1 of 3

ENVIRONMENTAL GUIDANCE PROGRAM REFERENCE BOOK

MARINE PROTECTION, RESEARCH, AND
SANCTUARIES ACT

AND

MARINE MAMMAL PROTECTION ACT

Prepared for

ASSISTANT SECRETARY FOR ENVIRONMENT,
SAFETY AND HEALTH

OFFICE OF ENVIRONMENTAL GUIDANCE
AND COMPLIANCE

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DISTRIBUTION STATEMENT A

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January 31, 1988
Revision 3

PREFACE

This Reference Book contains a current copy of the Marine Protection, Research, and Sanctuaries Act and the Marine Mammal Protection Act and those regulations that implement the statutes and appear to be most relevant to DOE activities. The document is provided to DOE and contractor staff for informational purposes only and should not be interpreted as legal guidance. Questions concerning this Reference Book may be directed to Timothy Harms, EH-231 (FTS: 896-6073).

UPDATE INSTRUCTIONS
ENVIRONMENTAL GUIDANCE PROGRAM REFERENCE BOOK
MARINE PROTECTION, RESEARCH, AND
SANCTUARIES ACT
AND
MARINE MAMMAL PROTECTION ACT

January 31, 1988

This Reference Book on the Marine Protection, Research, and Sanctuaries Act and the Marine Mammal Protection Act has been completely revised and is current through January 31, 1988.

Instructions for updating the Reference Book with January 31, 1988, revision 3 materials are as follows:

- o Remove all existing materials, Sections 1-4, and replace with new materials in a loose-leaf binder.

Any information regarding modifications in the distribution list of this Reference Book, including additions, deletions, and address changes, should be conveyed to Timothy Harms by calling him (FTS: 896-6073) or by sending them to him at the following address:

Timothy C. Harms
U. S. Department of Energy
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SECTION 1. SUMMARY

Two laws governing activities in the marine environment are considered in this Reference Book. The Marine Protection, Research, and Sanctuaries Act (MPRSA, P.L. 92-532) regulates ocean dumping of waste, provides for a research program on ocean dumping, and provides for the designation and regulation of marine sanctuaries. The Marine Mammal Protection Act (MMPA, P.L. 92-522) establishes a federal program to protect and manage marine mammals. The Fishery Conservation and Management Act (FCMA, P.L. 94-265) establishes a program to regulate marine fisheries resources and commercial marine fishermen. Because the Department of Energy (DOE) is not engaged in any activities that could be classified as fishing under FCMA, this Act and its regulations have no implications for the DOE; therefore, no further consideration of this Act is given within this Reference Book. The requirements of the MPRSA and the MMPA are discussed below in terms of their implications for the DOE.

Marine Protection, Research, and Sanctuaries Act

On October 23, 1972, Congress enacted the Marine Protection, Research and Sanctuaries Act (MPRSA), also known as the Ocean Dumping Act. The Act regulates the ocean dumping of all material beyond the territorial limit or 3 miles from shore and prevents or strictly limits dumping material that "would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities." "Material" includes (but is not limited to) dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, chemical and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wrecked or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural, and other waste. The term does not include sewage from vessels or oil, unless the oil is transported via a vessel or aircraft for the purpose of dumping. Disposal by means of a pipe, regardless of how far at sea the discharge occurs, is regulated by the Clean Water Act, through the National Pollutant Discharge Elimination System (NPDES) permit process.

Some of the waste material as defined above may be transported to and dumped into the ocean by the DOE under conditions stipulated in a permit issued by the Environmental Protection Agency (EPA) or the Corps of Engineers (COE or the Corps), depending upon the type of waste involved. Ocean dumping, however, is only possible if no other reasonable alternatives, such as landfilling, are available.

Section 102 (33 USC 1412) of MPRSA authorizes the EPA to issue ocean dumping permits for the transport to and disposal of materials into the oceans, excluding wastes regulated by COE (primarily dredged spoils). Other wastes categorically excluded from EPA permitting because of their hazardous nature are "radiological, chemical, and biological warfare agents and high-level radioactive waste. . . ." This section also directs the EPA Administrator to set criteria for the review of ocean dumping permits. In establishing the permit criteria, the EPA must consider several factors, including the need for the alternatives of waste recycling or land disposal of the wastes. As it sets and reviews its criteria, the EPA is specifically

directed by the Act to consult with federal officials (along with other interested parties) as appropriate. When the EPA reviews actual permit applications, it should also consult with interested federal agencies as needed. To protect critical ocean areas, the EPA may designate the sites and time periods at which ocean disposal will occur. Federal agencies, including DOE, must obtain EPA permits to conduct ocean dumping under MPRSA. Because the status of EPA dump sites changes from time to time, the DOE should contact the EPA when its plans to apply for a permit to dump at a particular site. Some EPA sites have not recently been used, while others are in the process of redesignation to accept additional kinds of waste. (See list of agency contacts in this section of the Reference Book.)

Section 103 (33 USC 1413) authorizes the Army Corps of Engineers (COE) to issue permits for the ocean disposal of dredged material (material excavated from navigable U.S. waters). Section 103(e) [33 USC 1413(e)] gives the Secretary of the Army the option of issuing regulations instead of permits, where federal project dredge material is concerned, although the criteria for the disposal decision would be much the same. Section 103 is of interest to DOE because of the Department's involvement in conversion of utility powerplants to coal fuel under the Fuel Use Act (FUA). These actions frequently entail dredging nearby rivers and channels to enable coal barges to obtain access to the powerplants. Thus, proper disposal of the dredged material must be planned. The DOE handles the permitting for powerplants that switch to coal fuel, and thus must assure that the plants comply with MPRSA provisions for dredge disposal, if disposal will occur in ocean waters outside the U.S. territorial limit.

Section 104 (33 USC 1414) describes the contents of permits issued under Title I of MPRSA and provides for periodic permit review and revision or revocation. Either the EPA Administrator or the Secretary of the Army may revoke a permit if dumping of waste materials does not consistently follow the original permit evaluation factors involving extent of marine environmental impact, etc.

Section 105 (33 USC 1415) provides that a party may bring suit to enjoin "any person, including the United States and any other government instrumentality or agency" if they appear to have violated Title I of MPRSA. Thus, DOE and other agencies could be sued for apparent noncompliance with the Act. However, *Middlesex County vs. National Sea Clammers* indicates that only injunctive relief, rather than monetary damages, may be sought [Ref. 101 S. Ct. 2615 (1981)].

States may not independently adopt regulations relating to activities covered by Title I of MPRSA (Section 106, 33 USC 1416). However, states may propose additional ocean dumping criteria to the EPA. If the EPA Administrator does not find the new criteria to be inconsistent with the Act, the Administrator may then adopt those criteria and issue regulations to implement them. Only in this way can state-level criteria be brought to bear upon agency (e.g., DOE) actions affected by Title I of MPRSA.

Title II of MPRSA (33 USC 1441 through 1445) provides for continuing research on the long-range effects of pollution, over-fishing, and human-induced changes in ocean ecosystems. This ongoing effort is conducted by the

Commerce Secretary, who may request support from other federal departments and agencies, such as the DOE. This support may include information exchange and the use of the personnel, services, and facilities of the other agencies and departments. Such arrangements may be conducted by interagency agreement. Title II mandates EPA research to minimize or end ocean dumping where possible. Alternatives must be studied, and the EPA is to promote cooperation among federal, state, and local groups addressing these research areas.

Title III of MPRSA (33 USC 1431 to 1439) authorizes the Commerce Secretary to designate certain areas as National Marine Sanctuaries (locations of the seven National Marine Sanctuaries are shown in Figure 1-1) after consultation with the heads of interested federal agencies and state and local governments, as appropriate. Sanctuaries may be designated in the marine environment, which Title III defines as:

"...those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law..." (Ref. 16 USC 1432)

The purpose of the sanctuaries is to preserve or restore areas for their conservation, recreational, ecological, or aesthetic value. Section 304 (16 USC 1434) permits the Commerce Secretary to issue implementing regulations to achieve these ends. Under the 1984 MPRSA amendments (P.L. 98-498), permits and licenses issued under other authorities (for actions in an area that becomes a sanctuary) will not necessarily terminate when a sanctuary is designated. However, the Commerce Secretary may regulate such pre-existing permits and licenses "consistent with the purposes for which the sanctuary is designated."

Marine sanctuary regulations and designations have been promulgated and are discussed in Section 3 of this Reference Book, Implementing Regulations. Certain national security activities may continue in or near designated marine sanctuaries, an aspect of the Act that may be relevant to the DOE. The implementing regulations of MPRSA suggest that the continuation of such actions will depend on the sanctuary location and the nature of the specific action. In the past, existing Defense Department activity at some sanctuary sites has been allowed to continue, with provisions for consultation between the National Oceanic and Atmospheric Administration (NOAA) and the Department of Defense (DOD) before additional activities begin. Also, certain prohibited actions may occur via permits granted by the NOAA Administrator, although such actions generally do not apply to ocean dumping (see Section 3 of this Reference Book for further discussion).

For further information on compliance with the MPRSA:

Joseph A. Uravitch
Chief, Marine and Estuarine Management Division
National Oceanic and Atmospheric Association
Universal Building
1825 Connecticut Ave., NW
Room 714
Washington, D.C. 20235
(202) 673-5126

Figure 1-1. Marine Sanctuaries Designated Under Title III of MPRSA.

Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA, P.L. 92-522) was enacted in 1972 to protect and manage marine mammals and their products (use of hides, meat, etc.). The primary authority for implementing the Act belongs to the Department of the Interior (DOI) Fish and Wildlife Service (FWS) and the Department of Commerce (DOC) National Marine Fisheries Service (NMFS). The FWS is responsible for management of the walrus, polar bear, sea otter, dugong, marine otter, and West Indian, Amazonian, and West African manatees. The NMFS is responsible for management of whales, porpoises, seals, and sea lions. The two agencies may issue permits under Section 104 (16 USC 1374) to persons, including federal agencies such as the DOE, that authorize the taking (or importing) of specific species of marine mammals.

States are able to take over responsibilities for managing one or more marine mammals after receiving approval for their program from the Secretary of the DOI or DOC. Regulations governing the transfer of responsibility were published in May 1983. To date, no state has fully taken on this duty.

The MMPA establishes a Marine Mammal Commission whose duties include reviewing laws and international conventions relating to marine mammals, studying the condition of these mammals, and recommending to federal officials steps, such as including a species on the Endangered Species List, that should be taken to protect marine mammals. Federal agencies are directed by Section 205 (16 USC 1405) to cooperate with the Commission by permitting it to use their facilities or services.

The DOE may become involved in complying with the MMPA if the Department approves, licenses, or funds an energy project that will be sited in an area that will require or result in the removal, capture, hunting, or killing of marine mammals. The DOE will need a permit specifying how the mammals should be handled from the appropriate agency, either the FWS or NMFS. Also, if the DOE is involved in the direct research use of marine mammals (e.g., studies of energy development impacts on these animals), a permit may be required.

For further information on compliance with MMPA, contact:

Lynn B. Starnes
Chief, Division of Fish and Wildlife Management Assistance
Department of the Interior
United States Fish and Wildlife Service
18th and C Streets, NW
Washington, D.C. 20240
(202) 632-2202

SECTION 2. HISTORY AND STATUTES

Copies of the Marine Protection, Research, and Sanctuaries Act and the Marine Mammal Protection Act are included in this section. These copies include all amendments to the Acts. A brief history of each Act follows.

Marine Protection, Research, and Sanctuaries Act

The enactment of the MPRSA in 1972 (P.L. 92-532) represented the adoption by the U.S. of the London Ocean Dumping Convention, an agreement by which several nations decided to limit their disposal of potentially harmful substances in the ocean. When the MPRSA was originally passed, both the public and policy makers felt that ocean disposal of wastes should be done primarily as a last resort, if there were no other practicable solution (e.g., land disposal) to a particular waste disposal problem. Much of the language and many of the provisions of the MPRSA reflect this philosophy.

Since the passage of the MPRSA, the Act has been made more lenient in certain cases. For example, P.L. 95-153, as amended by P.L. 96-572, revised the MPRSA to enable the dumping of industrial waste for research purposes. The EPA will allow such experimental disposal if (1) the activity relates to new ocean disposal technology, or (2) if the effort will yield data on the effects of ocean dumping upon human health, welfare, or amenities, or the marine environment and its economic potential. Ocean dumping of this nature is subject to an EPA/Commerce Department determination that the research benefits will likely outweigh any adverse impacts. Such research-oriented dumping would be by permit only, and its restrictions may extend to DOE studies of ocean waste disposal. Industrial waste in this context includes any solid, semisolid, or liquid waste produced by a manufacturing or processing plant, provided that such waste may "unreasonably degrade or endanger human health, welfare or amenities, or the marine environment, ecological systems, and economic potentialities."

The MPRSA still retains many stringent requirements on ocean dumping of wastes. However, the problems of disposing of hazardous wastes on land (typified by the Love Canal and Times Beach crises) have resulted in broader consideration of all waste disposal options, including ocean dumping. There also has been efforts at the Congressional level to provide incentives to decrease waste volume prior to disposal, treat waste more thoroughly prior to disposal, recycle waste materials, and other alternatives. While DOE compliance with the MPRSA still requires permits for the ocean disposal of certain wastes, the choice of ocean disposal sites, as well as the kind of waste and waste volume that can be disposed of, may be affected by future changes in the Act, as all options for waste disposal are reviewed.

Title III of the MPRSA, National Marine Sanctuaries, was completely revised late in 1984 (P.L. 98-498). The new Title III requires the Commerce Secretary to complete a Resource Assessment Report for each proposed sanctuary. This report (which becomes part of the draft Environmental Impact Statement that Commerce must prepare for an intended sanctuary) has to evaluate the present and potential uses of the sanctuary area, including energy and mineral development and research uses. Also in the amended

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Title III, Commerce must consider the adequacy of existing federal and state authorities and regulations to protect the potential sanctuary site. Funding for the marine sanctuary program has been authorized through FY 1988.

Section 202 of the MPRSA initiated a comprehensive and continuing program of research with respect to the possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems. Public Law 99-272 (April 7, 1986) revised this section by stipulating that this program shall include (but not be limited to):

- o the development and assessment of scientific techniques to define and quantify the degradation of the marine environment;
- o the assessment of the capacity of the marine environment to receive materials without degradation;
- o continuing monitoring programs to assess the health of the marine environment; and
- o the development of methodologies, techniques, and equipment for disposal of waste materials to minimize degradation of the environment.

Public Law 99-272 also added requirements for a plan assessing the feasibility in coastal areas of regional management plans for the disposal of waste materials, a report on sewage sludge disposal in the New York City metropolitan region, and additional information to be included in the Secretary of Commerce's annual report.

A Savings Clause was added to Section 106 on October 17, 1986 (P.L. 99-499) stating that nothing in the MPRSA shall restrict, affect, or modify the rights of any person to seek damages under state or federal law resulting from noncompliance with this Act.

Another amendment to the Act was made by the Water Quality Act of 1987 (P.L. 100-4, February 4, 1987). New Section 104A, which sets forth special provisions regarding certain dumping sites [the New York Bight Apex and the "106-Mile Ocean Waste Dump Site" (as described in 49 FR 19005)], was added.

Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA, P.L. 92-522) was enacted October 21, 1972. It has been amended eight times:

1. P.L. 93-205 (1973)
2. P.L. 94-265 (1976)
3. P.L. 95-136 (1977)
4. P.L. 95-316 (1978)
5. P.L. 96-470 (1980)
6. P.L. 97-58 (1981)
7. P.L. 97-389 (1982)
8. P.L. 98-364 (1984)

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The sections of the MMPA with importance to the DOE are Section 103 (16 USC 1373, Regulations on Taking Marine Mammals) and Section 104 (16 USC 1374, Permits). Section 103 has not been amended since enactment in 1972. Section 104 of the MMPA was amended in 1984. In one area, the 1984 amendments deal with the incidental taking of marine mammals during commercial fishing. In another area, the amendments address the staffing and budget of the Marine Mammal Commission. These 1984 changes are not relevant to DOE activities.

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972 *

(Enacted by P.L. 92-532, October 23, 1972, 86 Stat. 1052, 33 U.S.C. 1401 et seq., and 16 U.S.C. 1431 et seq.; Amended by P.L. 93-254, March 22, 1974; P.L. 93-472, October 26, 1974; P.L. 94-62, July 25, 1975; P.L. 94-326, June 30, 1976; P.L. 95-153, November 4, 1977; P.L. 96-332, August 29, 1980; P.L. 96-381, October 6, 1980; P.L. 96-470, October 19, 1980; P.L. 96-572, December 22, 1980; P.L. 97-16, June 23, 1981; P.L. 97-109, December 26, 1981; PL 97-375, December 21, 1982; PL 97-424, January 6, 1983; PL 98-498, October 19, 1984; PL 99-272, April 7, 1986; PL 99-499, October 17, 1986; PL 100-4, February 4, 1987)

This Act may be cited as the "Marine Protection, Research, and Sanctuaries Act of 1972."

