attention: Desk Officer for the Department of Commerce, NOAA.

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 through 4370(a)), a draft environmental impact statement has been prepared for the proposed designation and the proposed regulations. As required by section 304(a)(2), the draft environmental impact statement includes the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1434(b)(3)), maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area. Copies of the draft environmental impact statement are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

List of Subjects in 15 CFR Part 942

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

(Federal Domestic Assistance Catalog Number 11.429 National Marine Sanctuary Program)

Date: August 19, 1987.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR is proposed to be amended as follows:

1. Part 942 is added to read as follows:

PART 942—CORDELL BANK NATIONAL MARINE SANCTUARY

Sec.

942.1 Authority.

942.2 Purpose.

942.3 Boundary.

942.4 Definitions.

942.5 Allowed activities.

942.6 Prohibited activities.

942.7 Penalties.

942.8 Permit applications—procedures and criteria.

942.9 Appeals of administrative action.

942.10 Other authorities.

Appendix I—Cordell Bank National Marine Sanctuary Boundary Coordinates

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

§ 942.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *seq.* (the Act). The regulations in this part are issued pursuant to the authority of sections 303(a), 304, 305, and 307 of the Act.

§ 942.2. Purpose.

The purpose of designating the Sanctuary is to protect and conserve the discrete, highly productive marine area of the Cordell Bank and its surrounding waters and to ensure the continued availability of the area as an ecological, research and recreational resource.

§ 942.3. Boundary.

The Sanctuary consists of an area of marine waters 50 miles west-northwest of San Francisco, California. The boundary, encompassing 101.10 square nautical miles, follows a line that includes all waters within three nautical miles beyond the fifty fathom depth contour surrounding Cordell Bank. The boundary coordinates are listed in the appendix following § 942.10.

§ 942.4. Definitions.

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

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, or his/her successor or designee.

(c) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, NOAA or designee.

(d) "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.

(e) "The Sanctuary" means the Cordell Bank National Marine Sanctuary.

(f) "Injure" means to adversely change, either in the long- or short-term, a chemical or physical quality of, or the viability of, a sanctuary resource.

§ 942.5 Allowed activities.

All activities except those specifically prohibited by § 942.6 may be conducted within the Sanctuary subject to all other prohibitions, restrictions, and conditions imposed by any other authority.

§ 942.6 Prohibited activities.

(a) Except as may be necessary for national defense, in accordance with Article 5, Section 2 of the Designation Document, or as may be necessary to respond to an emergency threatening life, property or the environment, the following activities are prohibited unless permitted by the Assistant Administrator in accordance with § 942.8.

(1) *Depositing or discharging materials or substances.*

(i) Depositing or discharging, from any location within the boundary of the Sanctuary, of materials or substances of any kind except:

(A) Fish or parts of chumming materials (bait); and

(B) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by:

(1) Marine sanitation devices;

(2) Routine vessel maintenance, e.g., deck wash down;

(3) Engine exhaust; or

(4) Meals on board vessels.

(ii) Depositing or discharging, from any location beyond the boundary of the Sanctuary, materials or substances of any kind which may reasonably be expected to enter the Sanctuary and injure Sanctuary resources.

(2) *Removing or damaging resources.* Attempting to damage or damaging, or attempting to remove or removing, benthic organisms on the ridges and peaks of Cordell Bank.

(b) Any activity currently being carried out by the Department of Defense within the Sanctuary is exempt

from the prohibitions of this section. Additional activities of the Department of Defense may be exempted by the Assistant Administrator after consultation between the Department of Commerce and the Department of Defense.

(c) The prohibitions in this section will be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other international agreements to which the United States is a party

§ 942.7 Penalties.

(a) Section 307(b) of the Act authorizes the assessment of a civil penalty of not more than \$50,000 for each violation of any regulation issued pursuant to the Act. Each day of a continuing violation shall constitute a separate violation. Section 307(b)(3) further authorizes a proceeding in *rem* against any vessel used in violation of any regulation and for which a civil penalty has been assessed.

(b) Regulations setting forth the administrative procedures governing the assessment of civil penalties for violating the regulations in this part, hearings and appeals, permit sanctions and denials, and the issuance of written warnings appear at 15 CFR Part 904. Regulations setting forth the administrative procedures applicable to seizures, forfeitures, and disposals appear at 50 CFR Part 219.

(c) For violations of § 942.6(a)(1)(ii) of these regulations, a penalty may be assessed for those materials or substances discharged which enter the Sanctuary and injure Sanctuary resources.

§ 942.8 Permit applications—procedures and criteria.

(a) If a person wishes to conduct an activity prohibited under § 942.6, that person must apply for, receive, and be in possession of a valid permit issued pursuant to this Part authorizing that person to conduct that activity.