Finding, Policy, and Purpose

Sec. 2. (a) Unregulated dumping of material into ocean waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) The Congress declares that it is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(c) It is the purpose of this Act to regulate (1) the transportation by any person of material from the United States and, in the case of United States vessels, aircraft, or agencies, the transportation of material from a location outside the United States, when in either case the transportation is for the purpose of dumping the material into ocean waters, and (2) the dumping of material transported by any person from a location outside the United States if the dumping occurs in the territorial sea or the contiguous zone of the United States.

Sec. 3. For the purposes of this Act the term—

(a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(c) "Material" means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural, and other waste: but such term does not mean sewage from vessels within the meaning of section 312 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1322). Oil within the meaning of section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321), shall be included only to the extent that such oil is taken on board a vessel or aircraft for the purpose of dumping.

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(e) "Person" means any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

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(f) "Dumping" means a disposition of material: Provided, That it does not mean a disposition of any effluent from any outfall structure to the extent that such disposition is regulated under the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1376) under the provisions of section 13 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 407), or under the provisions of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011, et seq.), nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: Provided further, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program: And provided further, That it does not include the deposit of oyster shells or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.

(g) "District court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of Puerto Rico, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising therein.

(h) "Secretary" means the Secretary of the Army.

(i) "Dredged material" means any material excavated or dredged from the navigable waters of the United States.

(j) "High-level radioactive waste" means the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels, or irradiated fuel from nuclear power reactors.

(k) "Transport" or "transportation" refers to the carriage and related handling of any material by a vessel, or by any other vehicle, including aircraft.

(l) "Convention" means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

TITLE I — OCEAN DUMPING

Prohibited Acts

Sec. 101. (a) Except as may be authorized by a permit issued pursuant to section 102 or section 103 of this title, and subject to regulations issued pursuant to section 108 of this title,

(1) no person shall transport from the United States, and

(2) in the case of a vessel or aircraft registered in the United States or flying the United States flag or in the case of a United States department, agency, or instrumentality, no person shall transport from any location any material for the purpose of dumping it into ocean waters.

(b) Except as may be authorized by a permit issued pursuant to section 102 of this title, and subject to regulations issued pursuant to section 108 of this title, no person shall dump any material transported from a location outside the United States (1) into the territorial sea of the United States or (2) into a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States.

[Editor's note: Section 4 of P.L. 95-153 provided for a ban on dumping of sewage sludge to take effect at the end of 1981. The following is the relevant section:

Sec. 4. (a) The Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the "Administrator") shall end the dumping of sewage sludge and industrial waste into ocean waters, or into waters described in section 101(b) of the Marine Protection, Research and Sanctuaries Act of 1972, as soon as possible after the date of enactment of this section, but except as provided in subsections (b) and (c) in no case may the Administrator issue any permit, or any renewal thereof (under title I of such Act of 1972) which authorizes any such dumping after December 31, 1981.

[Sec. 4(a) of PL 95-153 amended by PL 96-572]

(b) After December 31, 1981, the Administrator may issue permits under such title I for the dumping of industrial waste into ocean waters, or into waters described in such section 101(b), if the Administrator determines—

(1) that the proposed dumping is necessary to conduct research—

(A) on new technology related to ocean dumping, or
 (B) to determine whether the dumping of such substance will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities;

(2) that the scale of the proposed dumping is such that the dumping will have minimal adverse impact upon the human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities; and

(3) after consultation with the Secretary of Commerce, that the potential benefits of such research will outweigh any such adverse impact.

Each permit issued pursuant to this subsection shall be subject to such conditions and restrictions as the Administrator determines to be necessary to minimize possible adverse impacts of such dumping. No permit issued by the Administrator pursuant to this subsection may have an effective period of more than six consecutive months.

[Sec. 4(b) of PL 95-153 revised by PL 96-572]

(c) After December 31, 1981, the Administrator may issue emergency permits under such title I for the dumping of industrial waste into ocean waters, or into waters described in such section 101(b), if the Administrator determines that there has been demonstrated to exist an emergency, requiring the dumping of such waste, which poses an unacceptable risk relating to human health and admits of no other feasible solution. As used herein, "emergency" refers to situations requiring action with a marked degree of urgency.

(d) For purposes of this section—

(1) the term "sewage sludge" means any solid, semisolid, or liquid waste generated by a municipal wastewater treatment plant the ocean dumping of which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities; and

(2) the term "industrial waste" means any solid, semisolid, or liquid waste generated by a manufacturing or processing plant the ocean dumping of which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities.

Environmental Protection Agency Permits

Sec. 102. (a) Except in relation to dredged material, as provided for in section 103 of this title, and in relation to

radiological, chemical, and biological warfare agents and high-level radioactive waste, for which no permit may be issued, the Administrator may issue permits, after notice and opportunity for public hearings, for the transportation from the United States or, in the case of a vessel or aircraft registered in the United States or flying the United States flag, in the case of an agency or instrumentality of the United States, for the transportation from a location outside the United States, of material for the purpose of dumping it into ocean waters, or for the dumping of material into the waters described in section 101(b), where the Administrator determines that such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

(A) The need for the proposed dumping.

(B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.

(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shore lines and beaches.

(D) The effect of such dumping on marine ecosystems, particularly with respect to—

(i) the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical processes,

(ii) potential changes in marine ecosystem diversity, productivity, and stability, and

(iii) species and community population dynamics.

(E) The persistence and permanence of the effects of the dumping.

(F) The effect of dumping particular volumes and concentrations of such materials.

(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.

(H) The effect on alternate uses of oceans, such as scientific study, fishing, and other living resource exploitation, and nonliving resource exploitation.

(I) In designating recommended sites, the Administrator shall utilize wherever feasible locations beyond the edge of the Continental Shelf.

In establishing or revising such criteria, the Administrator shall consult with Federal, State, and local officials, and interested members of the general public, as may appear appropriate to the Administrator. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards.

To the extent that he may do so without relaxing the requirements of this title, the Administrator, in establishing or revising such criteria, shall apply the standards and criteria binding upon the United States under the Convention, including its Annexes.

(b) The Administrator may establish and issue various categories of permits, including the general permits described in section 104(c).

(c) The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping and, when he finds it necessary to protect critical areas, shall, after consultation with the Secretary, also designate sites or times within which certain materials may not be dumped.

(d) No permit is required under this title for the transportation for dumping or the dumping of fish wastes, except when deposited in harbors or other protected or enclosed coastal waters, or where the Administrator finds that such deposits could endanger health, the environment, or ecological systems in a specific location. Where the Administrator makes such a finding, such material may be deposited only as authorized by a permit issued by the Administrator under this section.

(e) In the case of transportation of material, by an agency or instrumentality of the United States or by a vessel or aircraft registered in the United States or flying the United States flag, from a location in a foreign State Party to the Convention, a permit issued pursuant to the authority of that foreign State Party, in accordance with Convention requirements, and which otherwise could have been issued pursuant to subsection (a) hereof, shall be accepted, for the purposes of this title, as if it were issued by the Administrator under the authority of this section: *Provided*, That in the case of an agency or instrumentality of the United States, no application shall be made for a permit to be issued pursuant to

the authority of a foreign State Party to the Convention unless the Administrator concurs in the filing of such application.

[102(e) amended by PL 96-572]

Corps of Engineers Permits

Sec. 103. (a) Subject to the provisions of subsections (b), (c), and (d) of this section, the Secretary may issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it into ocean waters, where the Secretary determines that the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(b) In making the determination required by subsection (a), the Secretary shall apply those criteria, established pursuant to section 102(a), relating to the effects of the dumping. Based upon an evaluation of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Secretary shall make an independent determination as to the need for the dumping. The Secretary shall also make an independent determination as to other possible methods of disposal and as to appropriate locations for the dumping. In considering appropriate locations, he shall, to the extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 102(c).

(c) Prior to issuing any permit under this section, the Secretary shall first notify the Administrator of his intention to do so. In any case in which the Administrator disagrees with the determination of the Secretary as to compliance with the criteria established pursuant to section 102(a) relating to the effects of the dumping or with the restrictions established pursuant to section 102(c), relating to critical areas, the determination of the Administrator shall prevail. Unless the Administrator grants a waiver pursuant to subsection (d), the Secretary shall not issue a permit which does not comply with such criteria and with such restrictions.

(d) If, in any case, the Secretary finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site the utilization of which would result in noncompliance with the criteria established pursuant to section 102(a) relating to the effects of dumping or with the restrictions established pursuant to section 102(c) relating

to critical areas, he shall so certify and request a waiver from the Administrator of the specific requirements involved. Within thirty days of the receipt of the waiver request, unless the Administrator finds that the dumping of the material will result in an unacceptably adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries (including spawning and breeding areas), or recreational areas, he shall grant the waiver.

(e) In connection with Federal projects involving dredged material, the Secretary may, in lieu of the permit procedure, issue regulations which will require the application to such projects of the same criteria, other factors to be evaluated, the same procedures, and the same requirements which apply to the issuance of permits under subsections (a), (b), (c), and (d) of this section.

Permit Conditions

Sec. 104. (a) Permits issued under this title shall designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; (5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, after consultation with the Secretary of the Department in which the Coast Guard is operating, for the monitoring and surveillance of the transportation or dumping; and (6) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.

(b) The Administrator or the Secretary, as the case may be, may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this title as he deems appropriate.

(c) Consistent with the requirements of sections 102 and 103, but in lieu of a requirement for specific permits in such case, the Administrator or the Secretary, as the case may be, may issue general permits for the transportation for dumping, or dumping, or both, of specified materials or classes of materials for which he may issue permits, which he determines will have a minimal adverse environmental impact.

(d) Any permit issued under this title shall be reviewed periodically and, if appropriate, revised. The Administrator or the Secretary, as the case may be, may limit or deny the issuance of permits, or he may alter or revoke

partially or entirely the terms of permits issued by him under this title, for the transportation for dumping, or for the dumping, or both, of specified materials or classes of materials, where he finds that such materials cannot be dumped consistently with the criteria and other factors required to be applied in evaluating the permit application. No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for a hearing on such action as proposed.

(e) The Administrator or the Secretary, as the case may be, shall require an applicant for a permit under this title to provide such information as he may consider necessary to review and evaluate such application.

(f) Information received by the Administrator or the Secretary, as the case may be, as a part of any application or in connection with any permit granted under this title shall be available to the public as a matter of public record, at every stage of the proceeding. The final determination of the Administrator or the Secretary, as the case may be, shall be likewise available.

(g) A copy of any permit issued under this title shall be placed in a conspicuous place in the vessel which will be used for the transportation or dumping authorized by such permit, and an additional copy shall be furnished by the issuing official to the Secretary of the department in which the Coast Guard is operating, or its designee.

(h) Notwithstanding any provision of title I of the Marine Protection, Research, and Sanctuaries Act of 1972 to the contrary, during the two-year period beginning on the date of enactment of this subsection, no permit may be issued under such title I that authorizes the dumping of any low-level radioactive waste unless the Administrator of the Environmental Protection Agency determines—

(1) that the proposed dumping is necessary to conduct research—

(A) on new technology related to ocean dumping, or

(B) to determine the degree to which the dumping of such substance will degrade the marine environment;

(2) that the scale of the proposed dumping is limited to the smallest amount of such material and the shortest duration of time that is necessary to fulfill the purposes of the research, such that the dumping will have minimal adverse impact upon human health, welfare, and amenities, and the marine environment, ecological systems, economic potentialities, and other legitimate uses;

(3) after consultation with the Secretary of Commerce, that the potential benefits of such research will outweigh any such adverse impact; and

(4) that the proposed dumping will be preceded by appropriate baseline monitoring studies of the proposed dump site and its surrounding environment.

Each permit issued pursuant to this subsection shall be subject to such conditions and restrictions as the Administrator determines to be necessary to minimize possible adverse impacts of such dumping.

(i)(1) Two years after the date of enactment of this subsection, the Administrator may not issue a permit under this title for the disposal of radioactive waste material until the applicant, in addition to complying with all other requirements of this title, prepares, with respect to the site at which the disposal is proposed, a Radioactive Material Disposal Impact Assessment which shall include—

(A) a listing of all radioactive materials in each container to be disposed, the number of containers to be dumped, the structural diagrams of each container, the number of curies of each material in each container, and the exposure levels in rems at the inside and outside of each container;

(B) an analysis of the environmental impact of the proposed action, at the site at which the applicant desires to dispose of the material, upon human health and welfare and marine life;

(C) any adverse environmental effects at the site which cannot be avoided should the proposal be implemented;

(D) an analysis of the resulting environmental and economic conditions if the containers fail to contain the radioactive waste material when initially deposited at the specific site;

(E) a plan for the removal or containment of the disposed nuclear material if the container leaks or decomposes;

(F) a determination by each affected State whether the proposed action is consistent with its approved Coastal Zone Management Program;

(G) an analysis of the economic impact upon other users of marine resources;

(H) alternatives to the proposed action;

(I) comments and results of consultation with State officials and public hearings held in the coastal States that are nearest to the affected areas;

(J) a comprehensive monitoring plan to be carried out by the applicant to determine the full effect of the disposal on the marine environment, living resources, or human health, which plan shall include, but not be limited to, the monitoring of exterior container radiation samples, the taking of water and sediment samples, and

fish and benthic animal samples, adjacent to the containers, and the acquisition of such other information as the Administrator may require; and

(K) such other information which the Administrator may require in order to determine the full effects of such disposal.

(2) The Administrator shall include, in any permit to which paragraph (1) applies, such terms and conditions as may be necessary to ensure that the monitoring plan required under paragraph (1)(J) is fully implemented, including the analysis by the Administrator of the samples required to be taken under the plan.

(3) The Administrator shall submit a copy of the assessment prepared under paragraph (1) with respect to any permit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(4) (A) Upon a determination by the Administrator that a permit to which this subsection applies should be issued, the Administrator shall transmit such a recommendation to the House of Representatives and the Senate.

(B) No permit may be issued by the Administrator under this Act for the disposal of radioactive materials in the ocean unless the Congress, by approval of a resolution described in paragraph (D) within 90 days of continuous session of the Congress beginning on the date after the date of receipt by the Senate and the House of Representatives of such recommendation, authorizes the Administrator to grant a permit to dispose of radioactive material under this Act.

(C) For purposes of this subsection—

(1) continuity of session of the Congress is broken only by an adjournment sine die;

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the 90 day calendar period.

(D) For the purposes of this subsection, the term 'resolution' means a joint resolution, the resolving clause of which is as follows: 'That the House of Representatives and the Senate approve and authorize the Administrator of the Environmental Protection Agency to grant a permit under the Marine Protection, Research, and Sanctuaries Act of 1972 to dispose of radioactive materials in the ocean as recommended by the Administrator to the Congress on _____, 19____'; the first blank space therein to be filled with the appropriate applicant to dispose of nuclear material and the second blank therein to be filled with the date on which the Administrator

submits the recommendation to the House of Representatives and the Senate.

[104(h) and (i) added by PL 97-424]

Special Provisions Regarding Certain Dumping Sites
[104A added by PL 100-4]

Sec. 104A. (a) New York Bight Apex.—(1) For purposes of this subsection:

(A) The term "Apex" means the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(B) The term "Apex site" means that site within the Apex at which the dumping of municipal sludge occurred before October 1, 1983.

(C) The term "eligible authority" means any sewerage authority or other unit of State or local government that on November 2, 1983, was authorized under court order to dump municipal sludge at the Apex site.

(2) No person may apply for a permit under this title in relation to the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex unless that person is an eligible authority.

(3) The Administrator may not issue, or renew, any permit under this title that authorizes the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex after the earlier of—

(A) December 15, 1987; or

(B) the day determined by the Administrator to be the first day on which municipal sludge generated by eligible authorities can reasonably be dumped at a site designated under section 102 other than a site within the Apex.

(b) Restriction on Use of the 106-Mile Site. — The Administrator may not issue or renew any permit under this title which authorizes any person, other than a person that is an eligible authority within the meaning of subsection (a)(1)(C), to dump, or to transport for the purposes of dumping, municipal sludge within the site designated under section 102(c) by the Administrator and known as the "106-Mile Ocean Waste Dump Site" (as described in 49 F.R. 19005).

Penalties

Sec. 105. (a) Any person who violates any provision of this title, or of the regulations promulgated under this title, or a permit issued under this title shall be liable to a civil penalty of not more than \$50,000 for each violation to be assessed by the Administrator. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing of such violation. In determining the amount of the penalty, the gravity of the violation, prior violations, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. For good cause shown,

the Administrator may remit or mitigate such penalty. Upon failure of the offending party to pay the penalty the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(b) In addition to any action which may be brought under subsection (a) of this section, a person who knowingly violates this title, regulations promulgated under this title, or a permit issued under this title shall be fined not more than \$50,000 or imprisoned for not more than one year, or both.

(c) For the purpose of imposing civil penalties and criminal fines under this section each day of a continuing violation shall constitute a separate offense as shall the dumping from each of several vessels, or other sources.

(d) The Attorney General or his delegate may bring actions for equitable relief to enjoin an imminent or continuing violation of this title, of regulations promulgated under this title, or of permits issued under this title, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

(e) A vessel, except a public vessel within the meaning of section 13 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1163), used in a violation, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(f) If the provisions of any permit issued under section 102 or 103 are violated, the Administrator or the Secretary, as the case may be, may revoke the permit or may suspend the permit for a specified period of time. No permit shall be revoked or suspended unless the permittee shall have been given notice and opportunity for a hearing on such violation and proposed suspension or revocation.

(g) (1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any prohibition, limitation, criterion, or permit established or issued by or under this title. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such prohibition, limitation, criterion, or permit, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after notice of the violation has been given to the Administrator or the Secretary, and to

any alleged violator of the prohibition, limitation, criterion, or permit; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the prohibition, limitation, criterion, or permit; or

(C) if the Administrator has commenced action to impose a penalty pursuant to subsection (a) of this section, or if the Administrator, or the Secretary, has initiated permit revocation or suspension proceedings under subsection (f) of this section; or

(D) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of this title.

(3) (A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Administrator or Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator, the Secretary, or a State agency).

(h) No person shall be subject to a civil penalty or to a criminal fine or imprisonment for dumping materials from a vessel if such materials are dumped in an emergency to safeguard life at sea. Any such emergency dumping shall be reported to the Administrator under such conditions as he may prescribe.

Relationship to Other Laws

Sec. 106. (a) After the effective date of this title, all licenses, permits, and authorizations other than those issued pursuant to this title shall be void and of no legal effect, to the extent that they purport to authorize any activity regulated by this title, and whether issued before or after the effective date of this title.

(b) The provisions of subsection (a) shall not apply to actions taken before the effective date of this title under the authority of the Rivers and Harbors Act of 1899 (30 Stat. 1151), as amended (33 U.S.C. 401 et seq.).

(c) Prior to issuing any permit under this title, if it appears to the Administrator that the disposition of material, other than dredged material, may adversely affect navigation in the territorial sea of the United States, or in

the approaches to any harbor of the United States, or may create an artificial island on the Outer Continental Shelf, the Administrator shall consult with the Secretary and no permit shall be issued if the Secretary determines that navigation will be unreasonably impaired.

(d) After the effective date of this title, no State shall adopt or enforce any rule or regulation relating to any activity regulated by this title. Any State may, however, propose to the Administrator criteria relating to the dumping of materials into ocean waters within its jurisdiction, or into other ocean waters to the extent that such dumping may affect waters within the jurisdiction of such State, and if the Administrator determines, after notice and opportunity for hearing, that the proposed criteria are not inconsistent with the purposes of this title, may adopt those criteria and may issue regulations to implement such criteria. Such determination shall be made by the Administrator within one hundred and twenty days of receipt of the proposed criteria. For the purposes of this subsection, the term "State" means any State, interstate or regional authority, Federal territory or Commonwealth or the District of Columbia.

(e) Nothing in this title shall be deemed to affect in any manner or to any extent any provision of the Fish and Wildlife Coordination Act as amended (16 U.S.C. 661-666c).

(f) In addition to other provisions of law and notwithstanding the specific exclusion relating to dredged material in the first sentence in section 102(a) of this Act, the dumping of dredged material in Long Island Sound from any Federal project (or pursuant to Federal authorization) or from a dredging project by a non-Federal applicant exceeding 25,000 cubic yards shall comply with the criteria established pursuant to the second sentence of section 102(a) of the Act relating to the effects of dumping. Subsection (d) of this section shall not apply to this subsection.

[106(f) added by PL 96-572]

(g) SAVINGS CLAUSE.—Nothing in this Act shall restrict, affect or modify the rights of any person (1) to seek damages or enforcement of any standard or limitation under State law, including State common law, or (2) to seek damages under other Federal law, including maritime tort law, resulting from noncompliance with any requirement of this Act or any permit under this Act.

[106(g) added by PL 99-499]

Enforcement

Sec. 107. (a) The Administrator or the Secretary, as the case may be, may, whenever appropriate, utilize by agreement, the personnel, services and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reim-

bursable or a nonreimbursable basis, in carrying out his responsibilities under this title.

(b) The Administrator or the Secretary may delegate responsibility and authority for reviewing and evaluating permit applications, including the decision as to whether a permit will be issued, to an officer of his agency, or he may delegate, by agreement, such responsibility and authority to the heads of other Federal departments or agencies, whether on a reimbursable or nonreimbursable basis.

(c) The Secretary of the department in which the Coast Guard is operating shall conduct surveillance and other appropriate enforcement activity to prevent unlawful transportation of material for dumping, or unlawful dumping. Such enforcement activity shall include, but not be limited to, enforcement of regulations issued by him pursuant to section 108, relating to safe transportation, handling, carriage, storage, and stowage. The Secretary of the department in which the Coast Guard is operating shall supply to the Administrator and to the Attorney General, as appropriate, such information of enforcement activities and such evidentiary material assembled as they may require in carrying out their duties relative to penalty assessments, criminal prosecutions, or other actions involving litigation pursuant to the provisions of this title.

Regulations

Sec. 108. In carrying out the responsibilities and authority conferred by this title, the Administrator, the Secretary, and the Secretary of the department in which the Coast Guard is operating are authorized to issue such regulations as they may deem appropriate.

International Cooperation

Sec. 109. The Secretary of State, in consultation with the Administrator, shall seek effective international action and cooperation to insure protection of the marine environment, and may, for this purpose, formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations in support of the policy of this Act.

Effective Date and Savings Provisions

Sec. 110. (a) This title shall take effect six months after the date of the enactment of this Act.

(b) No legal action begun, or right of action accrued, prior to the effective date of this title shall be affected by any provision of this title.

Sec. 111. There are hereby authorized to be appropriated not to exceed \$3,600,000 for fiscal year 1973, not to exceed \$5,500,000 for each of the fiscal years 1974 and 1975, not to exceed \$5,300,000 for fiscal year 1976, not to exceed \$1,325,000 for the transition period (July 1 through September 30, 1976), not to exceed \$4,800,000 for fiscal 1977, not to exceed \$4,800,000

for fiscal year 1978, not to exceed \$2,000,000 for each of fiscal year 1980, fiscal year 1981, and not to exceed \$4,213,000 for fiscal year 1982, for the purposes and administration of this title, and for succeeding fiscal years only such sums as the Congress may authorize law.

[111 amended by PL 96-572; PL 97-16]

Sec. 112. The Administrator shall on or before February 1 of each year report to the Congress on the administration of this title during the preceding fiscal year, including recommendations for additional legislation if deemed necessary.

[112 revised by PL 96-470]

TITLE II – COMPREHENSIVE RESEARCH ON OCEAN DUMPING

Sec. 201. The Secretary of Commerce, in coordination with the Secretary of the Department in which the Coast Guard is operating and with the Administrator shall, within six months of the enactment of this Act [October 23, 1972], initiate a comprehensive and continuing program of monitoring and research regarding the effects of the dumping of material into ocean waters or other coastal waters where the tide ebbs and flows or into the Great Lakes or their connecting waters.

[201 amended by PL 99-272]

Sec. 202. (a)(1) The Secretary of Commerce, in close consultation with other appropriate Federal departments, agencies, and instrumentalities shall, within six months of the enactment of this Act, initiate a comprehensive and continuing program of research with respect to the possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems. These responsibilities shall include the scientific assessment of damages to the natural resources from spills of petroleum or petroleum products. In carrying out such research, the Secretary of Commerce shall take into account such factors as existing and proposed international policies affecting oceanic problems, economic considerations involved in both the protection and the use of the oceans, possible alternatives to existing programs, and ways in which the health of the oceans may best be preserved for the benefit of succeeding generations of mankind.

[202(a) amended by PL 96-381; (a)(1) designated and amended by PL 99-272]

(2) The Secretary of Commerce shall ensure that the program under this section complements, when appropriate, the activities undertaken by other Federal agencies pursuant to title I and section 203. That program shall include but not be limited to —

(A) the development and assessment of scientific techniques to define and quantify the degradation of the marine environment;

(B) the assessment of the capacity of the marine environment to receive materials without degradation;

(C) continuing monitoring programs to assess the health of the marine environment, including but not limited to the monitoring of bottom oxygen concentrations, contaminant levels in biota, sediments, and the water column, diseases in fish and shellfish, and changes in types and abundance of indicator species;

(D) the development of methodologies, techniques, and equipment for disposal of waste materials to minimize degradation of the marine environment.

[202(a)(2) added by PL 99-272]

(b) In carrying out his responsibilities under this section, the Secretary of Commerce, under the foreign policy guidance of the President and pursuant to international agreements and treaties made by the President with the advice and consent of the Senate, may act alone or in conjunction with any other nation or group of nations, and shall make known the results of his activities by such channels of communication as may appear appropriate.

(c) Each department, agency, and independent instrumentality of the Federal Government is authorized and directed to cooperate with the Secretary of Commerce in carrying out the purposes of this section and, to the extent permitted by law, to furnish such information as may be requested.

[Former 202(c) as amended by PL 96-470 was deleted and former subsections (d) and (e) were redesignated as (c) and (d), respectively, by PL 99-272]

(d) The Secretary of Commerce, in carrying out his responsibilities under this section, shall, to the extent feasible utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities (including those of the Coast Guard for monitoring purposes), and is authorized to enter into appropriate inter-agency agreements to accomplish this action.

Sec. 203. (a) The Administrator of the Environmental Protection Agency shall—

(1) conduct research, investigations, experiments, training, demonstrations, surveys, and studies for the purpose of—

(A) determining means of minimizing or ending, as soon as possible after the date of the enactment of this section, the dumping into ocean waters, or waters described in section 101(b), of material which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities, and

(B) developing disposal methods as alternatives to the dumping described in subparagraph (A); and

(2) encourage, cooperate with, promote the coordination of, and render financial and other assistance to appropriate public authorities, agencies, and institutions (whether Federal, State, interstate, or local) and appropriate private agencies, institutions, and individuals

in the conduct of research and other activities described in paragraph (1).

(b) Nothing in this section shall be construed to affect in any way the December 31, 1981, termination date, established in section 4 of the Act of November 4, 1977 (Public Law 95-153; 33 U.S.C. 1412a) for the ocean dumping of sewage sludge.

[203 revised by PL 96-381]

(c) The Administrator, in cooperation with the Secretary, the Secretary of Commerce, and other officials of appropriate Federal, State, and local agencies, shall assess the feasibility in coastal areas of regional management plans for the disposal of waste materials. Such plans should integrate where appropriate Federal, State, regional, and local waste disposal activities into a comprehensive regional disposal strategy. These plans should address, among other things —

(1) the sources, quantities, and types of materials that require and will require disposal;

(2) the environmental, economic, social, and human health factors (and the methods used to assess these factors) associated with disposal alternatives;

(3) the improvements in production processes, methods of disposal, and recycling to reduce the adverse effects associated with such disposal alternatives;

(4) the applicable laws and regulations governing waste disposal; and

(5) improvements in permitting processes to reduce administrative burdens.

[203(c) added by PL 99-272]

(d) The Administrator, in cooperation with the Secretary of Commerce, shall submit to the Congress and the President, not later than one year after the date of enactment of this provision, a report on sewage sludge disposal in the New York City metropolitan region. The report shall —

(1) consider the factors listed in subsection (c) as they relate to landfilling, incineration, ocean dumping, or any other feasible disposal or reuse/recycling option;

(2) include an assessment of the cost of these alternatives; and

(3) recommend such regulatory or legislative changes as may be necessary to reduce the adverse impacts associated with sewage sludge disposal.

[203(d) added by PL 99-272]

Annual Report

Sec. 204. (a) In March of each year, the Secretary of Commerce shall report to the Congress on his activities under this title during the previous fiscal year. The report shall include —

(1) the Secretary's findings made under section 201, including an evaluation of the short-term ecological

effects and the social and economic factors involved with the dumping;

(2) the results of activities undertaken pursuant to section 202;

(3) with the concurrence of the Administrator and after consulting with officials of other appropriate Federal agencies, an identification of the short and long-term research requirements associated with activities under title I, and a description of how Federal research under titles I and II will meet those requirements; and

(4) activities of the Department of Commerce under section 5 of the Act of March 10, 1934 (48 Stat. 401; 16 U.S.C. 665).

(b) In March of each year, the Administrator shall report to the Congress on his activities during the previous fiscal year under section 203.

[205 added by PL 96-572; revised and redesignated as 204 by PL 99-272]

Sec. 205. There are authorized to be appropriated for the first fiscal year after this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out this title, but the sums appropriated for any such fiscal year may not exceed \$6,000,000. There are authorized to be appropriated not to exceed \$1,500,000 for the transition period (July 1 through September 30, 1976), not to exceed \$5,600,000 for fiscal year 1977, not to exceed \$6,500,000 for fiscal year 1978, not to exceed \$11,396,000 for fiscal year 1981, not to exceed \$12,000,000 for fiscal year 1982, not to exceed \$10,635,000 for fiscal year 1986, and not to exceed \$11,114,000 for fiscal year 1987.

[204 amended by PL 96-381; amended and redesignated as 205 by PL 99-272]

TITLE III — NATIONAL MARINE SANCTUARIES

[Title III revised by PL 98-498]

Sec. 301. Findings, Purposes, and Policies.

(a) Findings. — The Congress finds that —

(1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these efforts have been directed almost exclusively to land areas above the high-water mark;

(2) certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national significance;

(3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment;

(4) a Federal program which identifies special areas of the marine environment will contribute positively to marine resources conservation and management; and

(5) such a Federal program will also serve to enhance public awareness, understanding, appreciation, and wise use of the marine environment.

(b) Purposes and Policies. — The purposes and policies of this title are —

(1) to identify areas of the marine environment of special national significance due to their resource or human-use values;

(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas that will complement existing regulatory authorities;

(3) to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas;

(4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and

(5) to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.

Sec. 302. Definitions.

As used in this title, the term —

(1) 'draft management plan' means the plan described in section 304(a)(1)(E);

(2) 'Magnuson Act' means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(3) 'marine environment' means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law;

(4) 'Secretary' means the Secretary of Commerce; and

(5) 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

Sec. 303. Sanctuary Designation Standards.

(a) Standards.—The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary—

(1) determines that the designation will fulfill the purposes and policies of this title; and

(2) finds that—

(A) the area is of special national significance due to its resource or human-use values;

(B) 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;

(C) designation of the area as a national marine sanctuary will facilitate the objectives in subparagraph (B); and

(D) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(b) **Factors and Consultations Required in Making Determinations and Findings.**—

(1) **Factors.**—For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a), the Secretary shall consider—

(A) the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biogeographic representation of the site;

(B) the area's historical, cultural, archaeological, or paleontological significance;

(C) the present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), (C);

(E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this title;

(F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development; and

(I) the socioeconomic effects of sanctuary designation.

(2) **Consultation.**—In making determinations and findings, the Secretary shall consult with—

(A) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Secretaries of State, Defense, Transportation, and the Interior, the Administrator, and the heads of other interested Federal agencies;

(C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary;

(D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act (16 U.S.C. 1852) that may be affected by the proposed designation; and

(E) other interested persons.

(3) **Resource Assessment Report.**—In making determinations and findings, the Secretary shall draft, as part of the environmental impact statement referred to in section 304(a)(1), a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. The Secretary, in consultation with the Secretary of the Interior, shall draft a resource assessment section for the report regarding any commercial or recreational resource uses in the area under consideration that are subject to the primary jurisdiction of the Department of the Interior.

Sec. 304. Procedures for Designation and Implementation.

(a) **Sanctuary Proposal.**—

(1) **Notice.**—In proposing to designate a national marine sanctuary, the Secretary shall—

(A) issue, in the Federal Register, a notice of the proposal, proposed regulations that may be necessary and reasonable to implement the proposal, and a summary of the draft management plan;

(B) provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal; and

(C) on the same day the notice required by subparagraph (A) is issued, the Secretary shall 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 a prospectus on the proposal which shall contain—

(i) the terms of the proposed designation;

(ii) the basis of the findings made under section 303(a) with respect to the area;

(iii) an assessment of the considerations under section 303(b)(1);

(iv) proposed mechanisms to coordinate existing regulatory and management authorities within the area;

(v) the draft management plan detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance activities for the area;

(vi) an estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education;

(vii) the draft environmental impact statement;

(viii) an evaluation of the advantages of cooperative State and Federal management if all or part of a

proposed marine sanctuary is within the territorial limits of any State or is superjacent to the subsoil and seabed within the seaward boundary of a State, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 et seq.); and

(ix) the proposed regulations referred to in subparagraph (A).