(b) Permit applications shall be addressed to the Assistant Administrator, Ocean Services and Coastal Zone Management; ATTN: Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. An application shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant

experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) Upon receipt of a complete application, the Assistant Administrator may seek the views of any person or entity, within or outside the Federal Government, and may hold a public hearing, in his or her discretion.

(d) The Assistant Administrator, in his or her discretion, may issue a permit subject to such conditions as deemed appropriate, to conduct an activity otherwise prohibited by § 942.6, if the Assistant Administrator finds that the activity will: Further research related to Sanctuary resources; further the educational value of the Sanctuary; further the recovery of archeological artifacts from or near the Sanctuary; or assist NOAA in managing the Sanctuary. In deciding whether to issue a permit, the Assistant Administrator may consider such factors as: The professional qualifications and financial ability of the applicant as related to the proposed activity; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was signed; and the end value of the applicant's overall activity.

(e) A permit issued pursuant to this section is nontransferrable.

(f) The Assistant Administrator may amend, suspend or revoke a permit issued pursuant to this section, in whole or in part, if the Assistant Administrator determines that the permittee has acted in violation of the terms of the permit or of these regulations or that other good cause exists for amending, suspending or revoking the permit. Any such action shall be communicated in writing to the permittee, and shall set forth the reason(s) for the action taken.

§ 942.9 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, an applicant for a permit, a permittee, or any other interested person (hereinafter appellant) may appeal the grant, denial, conditioning or suspension of any permit under § 940.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed and the reason(s) therefor, and must be submitted within 30 days of the action(s) by the Assistant

Administrator. The Administrator, in his or her discretion, may hold an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the

Administrator may request the appellant, the permit applicant or permittee, if other than the appellant, or any person or entity, within or outside the Federal Government, to submit such information as the Administrator may deem appropriate in order to decide the appeal. The Administrator shall decide the appeal based on the record before the Assistant Administrator and the record of the appeal. The Administrator will notify the appellant of the final decision and the reason(s) therefor in writing, normally within 30 days of the date of the receipt of adequate information to make the decision.

(c) If the Administrator determines that an informal hearing should be held, the Administrator may designate an officer before whom the hearing shall be held. Notice of the time, place, and subject matter of the hearing shall be published in the **Federal Register**. Such hearing shall be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant or permittee and other interested persons may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the conclusion of the hearing, the hearing officer shall recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify the appellant and other interested persons of his/her decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's decision shall constitute a final agency action for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended by the Administrator for good cause for a period not to exceed 30 days, either upon his/her own motion or upon written request from the appellant, permit applicant or permittee, stating the reason(s) therefor.

§ 942.10 Other authorities.

(a) All permits, licenses, and other authorizations issued pursuant to any other authority are valid within the Sanctuary subject only to the activity restrictions set forth in § 942.6.

APPENDIX I—CORDELL BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Point No.	Latitude	Longitude
1	37°58' 1678"	123°19' 0126"
2	37°59' 5988"	123°18' 5801"
3	38°00' 5453"	123°19' 2220"
4	38°02' 1971"	123°19' 5129"
5	38°03' 2099"	123°20' 1780"
6	38°03' 5204"	123°20' 4616"
7	38°04' 4802"	123°21' 3862"
8	38°05' 3092"	123°23' 2611"
9	38°06' 0713"	123°24' 0221"
10	38°06' 4362"	123°25' 1593"
11	38°07' 2385"	123°26' 4822"
12	38°07' 3434"	123°27' 5375"
13	38°07' 1286"	123°29' 4704"
14	38°06' 2381"	123°31' 1138"
15	38°04' 3460"	123°32' 5298"
16	38°03' 3861"	123°33' 1585"
17	38°01' 5683"	123°32' 5877"
18	38°00' 5402"	123°32' 3439"
19	38°00' 0592"	123°31' 2512"
20	37°59' 0238"	123°31' 1289"
21	37°57' 2470"	123°29' 42' 5"
22	37°56' 3979"	123°28' 4083"
23	37°55' 4343"	123°27' 5149"
24	37°54' 4914"	123°26' 0927"
25	37°54' 3846"	123°24' 0940"
26	37°55' 0103"	123°22' 2934"
27	37°57' 1773"	123°19' 4460"

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Activities of Self-Regulatory Organization Governing Members Who Possess Material, Nonpublic Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing amendments to Regulation 1.59, § 1.59(a) (9) and (c), which would require self-regulatory organizations to adopt rules prohibiting, in accordance with the standards contained in the regulation, disclosure or other improper use of material, non-public information by members of self-regulatory organization governing boards or committees, and which would require contract markets and clearing organizations to adopt rules requiring the immediate publication, except for good cause shown, of final decisions of contract market and clearing