(2) **Environmental Impact Statement.**—The Secretary shall—

(A) prepare a draft environmental impact statement, as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), on the proposal that includes the resource assessment report required under section 303(b)(3), maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area; and

(B) make copies of the draft environmental impact statement available to the public.

(3) **Public Hearing.**—No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national marine sanctuary for the purpose of receiving the views of interested parties.

(4) **Terms of Designation.** — The terms of designation of a sanctuary shall 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. The terms of designation may be modified only by the same procedures by which the original designation is made.

(5) **Fishing Regulations.** — The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the United States Fishery Conservation Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this title and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is

rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations.

(6) **Committee Action.** — After receiving the prospectus under subsection (a)(1)(C), the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the prospectus. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the prospectus, either Committee issues a report concerning matters addressed in the prospectus, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.

(b) **Taking Effect of Designations.** —

(1) **Notice.** — In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6). The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless —

(A) the designation or any of its terms is disapproved by enactment of a joint resolution of disapproval described in paragraph (3); or

(B) in the case of a natural marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

(2) **Withdrawal of Designation.** — If the Secretary considers that actions taken under paragraph (1)(A) or (B) will affect the designation of a national marine sanctuary in a manner that the goals and objectives of the sanctuary cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not disapproved under paragraph (1)(A) or not certified under paragraph (1)(B) shall take effect.

(3) **Resolution of Disapproval.** — For the purposes of this subsection, the term 'resolution of disapproval'

means a joint resolution which states after the resolving clause the following: "That the Congress disapproves the national marine sanctuary designation entitled _____ that was submitted to Congress by the Secretary of Commerce on _____", the first blank space being filled with the title of the designation and the second blank space being filled with the date on which the notice was submitted to Congress. In the event that the disapproval is addressed to one or more terms of the designation, the joint resolution shall state after the resolving clause the following: "That the Congress approves the national marine sanctuary designation entitled _____ that was submitted to Congress by the Secretary of Commerce on _____ but disapproves the following terms of such designation: _____", the first blank space being filled with the title of the designation, the second blank space being filled with the date on which the notice was submitted to Congress, and the third blank space referencing each term of the designation which is disapproved.

(4) Procedures. —

(A) In computing the forty-five-day periods of continuous session of Congress pursuant to subsection (a)(6) and paragraph (1) of this subsection —

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.

(B) When the committee to which a joint resolution has been referred has reported such a resolution, it shall at any time thereafter be in order to move to proceed to the consideration of the resolution. The motion shall be privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) This subsection is enacted by Congress as an exercise of the rulemaking power of each House of Congress, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the case of resolutions described in this subsection. This subsection supersedes other rules only to the extent that they are inconsistent therewith, and is enacted with full recognition of the constitutional right of either House to change the rules (so far as those relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(c) Access and Valid Rights. —

(1) Nothing in this title shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsis-

tence use or of access if the lease, permit, license, or right —

(A) was in existence on the date of enactment of the Marine Sanctuaries Amendments of 1984, with respect to any national marine sanctuary designated before that date; or

(B) is in existence on the date of designation of any national marine sanctuary, with respect to any national marine sanctuary designated after the date of enactment of the Marine Sanctuaries Amendments of 1984.

(2) The exercise of a lease, permit, license, or right is subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.

Sec. 305. Application of Regulations and International Negotiations.

(a) Regulations. — The regulations issued under section 304 shall be applied in accordance with generally recognized principles of international law, and in accordance with the treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—

(1) generally recognized principles of international law;

(2) an agreement between the United States and the foreign state of which the person is a citizen; or

(3) an agreement between the United States and the flag state of a foreign vessel, if the person is a crew-member of the vessel.

(b) Negotiations. — The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.

Sec. 306. Research and Education.

The Secretary shall conduct research and educational programs as are necessary and reasonable to carry out the purposes and policies of this title.

Sec. 307. Enforcement.

(a) In General. — The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title. The Secretary shall, whenever appropriate, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities on a reimbursable basis in carrying out the Secretary's responsibilities under this title.

(b) Civil Penalties. —

(1) Civil Penalty. — Any person subject to the jurisdiction of the United States who violates any regulation issued under this title shall be liable to the United States for a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day

of a continuing violation shall constitute a separate violation.

(2) Notice. — No penalty shall be assessed under this subsection until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

(3) In Rem Jurisdiction. — A vessel used in the violation of a regulation issued under this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

(c) Jurisdiction. — The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued under this title, and to grant such

other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States. The Attorney General may bring suit either on the Attorney General's own initiative or at the request of the Secretary.

Sec. 308. Authorization of Appropriations.

To carry out this title, there are authorized to be appropriated:

- (1) \$3,000,000 for fiscal year 1985.
- (2) \$3,300,000 for fiscal year 1986.
- (3) \$3,600,000 for fiscal year 1987.
- (4) \$3,900,000 for fiscal year 1988.

Sec. 309. Severability.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

MARINE MAMMAL PROTECTION ACT *

(Enacted by PL 92-522, October 21, 1972; 86 Stat. 1027; 16 U.S.C. 1361, *et seq.*; As amended by PL 93-205, December 28, 1973; PL 94-265, April 13, 1976; PL 95-136, October 18, 1977; PL 95-316, July 10, 1978; PL 96-470, October 19, 1980; PL 97-58, October 9, 1981; PL 97-389, December 29, 1982; PL 98-364, July 17, 1984)

[*Editor's note:* PL 95-136, besides amending the Marine Mammal Protection Act, included a section that did not amend the Act but instead concerned "the navigable waters of Puget Sound." The text of that section appears at the end of the Marine Mammal Protection Act.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act, with the following table of contents, may be cited as the "Marine Mammal Protection Act of 1972".

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FINDINGS AND DECLARATION OF POLICY

Sec. 2. The Congress finds that—

(1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;

(2) such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has already diminished below that population. In particular, efforts should be made to protect the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;

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(3) there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully;

(4) negotiations should be undertaken immediately to encourage the development of international arrangements for research on, and conservation of, all marine mammals;

(5) marine mammals and marine mammal products either—

(A) move in interstate commerce, or

(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce, and that the protection and conservation of marine mammals is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

(6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the carrying capacity of the habitat.

[2(6) amended by PL 97-58]

DEFINITIONS

Sec. 3. For the purposes of this Act—

(1) The term "depletion" or "depleted" means any case in which —

(A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act, determines that a species or population stock is below its optimum sustainable population;

(B) a State, to which authority for the conservation and management of a species or population stock is transferred under section 109, determines that such species or stock is below its optimum sustainable population; or

(C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973.

[3(1) revised by PL 97-58]

(2) The terms "conservation" and "management" mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals at their optimum sustainable population. Such terms include the entire scope of activities that constitute a modern scientific resource program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

[3(2) amended by PL 97-58]

(3) The term "district court of the United States" includes the District Court of Guam, District Court of the Virgin Islands, District Court of Puerto Rico, District Court of the Canal Zone, and, in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii.

(4) The term "humane" in the context of the taking of a marine mammal means that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved.

(5) The term "marine mammal" means any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this Act, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(6) the term "marine mammal product" means any item of merchandise which consists, or is composed in whole or in part, of any marine mammal.

(7) The term "moratorium" means a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products, except as provided in this Act.

(8) The term "optimum sustainable population" means, with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

[3(8) repealed and (9) amended and redesignated as (8) by PL 97-58]

(9) The term "person" includes (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Govern-

ment, of any State or political subdivision thereof, or of any foreign government.

[3(10) — (13) redesignated as (9) — (12) by PL 97-58]

(10) The term "population stock" or "stock" means a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature.

(11) The term "Secretary" means—

(A) the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this Act with respect to members of the order Cetacea and members, other than walruses, of the order Pinnipedia, and

(B) the Secretary of the Interior as to all responsibility, authority, funding, and duties under this Act with respect to all other marine mammals covered by this Act.

(12) The term "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

(13) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands.

[3(14) amended and redesignated as (13) by PL 97-58]

(14) The term "waters under the jurisdiction of the United States" means—

(A) the territorial sea of the United States, and

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured. (80 Stat. 908; 16 U.S.C. 1091—1094).

[3(15) revised by PL 94-265; redesignated as (14) by PL 97-58]

[Editor's note: Sec. 404(b) of PL 94-265 provides:

"(b) EFFECTIVE DATE. — The amendment made by subsection (a)* shall take effect March 1, 1977."]

EFFECTIVE DATE

Sec. 4. The provisions of this Act shall take effect upon the expiration of the sixty-day period following the date of its enactment.

*Section 404(a) of PL 94-265 amended Section 3(15)(B) of this Act.

TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

MORATORIUM AND EXCEPTIONS

Sec. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammals products, commencing on the effective date of this Act [Dec. 21, 1972], during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) Permits may be issued by the Secretary for taking and importation for purposes of scientific research and for public display if—

(A) the taking proposed in the application for any such permit, or

(B) the importation proposed to be made, is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act. The Commission and Committee shall recommend any proposed taking or importation which is consistent with the purposes and policies of section 2 of this Act. The Secretary shall, if he grants approval for importation, issue to the importer concerned a certificate to that effect which shall be in such form as the Secretary of the Treasury prescribes and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 104 subject to regulations prescribed by the Secretary in accordance with section 103. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary —

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States; and

(B) in the case of yellowfin tuna harvested with purse seines in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i) the government of the harvesting nation has adopted a regulatory program governing the incidental taking of marine mammals in the course of such harvesting that is comparable to that of the United States; and

(ii) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of marine mammals by United States vessels in the course of such harvesting.

[101 (a)(2) amended by PL 97-58, PL 98-364]

(3) (A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this Act to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111 of this title permitting and governing such taking and importing, in accordance with such determinations: *Provided, however,* That the Secretary, in making such determinations, must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this Act: *Provided further, however,* That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this Act. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes as provided for in paragraph (1) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

[101(a)(3)(B) amended by PL 97-58]

(4)(A) During any period of five consecutive years, the Secretary shall allow the incidental, but not the intentional, taking, by citizens of the United States while engaging in commercial fishing operations, of small numbers of marine mammals of a species or population stock that is not depleted if the Secretary, after notice and opportunity for public comment—

(i) finds that the total of such taking during such five-year period will have a negligible impact on such species or stock; and

(ii) provides guidelines pertaining to the establishment of a cooperative system among the fishermen involved for the monitoring of such taking.

(B) The Secretary shall withdraw, or suspend for a time certain, the permission to take marine mammals under subparagraph (A) if the Secretary finds, after notice and opportunity for public comment, that—

(i) the taking allowed under subparagraph (A) is having more than a negligible impact on the species or stock concerned; or

(ii) the policies, purposes and goals of this Act would be better served through the application of this title without regard to this subsection.

Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.

(5)(A) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock that is not depleted if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(i) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and its habitat, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) or section 109(f); and

(ii) prescribes regulations setting forth—

(I) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(II) requirements pertaining to the monitoring and reporting of such taking.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under

subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C) (i) applies), that—

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 103 and 104 shall not apply to the taking of marine mammals under the authority of this paragraph.

[101(a)(4) added by PL 97-58]

(b) Except as provided in section 109, the provisions of this Act shall not apply with respect to the taking of any marine mammal by an Indian, Aleut or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) is for subsistence purposes; or

[101(b), (b)(1) amended by PL 97-58]

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: *Provided*, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: *And provided further*, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing, and painting; and

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when under this Act, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine

mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this Act. Such regulations shall be prescribed after notice and hearing required by section 103 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared.

(c) In order to minimize undue economic hardship to persons subject to this Act, other than those engaged in commercial fishing operations referred to in subsection (a)(2) of this section, the Secretary, upon any such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, may exempt such person or class of persons from provisions of this Act for no more than one year from the date of the enactment of this Act, as he determines to be appropriate.

PROHIBITIONS

Sec. 102. (a) Except as provided in sections 101, 103, 104, 109, 111, and 113 of this title, it is unlawful —
[102(a) amended by PL 97-58]

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this title or by any statute implementing any such treaty, convention, or agreement —

(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States for any purpose in any way connected with the taking or importation of marine mammals or marine mammal products; and

(3) for any person, with respect to any marine mammal taken in violation of this title, to possess that mammal or any product from that mammal;

[Former 102(a)(3) deleted and new (3), (4) added by PL 97-58]

(4) for any person to transport, purchase, sell, or offer to purchase or sell any marine mammal or marine mammal product;

(5) for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this Act.

[102(a)(4) redesignated as (5) by PL 97-58]

(b) Except pursuant to a permit for scientific research issued under section 104(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was —

- (1) pregnant at the time of taking;
- (2) nursing at the time of taking, or less than eight months old, whichever occurs later;
- (3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock; or

[102(b)(3) amended by PL 97-58]

(4) taken in a manner deemed inhumane by the Secretary.

(c) It is unlawful to import into the United States any of the following:

- (1) Any marine mammal which was —
 - (A) taken in violation of this title; or
 - (B) taken in another country in violation of the law of that country.

(2) Any marine mammal product if —

(A) the importation into the United States of the marine mammal from which such product is made is unlawful under paragraph (1) of this subsection; or

(B) the sale in commerce of such product in the country of origin of the product is illegal;

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(d) Subsections (b) and (c) of this section shall not apply —

- (1) in the case of marine mammals or marine mammal products, as the case may be, to which subsection (b)(3) of this section applies, to such items imported into the United States before the date on which the Secretary publishes notice in the Federal Register of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted; or

[102(d)(1) amended by PL 97-58]

(2) in the case of marine mammals or marine mammal products to which subsection (c)(1)(B) or (c)(2)(B) of this section applies, to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(e) This Act shall not apply with respect to any marine mammal taken before the effective date of this Act, or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date.

(f) It is unlawful for any person or vessel or other conveyance to take any species of whale incident to commercial whaling in waters subject to the jurisdiction of the United States.

REGULATIONS ON TAKING OF MARINE MAMMALS

Sec. 103. (a) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal (including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks and will be consistent with the purposes and policies set forth in section 2 of this Act.

(b) In prescribing such regulations, the Secretary shall give full consideration to all factors which may affect the extent to which such animals may be taken or imported, including but not limited to the effect of such regulations on —

(1) existing and future levels of marine mammal species and population stocks;

(2) existing international treaty and agreement obligations of the United States;

(3) the marine ecosystem and related environmental considerations;

(4) the conservation, development, and utilization of fishery resources; and

(5) the economic and technological feasibility of implementation.

(c) The regulations prescribed under subsection (a) of this section for any species or population stock of marine mammal may include, but are not limited to, restrictions with respect to —

(1) the number of animals which may be taken or imported in any calendar year pursuant to permits issued

(2) the age, size, or sex (or any combination of the foregoing) of animals which may be taken or imported, whether or not a quota prescribed under paragraph (1) of this subsection applies with respect to such animals;

(3) the season or other period of time within which animals may be taken or imported;

(4) the manner and locations in which animals may be taken or imported; and

(5) fishing techniques which have been found to cause undue fatalities to any species of marine mammal in a fishery.

(d) Regulations prescribed to carry out this section with respect to any species or stock of marine mammals must be made on the record after opportunity for an agency hearing on both the Secretary's determination to waive the moratorium pursuant to section 101(a)(3)(A) of this title and on such regulations, except that, in addition to any other requirements imposed by law with respect to agency rulemaking, the Secretary shall publish and make available to the public either before or concurrent with the publication of notice in the Federal Register of his intention to prescribe regulations under this section —

(1) a statement of the estimated existing levels of the species and population stocks of the marine mammal concerned;

(2) a statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock;

(3) a statement describing the evidence before the Secretary upon which he proposes to base such regulations; and

(4) any studies made by or for the Secretary or any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of such regulations.

(e) Any regulation prescribed pursuant to this section shall be periodically reviewed, and may be modified from time to time in such manner as the Secretary deems consistent with and necessary to carry out the purposes of this Act.

(f) Within six months after the effective date of this Act and every twelve months thereafter, the Secretary shall report to the public through publication in the Federal Register and to the Congress on the current status of all marine mammal species and population stocks subject to the provisions of this Act. His report shall describe those actions taken and those measures believed necessary, including where appropriate, the issuance of permits pursuant to this title to assure the well-being of such marine mammals.

PERMITS

Sec. 104(a) The Secretary may issue permits which authorize the taking or importation of any marine mammal.

(b) Any permit issued under this section shall —

(1) be consistent with any applicable regulation established by the Secretary under section 103 of this title, and

(2) specify —

(A) the number and kind of animals which are authorized to be taken or imported;

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported;

(C) the period during which the permit is valid; and

(D) any other terms of conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking, the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of display or scientific research shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to and after such taking or importation. Any person authorized to take or import a marine mammal for purposes of display or scientific research shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(d)(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this Act and the applicable regulations established under section 103 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be

submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of title 5, United States Code, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e)(1) The Secretary may modify, suspend, or revoke in whole or part any permit issued by him under this section —

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 103 of this title; or

(B) in any case in which a violation of the terms and conditions of the permit is found.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during —

(1) the time of the authorized or taking importation;

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent. A duplicate copy of the issued permit

must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h)(1) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue general permits for the taking of such marine mammals, together with regulations to cover the use of such general permits.

[104 (h)(1) designated by PL 98-364]

(2)(A) Subject to subparagraph (B), the general permit issued under paragraph (1) on December 1, 1980 to the American Tunaboat Association is extended to authorize and govern the taking of marine mammals incidental to commercial purse seine fishing for yellowfin tuna during each year after December 31, 1984.

(B) The extension granted under subparagraph (A) is subject to the following conditions:

(i) The extension shall cease to have force and effect at the time the general permit is surrendered or terminated.

(ii) The permittee and certificate holders shall use the best marine mammal safety techniques and equipment that are economically and technologically practicable.

(iii) During the period of the extension, the terms and conditions of the general permit that are in effect on the date of the enactment of this paragraph shall apply, except that —

(I) the Secretary may make such adjustments as may be appropriate to those terms and conditions that pertain to fishing gear and fishing practice requirements and to permit administration;

(II) any such term and condition may be amended or terminated if the amendment or termination is based on the best scientific information available, including that obtained under the monitoring program required under paragraph (3)(A); and

(III) during each year of the extension, not to exceed 250 coastal spotted dolphin (*Stenella attenuata*) and not to exceed 2,750 eastern spinner dolphin (*Stenella longirostris*) may be incidentally taken under the general permit, may no accidental taking of either species is authorized at any time when incidental taking of that species is permitted.

(C) The quota on the incidental taking of coastal spotted dolphin and eastern spinner dolphin under paragraph (2)(B)(iii)(III) shall be treated—

(i) as within, and not in addition to, the overall annual quota under the general permit on the incidental taking of marine mammals; and

(ii) for purposes of paragraph (2)(B)(iii)(II), as a term of the general permit in effect on the date of the enactment of this paragraph.

(3)(A) The Secretary shall, commencing on January 1, 1985, undertake a scientific research program to monitor for at least five consecutive years, and periodically as necessary thereafter, the indices of abundance and trends of marine mammal population stocks which are incidentally taken in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

(B) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the monitoring program) that the incidental taking of marine mammals permitted under the general permit referred to in paragraph (2) is having a significant adverse effect on a marine mammal population stock, the Secretary shall take such action as is necessary, after notice and an opportunity for an agency hearing on the record, to modify the applicable incidental take quotas or requirements for gear and fishing practices (or both such quotas and requirements) for such fishing so as to ensure that the marine mammal population stock is not significantly adversely affected by the incidental taking.

(C) For each year after 1984, the Secretary shall include in his annual report to the public and the Congress under section 103(f) a discussion of the proposed activities to be conducted each year as part of the monitoring program required by subparagraph (A).

(D) There are authorized to be appropriated to the Department of Commerce for purposes of carrying out the monitoring program required under this paragraph not to exceed \$4,000,000 for the period beginning October 1, 1984, and ending September 30, 1988.

[104 (h)(2) and (3) added by PL 98-364]

PENALTIES

Sec. 105.(a)(1) Any person who violates any provision of this title or of any permit or regulation issued thereunder may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each unlawful taking or importation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found,

resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

[105(a)(1) designated by PL 97-58]

(2) In any case involving an alleged unlawful importation of a marine mammal or marine mammal product, if such importation is made by an individual for his own personal or family use (which does not include importation as an accommodation to others or for sale or other commercial use), the Secretary may, in lieu of instituting a proceeding under paragraph (1), allow the individual to abandon the mammal or product, under procedures to be prescribed by the Secretary, to the enforcement officer at the port of entry.

[105(a)(2) added by PL 97-58]

(b) Any person who knowingly violates any provision of this title or of any permit or regulation issued thereunder shall, upon conviction, be fined not more than \$20,000 for each such violation, or imprisoned for not more than one year, or both.

VESSEL FINE, CARGO FORFEITURE, AND REWARDS

Sec. 106. (a) Any vessel or other conveyance subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall have its entire cargo or the monetary value thereof subject to seizure and forfeiture. All provisions of law relating to the seizure, judicial forfeiture, and condemnation of cargo for violation of the customs laws, the disposition of such cargo, and the proceeds from the sale thereof, and the remission or mitigation of any such forfeiture, shall apply with respect to the cargo of any vessel or other conveyance seized in connection with the unlawful taking of a marine mammal insofar as such provisions of law are applicable and not inconsistent with the provisions of this title.

(b) Any vessel subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall be liable for a civil penalty of not more than \$25,000. Such penalty shall be assessed by the district court of the United States having jurisdiction over the vessel. Clearance of a vessel against which a penalty has been assessed, from a port of the United States, may be withheld until such penalty is paid, or until a bond or otherwise satisfactory surety is posted. Such penalty shall constitute a maritime lien on such vessel which may be recovered by action in rem in the district court of the United States having jurisdiction over the vessel.

(c) Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the fine incurred but not to exceed \$2,500 to any person who furnishes information which leads to a conviction for a violation of this title. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

ENFORCEMENT

Sec. 107. (a) Except as otherwise provided in this title, the Secretary shall enforce the provisions of this title. The Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency for purposes of enforcing this title.

(b) The Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this title. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States, for the purposes of any laws administered by the Civil Service Commission.

(c) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process, including warrants or other process issued in admiralty proceedings in United States district courts, as may be required for enforcement of this title and any regulations issued thereunder.

(d) Any person authorized by the Secretary to enforce this title may execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this title. Such person so authorized may, in addition to any other authority conferred by law —

(1) with or without warrant or other process, arrest any person committing in his presence or view a violation of this title or the regulations issued thereunder;

(2) with a warrant or other process, or without a warrant if he has reasonable cause to believe that a vessel or other conveyance subject to the jurisdiction of the United States or any person on board is in violation of any provision of this title or the regulations issued thereunder, search such vessel or conveyance and arrest such person;

(3) seize the cargo of any vessel or other conveyance subject to the jurisdiction of the United States used or employed contrary to the provisions of this title or the regulations issued hereunder or which reasonably appears to have been so used or employed; and

(4) seize, whenever and wherever found, all marine mammals and marine mammal products taken or retained in violation of this title or the regulations issued thereunder and shall dispose of them in accordance with regulations prescribed by the Secretary.

(e)(1) Whenever any cargo or marine mammal or marine mammal product is seized pursuant to this section, the Secretary shall expedite any proceedings commenced under section 105(a) or (b) of this title. All marine mammals or marine mammal products or other cargo so seized shall be held by any person authorized by the Secretary pending disposition of such proceedings. The owner or consignee of any such marine mammal or marine mammal product or other cargo so seized shall, as soon as practicable following such seizure, be notified of that fact in accordance with regulations established by the Secretary.

(2) The Secretary may, with respect to any proceeding under section 105 (a) or (b) of this title, in lieu of holding any marine mammal or marine mammal product or other cargo, permit the person concerned to post bond or other surety satisfactory to the Secretary pending the disposition of such proceeding.

(3)(A) Upon the assessment of a penalty pursuant to section 105(a) of this title, all marine mammals and marine mammal products or other cargo seized in connection therewith may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate.

(B) Upon conviction for violation of section 105(b) of this title, all marine mammals and marine mammal products seized in connection therewith shall be forfeited to the Secretary for disposition by him in such manner as he deems appropriate. Any other property or item so seized may, at the discretion of the court, be forfeited to the United States or otherwise disposed of.

(4) If with respect to any marine mammal or marine mammal product or other cargo so seized —

(A) a civil penalty is assessed under section 105(a) of this title and no judicial action is commenced to obtain the forfeiture of such mammal or product within thirty days after such assessment, such marine mammal or marine mammal product or other cargo shall be immediately returned to the owner or the consignee; or

(B) no conviction results from an alleged violation of section 105(b) of this title, such marine mammal or marine mammal product or other cargo shall immediately be returned to the owner or consignee if the Secretary does not, within thirty days after the final disposition of the case involving such alleged violation, commence proceedings for the assessment of a civil penalty under section 105(a) of this title.

INTERNATIONAL PROGRAM

Sec. 108. (a) The Secretary, through the Secretary of State, shall —

(1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of all marine mammals covered by this Act;

(2) initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals. The Secretary of State shall prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums;

(3) encourage such other agreements to promote the purposes of this Act with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of marine mammals;

(4) initiate the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this Act;

(5) seek the convening of an international ministerial meeting on marine mammals before July 1, 1973, for the purposes of (A) the negotiation of a binding international convention for the protection and conservation of all marine mammals, and (B) the implementation of paragraph (3) of this section; and

(6) provide to the Congress by not later than one year after the date of the enactment of this Act a full report on the results of his efforts under this section.

(b)(1) In addition to the foregoing, the Secretary shall —

(A) in consultation with the Marine Mammal Commission established by section 201 of this Act, undertake a study of the North Pacific fur seals to determine whether herds of such seals subject to the jurisdiction of the United States are presently at their optimum sustainable population and what population trends are evident; and

(B) in consultation with the Secretary of State, promptly undertake a comprehensive study of the provisions of this Act, as they relate to North Pacific fur seals, and the provisions of the North Pacific Fur Seal Convention signed on February 9, 1957, as extended

(hereafter referred to in this subsection as the "Convention"), to determine what modifications, if any, should be made to the provisions of the Convention, or of this Act, or both, to make the Convention and this Act consistent with each other. The Secretary shall complete the studies required under this paragraph not later than one year after the date of enactment of this Act and shall immediately provide copies thereof to Congress.

(2) If the Secretary finds —

(A) as a result of the study required under paragraph (1)(A) of this subsection, that the North Pacific fur seal herds are below their optimum sustainable population and are not trending upward toward such level, or have reached their optimum sustainable population but are commencing a downward trend, and believes the herds to be in danger of depletion; or

(B) as a result of the study required under paragraph (1)(B) of this subsection, that modifications of the Convention are desirable to make it and this Act consistent, he shall, through the Secretary of State, immediately initiate negotiations to modify the Convention so as to (i) reduce or halt the taking of seals to the extent required to assure that such herds attain and remain at their optimum sustainable population, or (ii) make the Convention and this Act consistent, or both, as the case may be. If negotiations to so modify the Convention are unsuccessful, the Secretary shall, through the Secretary of State, take such steps as may be necessary to continue the existing Convention beyond its present termination date so as to continue to protect and conserve the North Pacific fur seals to prevent a return to pelagic sealing.

FEDERAL COOPERATION WITH STATES

[109 revised by PL 97-58]

Sec. 109. (a) No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as "management authority") to the State under subsection (b)(1).

(b)(1) Subject to paragraph (2) and subsection (f), the Secretary shall transfer management authority for a species of marine mammal to a State if the Secretary finds, after notice and opportunity for public comment, that the State has developed and will implement a program for the conservation and management of the species that—

(A) is consistent with the purposes, policies, and goals of this Act and with international treaty obligations;

(B) requires that all taking of the species be humane;

(C) does not permit the taking of the species unless and until—

(i) the State has determined, under a process consistent with the standards set forth in subsection (c)—

(I) that the species is at its optimum sustainable population (hereinafter in this section referred to as "OSP"), and

(II) the maximum number of animals of that species that may be taken without reducing the species below its OSP, and

(ii) the determination required under clause (i) is final and implemented under State law, and, if a cooperative allocation agreement for the species is required under subsection (d)(1), such an agreement is implemented;

(D) does not permit the taking of a number of animals of the species that exceeds the maximum number determined pursuant to subparagraph (C)(i)(II), and, in the case of taking for subsistence uses (as defined in subsection (f)(2)), does not permit the taking of a number of animals that would be inconsistent with the maintenance of the species at its OSP;

(E) does not permit the taking of the species for scientific research and public display purposes, except for taking for such purposes that is undertaken by, or on behalf of, the State;

(F) provides procedures for acquiring data, and evaluating such data and other new evidence, relating to the OSP of the species, and the maximum take that would maintain the species at that level, and, if required on the basis of such evaluation, for amending determinations under subparagraph (C)(i);

(G) provides procedures for the resolution of differences between the State and the Secretary that might arise during the development of a cooperative allocation agreement under subsection (d)(1); and

(H) provides for the submission of an annual report to the Secretary regarding the administration of the program during the reporting period.

(2) During the period between the transfer of management authority for a species to a State under paragraph (1) and the time at which the implementation requirements under paragraph (1)(C)(ii) are complied with—

(A) the State program shall not apply with respect to the taking of the species within the State for any purpose, or under any condition, provided for under section 101; and

(B) the Secretary shall continue to regulate, under this title, all takings of the species within the State.

(3) After the determination required under paragraph (1)(C)(i) regarding a species is final and implemented under State law and after a cooperative allocation agreement described in subsection (d)(1), if required, is implemented for such species—

(A) such determination shall be treated, for purposes of applying this title beyond the territory of the State, as a determination made in accordance with section 103 and as an applicable waiver under section 101(a)(3);

(B) the Secretary shall regulate, without regard to this section other than the allocations specified under such an agreement, the taking of the species—

(i) incidentally in the course of commercial fishing operations (whether provided for under section 101(a)(2) or (4)), or in the course of other specified activities provided for under section 101(a)(5), in the zone described in section 3(14)(B), and

(ii) for scientific research or public display purposes (other than by, or on behalf of, the State), except that any taking authorized under a permit issued pursuant to section 101(a)(1) after the date of the enactment of the 1981 amendment to this subsection allowing the removal of live animals from habitat within the State shall not be effective if the State agency disapproves, on or before the date of issuance of the permit, such taking as being inconsistent with the State program; and

(C) section 101(b) shall not apply.

(c) The State process required under subsection (b)(1)(C) must comply with the following standards:

(1) The State agency with management authority for the species (hereinafter in this section referred to as the "State agency") must make an initial determination regarding the factors described in clause (i) of that subsection. The State agency must identify, and make available to the public under reasonable circumstances, the documentation supporting such initial determination. Unless request for a hearing under paragraph (2) regarding the initial determination is timely made, the initial determination shall be treated as final under State law.

(2) The State agency shall provide opportunity, at the request of any interested party, for a hearing with respect to the initial determination made by it under paragraph (1) at which interested parties may—

(A) present oral and written evidence in support of or against such determination; and

(B) cross-examine persons presenting evidence at the hearing.

The State agency must give public notice of the hearing and make available to the public within a reasonable time before commencing the hearing a list of the witnesses for the State and a general description of the documentation and other evidence that will be relied upon by such witnesses.

(3) The State agency, solely on the basis of the record developed at a hearing held pursuant to paragraph (2), must make a decision regarding its initial determination under paragraph (1) and shall include with the record a statement of the findings and conclusions, and the reason or basis therefor, on all material issues.

(4) Opportunity for judicial review of the decision made by the State agency on the record under paragraph (3), under scope of review equivalent to that provided for in section 706(2) (A) through (E) of title 5, United States Code, must be available under State law. The Secretary may not initiate judicial review of any such decision.

(d)(1) If the range of a species with respect to which a determination under paragraph (1)(C)(i) of subsection (b) is made extends beyond the territorial waters of the State, the State agency and the Secretary (who shall first coordinate with the Marine Mammal Commission and the appropriate Regional Fishery Management Council established under section 302 of the Act of April 13, 1976 (16 U.S.C. 1852)) shall enter into a cooperative allocation agreement providing procedures for allocating, on a timely basis, such of the number of animals, as determined under paragraph (1)(C)(i)(II) of subsection (b), as may be appropriate with priority of allocation being given firstly to taking for subsistence uses in the case of the State of Alaska, and secondly to taking for purposes provided for under section 101(a) within the zone described in section 3(14)(B).

(2) If the State agency requests the Secretary to regulate the taking of a species to which paragraph (1) applies within the zone described in section 3(14)(B) for subsistence use or for hunting, or both, in a manner consistent with the regulation by the State agency of such taking within the State, the Secretary shall adopt, and enforce within such zone, such of the State agency's regulatory provisions as the Secretary considers to be consistent with his administration of section 101(a) within such zone. The Secretary shall adopt such provisions through the issuance of regulations under section 553 of title 5, United States Code, and with respect to such issuance the Regulatory Flexibility Act, the Paperwork Reduction Act, Executive Order Numbered 12291, dated February 17, 1981, and the thirty-day notice requirement in subsection (d) of such section 553 shall not apply. For purposes of sections 105, 106, and 107, such regulations shall be treated as having been issued under this title.

(e)(1) Subject to paragraph (2), the Secretary shall revoke, after opportunity for a hearing, any transfer of management authority made to a State under subsection (b)(1) if the Secretary finds that the State program for the conservation and management of the species concerned is not being implemented, or is being implemented in a

manner inconsistent with the provisions of this section or the provisions of the program. The Secretary shall also establish a procedure for the voluntary return by a State to the Secretary of species management authority that was previously transferred to the State under subsection (b)(1).

(2)(A) The Secretary may not revoke a transfer of management authority under paragraph (1) unless—

(i) the Secretary provides to the State a written notice of intent to revoke together with a statement, in detail, of those actions, or failures to act, on which such intent is based; and

(ii) during the ninety-day period after the date of the notice of intent to revoke—

(I) the Secretary provides opportunity for consultation between him and the State concerning such State actions or failures to act and the remedial measures that should be taken by the State, and

(II) the State does not take such remedial measures as are necessary, in the judgment of the Secretary, to bring its conservation and management program, or the administration or enforcement of the program, into compliance with the provisions of this section.

(B) When a revocation by the Secretary of a transfer of management authority to a State becomes final, or the State voluntarily returns management authority to the Secretary, the Secretary shall regulate the taking, and provide for the conservation and management, of the species within the State in accordance with the provisions of this Act (and in the case of Alaskan Natives, section 101(b) and subsection (i) of this section shall apply upon such revocation or return of management authority).

(f)(1) The Secretary may not transfer management authority to the State of Alaska under subsection (b)(1) for any species of marine mammal unless—

(A) the State has adopted and will implement a statute and regulations that insure that the taking of the species for subsistence uses—

(i) is accomplished in a nonwasteful manner,

(ii) will be the priority consumptive use of the species, and

(iii) if required to be restricted, such restriction will be based upon—

(I) the customary and direct dependence upon the species as the mainstay of livelihood,

(II) local residency, and

(III) the availability of alternative resources; and

(B) the State has adopted a statute or regulation that requires that any consumptive use of marine mammal species, other than for subsistence uses, will be authorized during a regulatory year only if the appropriate agency first makes findings, based on an administrative record before it, that—

(i) such use will have no significant adverse impact upon subsistence uses of the species, and

(ii) the regulation of such use, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, will, to the maximum extent practicable, provide economic opportunities for the residents of the rural coastal villages of Alaska who engage in subsistence uses of that species.

(2) For purposes of paragraph (1), the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this paragraph—

(A) The term "family" means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(B) The term "barter" means the exchange of marine mammals or their parts, taken for subsistence uses—

(i) for other wildlife or fish or their parts, or

(ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

(g) Neither the transfer of management authority to a State under subsection (b)(1), nor the revocation or voluntary return of such authority under subsection (e), shall be deemed to be an action for which an environmental impact statement is required under section 102 of the National Environmental Policy Act of 1969.

(h) Nothing in this title shall prevent a Federal, State, or local government official or employee or a person designated under section 112(c) from taking, in the course of his duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for—

(1) the protection or welfare of the mammal,

(2) the protection of the public health and welfare, or

(3) the nonlethal removal of nuisance animals,

and, in any case in which the return of the mammal to its natural habitat is feasible, includes steps designed to achieve that result.

(i) The Secretary may (after providing notice thereof in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the affected area and providing opportunity for a hearing thereon in such area) prescribe regulations requiring the marking, tagging, and reporting of animals taken pursuant to section 101(b).

(j) The Secretary may make grants to States to assist them—

"(1) in developing programs, to be submitted for approval under subsection (b), for the conservation and management of species of marine mammals; and

(2) in administering such programs if management authority for such species is transferred to the State under such subsection.

Grants made under this subsection may not exceed 50 per centum of the costs of developing a State program before Secretarial approval, or of administering the program thereafter.

(K) The Secretary is authorized and directed to enter into cooperative arrangements with the appropriate officials of any State for the delegation to such State of the administration and enforcement of this title: *Provided*, That any such arrangement shall contain such provisions as the Secretary deems appropriate to insure that the purposes and policies of this Act will be carried out.

(1) There are authorized to be appropriated to the Department of the Interior, for the purposes of carrying out this section, not to exceed \$400,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(2) There are authorized to be appropriated to the Department of Commerce, for the purposes of carrying out this section, not to exceed \$225,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

[Editor's note: Section 4(b) of PL 97-58 provides:

"(b) No Effect on Certain Cooperative Agreements.—Nothing in the amendments made by subsection (a)* shall be construed as affecting in any manner, or to any extent, any cooperative agreement entered into by a State under section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) before, on, or after the date of the enactment of this Act."]

MARINE MAMMAL RESEARCH GRANTS

Sec. 110. (a) The Secretary is authorized to make grants, or to provide financial assistance in such other form as he deems appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects which are relevant to the protection and conservation of marine mammals.

*Subsection 4(a) of PL 97-58 revised Section 109 of this Act.

In carrying out this subsection, the Secretary shall undertake a program of, and shall provide financial assistance for, research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals. The Secretary shall include a description of the annual results of research carried out under this section in the report required under section 103(f).

[110(a) amended by PL 97-58]

(b) Any grant or other financial assistance provided by the Secretary pursuant to this section shall be subject to such terms and conditions as the Secretary deems necessary to protect the interests of the United States and shall be made after review by the Marine Mammal Commission.

(c) There are authorized to be appropriated, for the purposes of carrying out this section, not to exceed the following sums for the following fiscal years:

(1) \$2,500,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, June 30, 1975, September 30, 1976, and September 30, 1977, of which one-third of the sum appropriated for any such fiscal year shall be available to the Secretary of the Interior and two-thirds of any such sum shall be available to the Secretary of Commerce.

(2) \$1,200,000, all of which shall be available to the Secretary of the Interior, for the fiscal year ending September 30, 1978.

(3) \$200,000, all of which shall be available to the Secretary of Commerce, for the fiscal year ending September 30, 1978.

(4) (A) \$1,300,000 which shall be available to the Secretary of the Interior for the fiscal year ending September 30, 1979.

(B) \$2,700,000 which shall be available to the Secretary of Commerce for the fiscal year ending September 30, 1979.

(5) (A) \$1,500,000 which shall be available to the Secretary of the Interior for the fiscal year ending September 30, 1980.

(B) \$2,700,000 which shall be available to the Secretary of Commerce for the fiscal year ending September 30, 1980.

(6) (A) \$2,100,000 which shall be available to the Secretary of the Interior for the fiscal year ending September 30, 1981.

(B) \$2,700,000 which shall be available to the Secretary of Commerce for the fiscal year ending September 30, 1981.

COMMERCIAL FISHERIES GEAR DEVELOPMENT

Sec. 111. (a) The Secretary of the department in which the National Oceanic and Atmospheric Administration is operating (hereafter referred to in this sec-

tion as the "Secretary") is hereby authorized and directed to immediately undertake a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with commercial fishing. At the end of the full twenty-four calendar month period following the date of the enactment of this Act, the Secretary shall deliver his report in writing to the Congress with respect to the results of such research and development. For the purposes of this section, there is hereby authorized to be appropriated the sum of \$1,000,000 for the fiscal year ending June 30, 1973, and the same amount for the next fiscal year. Funds appropriated for this section shall remain available until expended.

(b) The Secretary, after consultation with the Marine Mammal Commission, is authorized and directed to issue, as soon as practicable, such regulations, covering the twenty-four-month period referred to in section 101(a)(2) of this title, as he deems necessary or advisable, to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations. Such regulations shall be adopted pursuant to section 553 of title 5, United States Code. In issuing such regulations, the Secretary shall take into account the results of any scientific research under subsection (a) of this section and, in each case, shall provide a reasonable time not exceeding four months for the persons affected to implement such regulations.

(c) Additionally, the Secretary and Secretary of State are directed to commence negotiations within the Inter-American Tropical Tuna Commission in order to effect essential compliance with the regulatory provisions of this Act so as to reduce to the maximum extent feasible the incidental taking of marine mammals by vessels involved in the tuna fishery. The Secretary and Secretary of State are further directed to request the Director of Investigations of the Inter-American Tropical Tuna Commission to make recommendations to all member nations of the Commission as soon as is practicable as to the utilization of methods and gear devised under subsection (a) of this section.

(d) Furthermore, after timely notice and during the period of research provided in this section, duly authorized agents of the Secretary are hereby empowered to board and to accompany any commercial fishing vessel documented under the laws of the United States, there being space available, on a regular fishing trip for the purpose of conducting research or observing operations in regard to the development of improved fishing methods and gear as authorized by this section. Such research and observation shall be carried out in such manner as to minimize interference with fishing

operations. The Secretary shall provide for the cost of quartering and maintaining such agents. No master, operator, or owner of such a vessel shall impair or in any way interfere with the research or observation being carried out by agents of the Secretary pursuant to this section.

REGULATIONS AND ADMINISTRATION

Sec. 112. (a) The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this title.

(b) Each Federal agency is authorized and directed to cooperate with the Secretary, in such manner as may be mutually agreeable, in carrying out the purposes of this title.

(c) The Secretary may enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this title on such terms as he deems appropriate with any Federal or State agency, public or private institution, or other person.

(d) The Secretary shall review annually the operation of each program in which the United States participates involving the taking of marine mammals on land. If at any time the Secretary finds that any such program cannot be administered on lands owned by the United States or in which the United States has an interest in a manner consistent with the purposes of policies of this Act, he shall suspend the operation of that program and shall include in the annual report to the public and the Congress required under section 103(f) of this Act his reasons for such suspension, together with recommendations for such legislation as he deems necessary and appropriate to resolve the problem.

[112 amended by PL 96-470]

APPLICATION TO OTHER TREATIES AND CONVENTIONS; REPEAL

Sec. 113. (a) The provisions of this title shall be deemed to be in addition to and not in contravention of the provisions of any existing international treaty, convention, or agreement, or any statute implementing the same, which may otherwise apply to the taking of marine mammals. Upon a finding by the Secretary that the provisions of any international treaty, convention, or agreement, or any statute implementing the same has been made applicable to persons subject to the provisions of this title in order to effect essential compliance with the regulatory provisions of this Act so as to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations, section 105 of this title may not apply to such persons.

(b) The proviso to the Act entitled "An Act to repeal certain laws providing for the protection of sea lions in Alaska water," approved June 16, 1934 (16 U.S.C. 659), is repealed.

AUTHORIZATION OF APPROPRIATIONS

Sec. 114. (a) There are authorized to be appropriated not to exceed \$2,000,000 for the fiscal year ending June 30, 1973, and the four next following fiscal years, not to exceed \$11,500,000 for the fiscal year ending September 30, 1978, not to exceed \$8,500,000 for the fiscal year ending September 30, 1979, not to exceed \$9,000,000 for the fiscal year ending September 30, 1980, and not to exceed \$9,500,000 for the fiscal year ending September 30, 1981, to enable the department in which the National Oceanic and Atmospheric Administration is operating to carry out such functions and responsibilities as it may have been given under this title (other than sections 109 and 110).

(b) There are authorized to be appropriated not to exceed \$700,000 for the fiscal year ending June 30, 1973, not to exceed \$525,000 for each of the next four fiscal years thereafter, not to exceed \$650,000 for the fiscal year ending September 30, 1979, not to exceed \$760,000 for the fiscal year ending September 30, 1980, and not to exceed \$876,000 for the fiscal year ending September 30, 1981, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this title (other than sections 109 and 110).

TITLE II — MARINE MAMMAL COMMISSION

ESTABLISHMENT OF COMMISSION

Sec. 201. (a) There is hereby established the Marine Mammal Commission (hereafter referred to in this title as the "Commission").

(b)(1) Effective September 1, 1982, the Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate. The President shall make his selection from a list of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation and the Chairman of the National Academy of Sciences. No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

[201 (b)(1) amended by PL 97-389; PL 98-364]

(2) The term of office for each member shall be three years; except that of the members initially appointed to the Commission, the term of one member shall be for one year, the term of one member shall be for two years, and the term of one member shall be for three years. No member is eligible for reappointment; except that any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed (A) shall be appointed for the remainder of such term, and (B) is eligible for reappointment for one full term. A member may serve after the expiration of his term until his successor has taken office.

(c) The President shall designate a Chairman of the Commission (hereafter referred to in this title as the "Chairman") from among its members.

(d) Members of the Commission shall each be compensated at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

(e) The Commission shall have an Executive Director, who shall be appointed (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service) by the Chairman with the approval of the Commission and shall be paid at a rate not in excess of the rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code. The Executive Director shall have such duties as the Chairman may assign.

DUTIES OF COMMISSION

Sec. 202. (a) The Commission shall —

(1) undertake a review and study of the activities of the United States pursuant to existing laws and international conventions relating to marine mammals, including, but not limited to, the International Convention for the Regulation of Whaling, the Whaling Convention Act of 1949, the Interim Convention on the Conservation of North Pacific Fur Seals, and the Fur Seal Act of 1966;

(2) conduct a continuing review of the condition of the stocks of marine mammals, of methods for their protection and conservation, of humane means of taking marine mammals, or research programs conducted or proposed to be conducted under the authority of this Act, and of all applications for permits for scientific research;

(3) undertake or cause to be undertaken such other studies as it deems necessary or desirable in connection with its assigned duties as to the protection and conservation of marine mammals;

(4) recommend to the Secretary and to other Federal officials such steps as it deems necessary or desirable for the protection and conservation of marine mammals;

(5) recommend to the Secretary of State appropriate policies regarding existing international arrangements for the protection and conservation of marine mammals, and suggest appropriate international arrangements for the protection and conservation of marine mammals;

(6) recommend to the Secretary of the Interior such revisions of the endangered species list, and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973, as may be appropriate with regard to marine mammals; and

(7) recommend to the Secretary, other appropriate Federal officials, and Congress such additional measures as it deems necessary or desirable to further the policies of this Act, including provisions for the protection of the Indians, Eskimos, and Aleuts whose livelihood may be adversely affected by actions taken pursuant to this Act.

(b) The Commission shall consult with the Secretary at such intervals as it or he may deem desirable, and shall provide each annual report required under section 204, before submission to Congress to the Secretary for comment.

[202(b) amended by PL 97-58]

(c) The reports and recommendations which the Commission makes shall be matters of public record and shall be available to the public at all reasonable times. All other activities of the Commission shall be matters of public record and available to the public in accordance with the provisions of section 552 of title 5, United States Code.

(d) Any recommendations made by the Commission to the Secretary and other Federal officials shall be responded to by those individuals within one hundred and twenty days after receipt thereof. Any recommendations which are not followed or adopted shall be referred to the Commission together with a detailed explanation of the reasons why those recommendations were not followed or adopted.

COMMITTEE OF SCIENTIFIC ADVISORS ON MARINE MAMMALS

Sec. 203. (a) The Commission shall establish, within ninety days after its establishment, a Committee of Scientific Advisors on Marine Mammals (hereafter

referred to in this title as the "Committee"). Such Committee shall consist of nine scientists knowledgeable in marine ecology and marine mammal affairs appointed by the Chairman after consultation with the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences.

(b) Except for United States Government employees, members of the Committee shall each be compensated at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day such member is engaged in the actual performance of duties vested in the Committee. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

(c) The Commission shall consult with the Committee on all studies and recommendations which it may propose to make or has made, on research programs conducted or proposed to be conducted under the authority of this Act, and on all applications for permits for scientific research. Any recommendations made by the Committee or any of its members which are not adopted by the Commission shall be transmitted by the Commission to the appropriate Federal agency and to the appropriate committees of Congress with a detailed explanation of the Commission's reasons for not accepting such recommendations.

COMMISSION REPORTS

Sec. 204. The Commission shall transmit to Congress, by January 31 of each year, a report which shall include —

(1) a description of the activities and accomplishments of the Commission during the immediately preceding year; and

(2) all the findings and recommendations made by and to the Commission pursuant to section 202 of this Act together with the responses made to these recommendations.

COORDINATION WITH OTHER FEDERAL AGENCIES

Sec. 205. The Commission shall have access to all studies and data compiled by Federal agencies regarding marine mammals. With the consent of the appropriate Secretary or Agency head, the Commission may also utilize the facilities or services of any Federal agency and shall take every feasible step to avoid duplication of research and to carry out the purposes of this Act.

ADMINISTRATION OF COMMISSION

Sec. 206. The Commission, in carrying out its responsibilities under this title, may —

- (1) employ and fix the compensation of such personnel;
- (2) acquire, furnish, and equip such office space;
- (3) enter into such contracts or agreements with or provide such grants to other organizations, both public and private;

[206(3) amended by PL 97-58]

(4) procure the services of such experts or consultants or an organization thereof as is authorized under section 3109 of title 5, United States Code (but at rates for individuals not to exceed \$100 per diem); and

(5) incur such necessary expenses and exercise such other powers, as are consistent with and reasonably required to perform its functions under this title. Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services; except that no fewer than 11 employees must be employed under paragraph (1) at any time.

[206 (5) amended by PL 98-364]

AUTHORIZATION OF APPROPRIATIONS

Sec. 207. There are authorized to be appropriated for the fiscal year in which this title is enacted and for the next five fiscal years thereafter such sums as may be necessary to carry out this title, but the sums appropriated for any fiscal year other than the fiscal year ending September 30, 1978, shall not exceed \$1,000,000, the sum appropriated for the fiscal year ending September 30, 1978, shall not exceed \$2,000,000, the sum appropriated for the fiscal year ending September 30, 1979, shall not exceed \$1,000,000, the sum appropriated for the fiscal year ending September 30, 1980, shall not exceed \$1,000,000, and the sum appropriated for the fiscal year ending September 30, 1981, shall not exceed \$1,000,000.

Related Law: Section 7 of PL 97-58 (October 9, 1981) provides:

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF COMMERCE.— There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under title I other than section 104 (h)(3) of the Marine Mammal Protection Act of 1972, \$7,223,000 for fiscal year 1982, \$8,000,000 for fiscal year 1983, and \$8,800,000 for each of fiscal years 1984, 1985, 1986, 1987, and 1988.

(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out such functions and responsibilities as it may have been given under such title I, \$1,600,000 for fiscal year 1982, \$1,760,000 for fiscal year 1983, \$2,000,000 for fiscal year 1984, \$2,500,000 for fiscal year 1985, and \$3,000,000 for each of fiscal years 1986, 1987, and 1988.

(c) MARINE MAMMAL COMMISSION.—There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out title II of such Act of 1972, \$672,000 for fiscal year 1982, \$1,000,000 for fiscal year 1983, and \$1,100,000 for each of fiscal years 1984, 1985, 1986, 1987, and 1988.

[7 (a)—(c) amended by PL 98-364]

[Editor's note: The following is Section 5 of PL 95-136, October 18, 1977. Sections 1 through 4 amended the Marine Mammal Protection Act. Section 5 did not, but is generally linked with the Act in the public view. Text of Section 5 follows:]

“Sec. 5. (a) The Congress finds that —

“(1) the navigable waters of Puget Sound in the State of Washington, and the natural resources therein, are a fragile and important national asset;

“(2) Puget Sound and the shore area immediately adjacent thereto is threatened by increased domestic and international traffic of tankers carrying crude oil in bulk which increases the possibility of vessel collisions and oil spills; and

“(3) it is necessary to restrict such tanker traffic in Puget Sound in order to protect the navigable waters thereof, the natural resources therein, and the shore area immediately adjacent thereto, from environmental harm.

“(b) Notwithstanding any other provision of law, on and after the date of enactment of this section, no officer, employee, or other official of the Federal Government shall, or shall have authority to, issue, renew, grant, or otherwise approve any permit, license, or other authority for constructing, renovating, modifying, or other-

wise altering a terminal, dock, or other facility in, on, or immediately adjacent to, or affecting the navigable waters of Puget Sound, or any other navigable waters in the State of Washington east of Port Angeles, which will or may result in any increase in the volume of crude oil capable of being handled at any such facility (measured as of the date of enactment of this section), other than oil to be refined for consumption in the State of Washington.”

Public Law 95-426 (October 7, 1978), an act pertaining to foreign relations authorization, includes the following section concerning marine mammal protection:

ACTION CONCERNING RESOURCES

“SEC. 602. It is the sense of the Congress that the President should convey to all countries having an interest in cetacean sea life the serious concern of the Congress regarding the continuing destruction of these marine mammals (highlighted by the recent slaughter of dolphins in the Sea of Japan by Japanese fishermen) and should encourage such countries—

(1) to join in international discussions with other such countries in order to advance general understanding of cetacean life and thereby facilitate an effective use of the living marine resources of the world which does not jeopardize the natural balance of the aquatic environment;

(2) to participate in an exchange of information with the National Marine Fisheries Service of the United States Department of Commerce, including cooperation in studies of—

(A) the impact of cetaceans on ecologically related human foodstuffs, and

(B) alternative methods of dealing with cetacean problems as they occur;

(3) to cooperate in establishing an international cetacean commission to advance understanding of cetacean life and to insure the effective conservation and protection of cetaceans on a global scale; and

(4) to adopt comprehensive marine mammal protection legislation.”]

SECTION 3. IMPLEMENTING REGULATIONS

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT

The primary implementing regulations under the MPRSA include:

- o 15 CFR Parts 924, 929, 935 through 938, and 941 which deal with the designation and operation of marine sanctuaries by the Commerce Department;
- o 33 CFR Parts 324 and 325 covering U.S. Army Corps of Engineers (COE) dredge dumping permits under MPRSA and processing of Corps permits [The regulations in 33 CFR 325 also implement the Corps permit programs under Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act. (Refer to the Reference Book on these two Acts for more information.)]; and
- o 40 CFR Subchapter H Parts 220 - 225 and 227 - 229 which address ocean dumping.

In addition to these regulations, planning meetings may be held between the DOE, the implementing agency, and other affected agencies or groups to establish early on the need for an ocean dumping permit and to identify databases or gaps. These meetings may hasten the permit process and can be a part of the environmental impact statement scoping procedure, if the need for an impact statement is foreseen.

Following is a summary of pertinent MPRSA/MMPA regulations.

15 CFR PARTS 924, 929, 935 TO 938, AND 941: MPRSA MARINE SANCTUARY REGULATIONS

Title III of MPRSA explains the purpose of marine sanctuaries and the need to control activities within the sanctuaries. The sanctuary program is managed by the Department of Commerce, and its regulations are codified beginning at 15 CFR 922. The Part 922 regulations are relevant only to the Commerce Department and are not included in this Reference Book. The purpose of sanctuary designation is to identify and protect distinctive physical and biological resources in the marine environment, which includes both ocean waters and the Great Lakes. The main area of interest to the DOE is what Departmental activities, either present or planned, might be restricted or prohibited in or near a designated sanctuary or candidate site. These issues are covered in the parts of Title 15 that address the seven sanctuaries designated to date. Locations of these seven sanctuaries are shown in Figure 1-1 of this Reference Book (see Section 1, Summary).

Part 924 - Monitor Marine Sanctuary Regulations

The Monitor Marine Sanctuary is located off the mid-Atlantic U.S. coastline and became a designated sanctuary as of May 19, 1975, pursuant to Title III of the MPRSA. The sanctuary designation regulations that are most relevant to ongoing or planned DOE activities include prohibitions on:

- o seabed drilling or coring,
- o discharging wastes in violation of any federal statute or regulation, and
- o any type of subsurface salvage or recovery.

The NOAA may issue permits to conduct such activities only if they relate to research on the sunken vessel, the Monitor, or recovery operations following an air or marine casualty. Also of interest to the DOE is Section 924.7, which stated at the time of sanctuary designation that any federal agency that had already authorized a prohibited activity in the area had to notify the NOAA. At that point, the NOAA Administrator would decide whether the federal activity could continue, consistent with MPRSA Title III, or whether it must cease. The NOAA decisions in this regard are final.

Part 929 - Key Largo National Marine Sanctuary Regulations

The final regulations for this sanctuary off the Florida coast became effective on January 9, 1984. They prohibit the following activities of potential DOE interest:

- o dredging, filling, excavating, or building;
- o removal or destruction of natural site features, marine life, or archeological/historical resources; and
- o discharge of substances into sanctuary waters (with limited exceptions for marine sanitation, etc.).

Only the NOAA Assistant Administrator for Ocean Services and Coastal Zone Management may permit variances from the prohibited actions. As a part of these regulations, activities "as may be necessary for the national defense" are exempt from the list of prohibited sanctuary actions. (Defense Department activities related to the national defense are also specifically exempt.)

Part 935 - The Channel Islands National Marine Sanctuary Regulations

The Channel Islands sanctuary, designated in October 1980, is located off the southern California coast. Although it is an area that contains a very rich and diverse marine fauna, a number of human activities are allowed to continue there. Some hydrocarbon exploration, development, and production is allowed, with conditions that include availability of oil spill control

equipment. However, hydrocarbon development activities pursuant to leases executed after the sanctuary regulations became effective are prohibited. Other prohibited activities of DOE interest include:

- o discharge of materials of any kind within the sanctuary, except for various routine ship wastes, fishing waste, and hydrocarbon development wastes (only as allowed under Section 935.6); and
- o alteration of, or construction on, the seabed.

Section 935.7, however, excludes from these prohibitions those activities "as may be necessary for the national defense."

Part 936 - The Point Reyes/Farallon Islands Marine Sanctuary Regulations

Also off the California coast, this sanctuary was designated in January 1981. These regulations contain allowances for certain defense-related and hydrocarbon development activities, as do the regulations for the Channel Islands sanctuary. Alteration of, or construction on, the seabed is expressly prohibited (except in limited cases), and this prohibition includes seabed drilling or dredging.

Part 937 - The Looe Key National Marine Sanctuary Regulations

Located just south of the Key Largo sanctuary, the Looe Key Sanctuary is located off the coast of the lower Florida Keys. Regulations were issued for Looe Key in January 1981. The sanctuary contains coral reefs and other resources which at the time of designation were in danger of overuse or abuse by recreational fishermen, divers, boaters, and others. As with some of the other sanctuaries, national defense activities are generally exempted from the activities prohibited in the sanctuary. Prohibited activities are largely directed at the recreational sector, covering the damage or removal of corals, the use of certain fishing methods, etc. No materials may be discharged into sanctuary waters, except for vessel sanitation and cooling water effluents and fishing wastes.

Part 938 - The Gray's Reef National Marine Sanctuary Regulations

Regulations for this sanctuary were established in January 1981. Gray's Reef is located off the southeastern U.S. coastline and contains both a unique benthic ecosystem and recreational resources. National defense activities are generally exempted from the prohibited activities. Prohibited activities of relevance to the DOE include:

- o alteration of, or construction on, the seabed; and
- o discharge of materials except for routine vessel cooling water and sanitation waste and fishing wastes.

Part 941 - The Fagatelle Bay National Marine Sanctuary Regulations

The final designation of the Fagatelle Bay National Marine Sanctuary became effective in July 1986. The sanctuary consists of a bay area off the southwest coast of Tutuila Island, American Samoa. The area contains a unique and vast array of tropical marine organisms, including corals, and a diverse tropical reef ecosystem with endangered and threatened species. In this sanctuary, prohibited activities of relevance to the DOE include:

- o discharge of any materials or substances of any kind into the waters, and
- o the disturbance of the benthic community by dredging, filling, dynamiting, bottom trawling, or any alteration of the seabed.

Prohibited activities may be allowed "as necessary for national defense" under a provision in Section 941.8.

33 CFR PARTS 324 AND 325: ARMY CORPS OF ENGINEERS (COE) REGULATIONS ON DREDGE DUMPING PERMITS PURSUANT TO THE MPRSA

Within title 33, Part 324 (Permits for Ocean Dumping of Dredged Material) and Part 325 (Processing of Department of the Army Permits) describe activities that require ocean dredge dumping permits and the procedures involved if the DOE needs to obtain a dredge dumping permit from the Corps. This information, formerly contained in 33 CFR 209.120 [mentioned in the EPA implementing regulations under 40 CFR 220.2(h)], has been revised and placed in 33 CFR 324 and 325. Certain other Corps permitting activities (unrelated to MPRSA) are also covered under Part 325. They will not be addressed here.

Part 324 - Permits for Ocean Dumping

Section 324.3 (Activities Requiring Permits) is the section most relevant to the DOE because it outlines federal agency activities that require COE dredging permits under MPRSA. Specifically, the transportation of dredged material by or on behalf of any federal agency (other than the Corps) for the purpose of ocean dumping is subject to COE permit requirements and regulations. If the DOE submits an ocean dredge dumping permit application, the COE will evaluate it and the EPA may review it also. The same kinds of environmental impact criteria apply (whether unreasonable degradation of human health, welfare, amenities, etc., will occur) as with a non-dredging permit application. The COE District Engineer will specify disposal sites. If the EPA Regional Administrator believes that the proposed dredge dumping will not comply with MPRSA criteria, the permit may still be granted under some circumstances. For example, if the dredge dumping is in the public interest and the Corps determines that there is no other economically feasible disposal site or method, the permit could still be issued.

Part 325 - Processing of Department of the Army Permits

This part deals with the application for, and processing of, dredge permits by the COE, including ocean dredge dumping permits. Environmental Impact Statement (EIS) requirements are discussed, as are public hearings, Endangered Species Act compliance, the duration of permit authorization, the modification or suspension of permits, reporting requirements, joint agency review meetings (to expedite permitting), and other features of the COE dredge permitting process. The permit form appears in Appendix A of Part 325 (included in this Reference Book). Guidance to the Corps on the need for an EIS for an applicant's project (e.g., a DOE disposal action) and the procedure for EIS completion (by the Corps) appears in 33 CFR 230. Part 230 is not reproduced in this Reference Book since it consists mainly of Council on Environmental Quality (CEQ) regulations for the Corps on the overall implementation of National Environmental Policy Act (NEPA) in Corps activities. Section 230.14 discusses interagency coordination on EISs in cases where the Corps and another federal entity may be involved in NEPA compliance. The DOE should be aware that the Corps may require data from the applicant to enable the Corps to complete the EIS.

40 CFR SUBCHAPTER H PARTS 220 - 225 AND 227 - 229: OCEAN DUMPING

A summary of each of the Parts of 40 CFR Subchapter H that focus on ocean dumping under MPRSA and that are of direct relevance to DOE activities follows. A table of contents for Parts 220 - 225 and 227 - 229 precedes the copy of the regulations that is included in this Reference Book. Regulatory revisions of Parts 220 through 229 are planned which will clarify existing regulations and incorporate previous program experience. The notice of proposed rulemaking for these revisions is scheduled to be published in the Federal Register in the summer of 1988.

Part 220 - General

Part 220 defines the purpose and scope of Subchapter H, provides definitions of terms used in the Subchapter, and describes the kinds of ocean dumping permits that the EPA and the COE may issue under MPRSA Sections 102 and 103. Additional material on the Corps of Engineers' permits also appears in the discussions of 40 CFR 225 below and in 33 CFR 324 and 325 as discussed above. Part 220 contains the following permit categories:

- o General Permits - issued for the dumping of materials that will have a minimal adverse impact and are usually disposed of in small (unspecified) quantities. These permits are either issued through the procedures outlined in Part 221 or at the discretion of the EPA Administrator.
- o Special Permits - issued for not longer than a three-year period. Applicants must satisfy the permit evaluation criteria in Part 227 (discussed below), which covers environmental impacts.

- o Emergency Permits - issued when materials prohibited from dumping under MPRSA must be disposed of in an emergency situation, where no other solution is feasible and there is an unacceptable human health risk. These materials include organohalogens, mercury and its compounds, oil (in any form, including crude oil, hydraulic fluids, etc. - - except as regulated by the Clean Water Act), and known or suspected carcinogens, mutagens, or teratogens. High-level radioactive waste; radiological, chemical, or biological warfare materials; persistent inert synthetic or natural materials that may interfere with fishing, navigation, or other ocean uses; and materials not sufficiently described by the permit applicant to determine their impacts cannot be dumped under an emergency permit.
- o Interim Permits - issued for a one-year period only. These permits are not relevant to the DOE, since their only application is to limited cases of sewage sludge disposal by certain states.
- o Research Permits - valid for the dumping of any materials, other than those prohibited in MPRSA (as discussed under Emergency Permits, above), that are produced in the course of a research project.
- o Permits for Incineration at Sea - issued only as a type of research or interim permit until criteria to regulate this kind of disposal have been promulgated.

Part 221 - Applications for Ocean Dumping Permits Under Section 102 of the Act

Part 221 covers the required contents of dumping permit applications, who must apply for a permit, the adequacy of information supplied by the applicant, and permit fees. The following information must be supplied on applications for ocean dumping by potential permit-holders, including federal departments like the DOE:

- o producer and transporter of the waste;
- o physical and chemical description of the material to be dumped;
- o number of containers (if applicable);
- o waste quantity;
- o proposed dump site and method of release;
- o the specific process or activity that gives rise to the dumped material;

- o the need for ocean disposal;
- o evaluation of short- and long-term alternative means of disposal, treatment, or waste recycling; and
- o an assessment of the impacts of the planned dumping.

The assessment must include the duration of impacts on: the marine environment, navigation, living and non-living resource exploitation, scientific study, recreation, and other ocean uses. Disposal alternatives to be considered in the permit application shall include landfills; well injection; incineration; spread of material over open ground; biological, physical, and chemical treatment; and material storage.

Part 222 - Action on Ocean Dumping Permit Applications Under Section 102 of the Act

This part elaborates on the permit application and review process and covers requirements for public hearings and the procedure for appeals of permit denials. Part 222 indicates that the issuance, denial, or imposition of conditions on general, special, emergency, interim, and research permits will be determined by applying the MPRSA criteria listed in Part 227 (Criteria for the Evaluation of Permit Applications for Ocean Dumping of Materials) and Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping). These two Parts will be discussed further under their respective headings (below).

Part 223 - Contents of Permits; Revision, Revocation, or Limitation of Ocean Dumping Permits Under Section 104(d) of the Act

Part 223 contains two subparts, the first of which (Subpart A - Contents of Ocean Dumping Permits Issued Under Section 102 of the Act) is of limited interest, since it focuses on how permits will be displayed on dumping vessels and what information the permits on display should contain. Subpart B (Procedures for Revision, Revocation, or Limitation of Ocean Dumping Permits Under Section 104(d) of the Act) is of more direct DOE interest, since the DOE may from time to time hold permits for ocean dumping. Subpart B applies to general, special, emergency, interim, or research permits.

Part 224 - Records and Reports Required of Ocean Dumping Permittees Under Section 102 of the Act

This part describes recordkeeping and reporting requirements for holders of general, special, interim, emergency, or research permits.

Part 225 - Corps of Engineers Dredged Material Permits

This part may be of interest to the DOE insofar as dredging may sometimes be needed to enable barge transport of coal to powerplants that

plan conversion to coal fuel under the Fuel Use Act. Under Section 103 of the Act, the Corps of Engineers reviews Dredged Material Permit applications which will allow transportation of such material into ocean waters for dumping. Permit evaluation is based largely on MPRSA Part 227 criteria. Corps permits are processed in accordance with 33 CFR 324 and 325 (discussed previously in this section of the Reference Book).

Part 227 - Criteria for the Evaluation of Permit Applications for Ocean Dumping of Materials

Both this part and Part 228 (which covers disposal site management criteria) are central to the MPRSA because they contain specific material on which wastes may be disposed of at sea and under what conditions. There is considerable emphasis on finding alternatives to ocean dumping -- such that disposal at sea becomes almost the choice of last resort. Within Subpart A, Section 227.2 provides that permit applications will be considered on a case by case basis. Subpart B imposes various impact criteria for ocean dumping of wastes. For example, Subsection 227.13 lists as dredged materials acceptable for dumping: beach restoration material, material similar to the receiving substrate, and material obtained far from known pollution sources. Once the impact criteria in Subpart B are met, a dumping permit will be issued, unless:

- o there is no need for dumping and alternative disposal is available (per Subpart C);
- o the adverse impacts on aesthetic, recreational, or economic attributes of the disposal area are unacceptable (per Subpart D); or
- o effects on other uses of the ocean are unacceptable (per Subpart E).

If these permit-denial conditions occur, the EPA may still issue an interim dumping permit if:

- o the material to be dumped does not contain certain substances listed in Sections 227.5 or 227.6, except in trace amounts;
- o the need for ocean dumping exists, without alternatives; and
- o the public interest will be served more by dumping the waste in the ocean than by preserving the aesthetic, recreational, or economic values affected by ocean dumping.

Materials which do not satisfy the impact criteria of Subpart B will not be permitted for ocean dumping except on an interim-permit basis.

Part 228 - Criteria for the Management of Disposal Sites for Ocean Dumping

The criteria set forth in Part 228 are intended to prevent unreasonable degradation of the marine environment in the vicinity of ocean disposal areas. Part 228 applies to both EPA-permitted dumping and COE dredged-

material dumping. Part 228 contains an extensive list of approved dredged material dump sites for use under Army Corps' Dredged Material Permits, as well as a list of EPA ocean dumping sites. Although the EPA has ultimate authority over dredge permits, the Corps may impose its own specific conditions on the permits that it issues. Along with criteria for disposal site selection, Part 228 also contains a qualifier that the EPA may limit the time and rate of site use or may withdraw a site from dumping altogether. The agency will, whenever possible, locate the sites beyond the edge of the continental shelf. Regions of frequent commercial or recreational navigation will be avoided, as will existing fisheries. If either the EPA or COE decide that it is necessary, a disposal site monitoring program may be established. The program may include not only the EPA baseline and trend assessment surveys, but also studies by other federal agencies (e.g., DOE), the permit holders themselves, contractors, or the NOAA. Typically, the EPA conducts the baseline and trend assessment surveys for existing dump sites and dredge disposal sites. The EPA requests prospective permit holders that wish to use new (non-dredge spoil) disposal sites to conduct their own surveys, although these are conducted under EPA supervision.

Part 229 - General Permits

This part is of little direct relevance to the DOE, covering transportation and disposal of vessels and burial at sea. Subsection 229.3 gives a blanket general permit to all departments and agencies needing to dispose of vessels at sea, with certain provisions for disposal site depth and fuel compartment or cargo area contents.

MARINE MAMMAL PROTECTION ACT

Regulations implementing the Marine Mammal Protection Act (MMPA) are published separately by the FWS (Interior Department) and NMFS (Commerce Department) because the FWS is responsible for managing certain marine mammals (walrus, polar bear, sea otter, dugong, marine otter, West Indian Manatee, Amazonian Manatee, and West African Manatee) and the NMFS is responsible for other marine mammals (whales, porpoises, seals, and sea lions). Consequently, there are two sets of regulations, but they are very similar in content. Regulations with relevance to the DOE are summarized below and copies follow. Omitted regulations are generally directed toward commercial fishermen, use of marine mammals by Alaskan natives, and transfer of authorities to states.

50 CFR 13: FISH AND WILDLIFE SERVICE GENERAL PERMIT PROCEDURES

Subparts A through E

These regulations describe the contents and procedures of the FWS's general permit application. These procedures apply to all FWS issued permits including permits to take marine mammals. Additional specific requirements are included in 50 CFR 18, Subpart D.

50 CFR 18: FISH AND WILDLIFE SERVICE MARINE MAMMAL REGULATIONS

Subpart A - Introduction

This subpart includes the definitions that are important to understanding the FWS marine mammal protection program.

Subpart D - Special Exemptions

This subpart describes the need for permits to take marine mammals and the FWS's procedures for issuing permits.

Subpart H - Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species

This regulation lifts the moratorium on taking (or importing) the Pacific walrus in Alaska. The taking of such walruses must be done under authority of a permit issued under Subpart D of 50 CFR 18.

50 CFR 216: NATIONAL MARINE FISHERIES SERVICE REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Subpart A - Introduction

This subpart includes the definitions that are important to understanding the NMFS's marine mammal protection program.

Subpart D - Special Exceptions

This subpart describes the need for permits to take marine mammals and the NMFS's procedures for issuing permits.

Subpart I - Waiver of Moratorium on Taking of Marine Mammals

This regulation lifts the moratorium on taking certain seals, sea lions, and the Beluga whale from waters off Alaska. The taking of such animals must be done under authority of a permit issued under Subpart D of 50 CFR 216.

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**PART 924—MONITOR MARINE
SANCTUARY**

Sec.

924.1 Authority.

924.2 Description of the Sanctuary.

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924.6 Permit procedures and criteria.

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AUTHORITY: Secs. 302 and 303, Pub. L. 92-532, as amended; 86 Stat. 1061 (16 U.S.C. 1432 and 1433).

SOURCE: 40 FR 21706, May 19, 1975, unless otherwise noted.

§ 924.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of the Act. The following regulations are issued pursuant to the authorities of sections 302(f), 302(g) and 303 of the Act.

§ 924.2 Description of the Sanctuary.

The Sanctuary consists of a vertical water column in the Atlantic Ocean one mile in diameter extending from the surface to the seabed, the center of which is at 35°00'23" north latitude and 75°24'32" west longitude.

§ 924.3 Activities prohibited within the Sanctuary.

Except as may be permitted by the Administrator, no person subject to the jurisdiction of the United States shall conduct, nor cause to be conduct-

ed, any of the following activities in the Sanctuary:

(a) Anchoring in any manner, stopping, remaining, or drifting without power at any time;

(b) Any type of subsurface salvage or recovery operation;

(c) Any type of diving, whether by an individual or by a submersible;

(d) Lowering below the surface of the water any grappling, suction, conveyor, dredging or wrecking device;

(e) Detonation below the surface of the water of any explosive or explosive mechanism;

(f) Seabed drilling or coring;

(g) Lowering, laying, positioning or raising any type of seabed cable or cable-laying device;

(h) Trawling; or

(i) Discharging waste material into the water in violation of any Federal statute or regulation.

§ 924.4 Penalties for commission of prohibited acts.

Section 303 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 Title III of the Act, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. Details are set out in Subpart D of Part 922 of this chapter (39 FR 23254, 23257, June 27, 1974). Subpart D is applicable to any instance of a violation of these regulations.

§ 924.5 Permitted activities.

Any person or entity may conduct in the Sanctuary any activity listed in § 924.3 of this part if:

(a) Such activity is either: (1) For the purpose of research related to the MONITOR, or (2) pertains to salvage or recovery operations in connection with an air or marine casualty; and

(b) Such person or entity is in possession of a valid permit issued by the Administrator authorizing the conduct of such activity; except that, no permit is required for the conduct of any activity immediately and urgently necessary for the protection of life, property or the environment.

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§ 924.6 Permit procedures and criteria.

(a) Any person or entity who wishes to conduct in the Sanctuary an activity for which a permit is authorized by § 924.5 (hereafter a permitted activity) may apply in writing to the Administrator for a permit to conduct such activity citing this section as the basis for the application. Such application should be made to the Administrator, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20230. Upon receipt of such application, the Administrator shall request, and such person or entity shall supply to the Administrator, such information and in such form as the Administrator may require to enable him to act upon the application.

(b) In considering whether to grant a permit for the conduct of a permitted activity for the purpose of research related to the MONITOR, the Secretary shall evaluate such matters as: (1) The general professional and financial responsibility of the applicant; (2) the appropriateness of the research method(s) envisioned to the purpose(s) of the research; (3) the extent to which the conduct of any permitted activity may diminish the value of the MONITOR as a source of historic, cultural, aesthetic and/or maritime information; (4) the end value of the research envisioned; and (5) such other matters as the Administrator deems appropriate.

(c) In considering whether to grant a permit for the conduct of a permitted activity in the Sanctuary in relation to an air or marine casualty, the Administrator shall consider such matters as: (1) The fitness of the applicant to do the work envisioned; (2) the necessity of conducting such activity; (3) the appropriateness of any activity envisioned to the purpose of the entry into the Sanctuary; (4) the extent to which the conduct of any such activity may diminish the value of the MONITOR as a source of historic, cultural, aesthetic and/or maritime information; and (5) such other matters as the Administrator deems appropriate.

(d) In considering any application submitted pursuant to this Section, the Administrator may seek and consider the views of any person or entity,

within or outside of the Federal Government, as he deems appropriate; except that, he shall seek and consider the views of the Advisory Council on Historic Preservation.

(e) The Administrator may, in his discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as he deems appropriate, except that the Administrator shall attach to any permit granted for research related to the MONITOR the condition that any information and/or artifact(s) obtained in the research shall be made available to the public. The Administrator may observe any activity permitted by this section; and/or may require the submission of one or more reports of the status or progress of such activity.

(f) A permit granted pursuant to this section is nontransferable.

(g) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

(Information collection requirements contained in paragraph (a) have been approved by the Office of Management and Budget under control number 0648-0141)

[40 FR 21706, May 19, 1975, as amended at 49 FR 1040, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 924.7 Certification procedures.

Any Federal agency which, as of the effective date of these regulations, already has permitted, licensed or otherwise authorized any prohibited activity in the Sanctuary shall notify the Administrator of this fact in writing. The writing shall include a reasonably detailed description of such activity, the person(s) involved, the beginning and ending dates of such permission,

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the reason(s) and purpose(s) for same, and a description of the total area affected. The Administrator shall then decide whether the continuation of the permitted activity, in whole or in part, or subject to such condition(s) as he may deem appropriate, is consistent with the purposes of Title III of the Act and can be carried out within these regulations. He shall inform the Federal agency of his decision in these regards, and the reason(s) therefore, in writing. The decision of the Secretary made pursuant to this section shall be final action for the purpose of the Administrative Procedure Act.

§ 924.8 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 924.6 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 reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Secretary may request, and if he does, the Appellant shall provide, such additional information and in such form as the Secretary may request in order to enable him to act upon the appeal. If the Appellant has not requested a hearing, the Secretary shall decide the appeal upon: (1) The basis of the criteria set out in § 924.6(b) or (c) of this part, as appropriate, (2) information relative to the application on file in NOAA, (3) information provided by the Appellant, and (4) such other considerations as he deems appropriate. He shall notify the Appellant of his decision, and the reason(s) therefore, in writing within 30 days of the date of his receipt of the appeal.

(c) If the Appellant has requested a hearing, the Secretary shall grant an informal hearing before a Hearing Officer designated for that purpose by the Secretary after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGIS-

TER. Such hearing shall be held no later than 30 days following the Secretary's receipt of the appeal. The Appellant and any interested person may appear personally or by counsel at the hearing, present evidence, cross-examine witnesses, offer argument and file a brief. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Secretary based upon the considerations outlined in paragraph (b) of this section and based upon the record made at the hearing.

(d) The Secretary may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Secretary shall notify the Appellant of his decision, and the reason(s) therefore, in writing within 15 days of his receipt of the recommended decision of the Hearing Officer. The Secretary's action, whether without or after a hearing, as the case may be, shall constitute final action for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this Section may be extended by the Secretary for good cause, either upon the Secretary's own motion and upon written notification to an Appellant stating the reason(s) therefore, or upon the written request of an Appellant to the Secretary stating the reason(s) therefore, except that no time limit may be extended more than 30 days.

[40 FR 21706, May 19, 1975, as amended at 49 FR 1040, Jan. 8, 1984]

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**PART 929—KEY LARGO NATIONAL
MARINE SANCTUARY FINAL
REGULATIONS**

Sec.

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- 929.2 Purpose.
- 929.3 Boundaries.
- 929.4 Definitions.
- 929.5 Management and enforcement.
- 929.6 Allowed activities.
- 929.7 Activities prohibited or controlled.
- 929.8 Other authorities.
- 929.9 Penalties for commission of prohibited acts.
- 929.10 Permit procedures and criteria.
- 929.11 Appeals of administrative action.

AUTHORITY: Title III of Pub. L. 92-532, 86 Stat. 1061, 1062 (16 U.S.C. 1431-1434).

SOURCE: 48 FR 55118, Dec. 9, 1983, unless otherwise noted.

§ 929.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of the Marine Protection, Research and Sanctuaries Act of 1972 as amended (the Act). The following regulations are issued pursuant to Title III of the Act.

§ 929.2 Purpose.

The purpose of designating the Key Largo National Marine Sanctuary is to protect and preserve the coral reef ecosystem in its natural state and to regulate uses within the Sanctuary to ensure the health and well-being of the coral and associated flora and fauna.

§ 929.3 Boundaries.

The Sanctuary consists of a portion of the Atlantic Ocean beginning at approximately three miles east of Key Largo, Florida, adjacent to the John

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Pennekamp Coral Reef State Park. The coordinates for the Sanctuary are: The point of beginning (POB) is at geographic coordinates 25° (degrees), 19.45' (minutes) north latitude, 80°, 12.0' west longitude, said point being the northeast boundary corner of John Pennekamp Coral Reef State Park. From said POB run thence southeasterly to geographic coordinates 25°, 16.2' north latitude 80°, 8.7' west longitude, said point also being on the 300 foot isobath, thence in a southwesterly direction to geographic coordinates 25°, 07.5' north latitude, 80°, 12.5' west longitude, thence again run in a southwesterly direction to geographic coordinates 24°, 58.3' north latitude, 80°, 19.8' west longitude, thence leaving said 300 foot isobath run northwesterly to geographic coordinates 25°, 2.2' north latitude, 80°, 25.25' west longitude, said point being the southeast boundary corner of John Pennekamp Coral Reef State Park, thence in a northeasterly direction along said easterly boundary of said State Park to the POB.

§ 929.4 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA).

(b) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, or his/her successor, or designee.

(c) "Persons" 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 or local unit of the government.

(d) "The Sanctuary" means the Key Largo National Marine Sanctuary.

(e) "Tropical fish" means fish and invertebrates of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which live in a close interrelationship with corals and coral reef substrates.

§ 929.5 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has

primary responsibility for the management of the Sanctuary pursuant to the Act. NOAA's responsibilities under the Act require that the Sanctuary Programs Division review, consider, and approve any activities that take place in the Sanctuary in accordance with these rules and regulations. The U.S. Coast Guard and the Florida Department of Natural Resources, Division of Recreation and Parks (FDNR) shall conduct surveillance and enforcement of these regulations pursuant to 14 U.S.C. 89, 16 U.S.C. 1432 (f)(4), 16 U.S.C. 7421 (b), 16 U.S.C. 3375 (a), or other appropriate legal authority.

§ 929.6 Allowed activities.

All activities except those specifically prohibited by § 929.7 or other applicable authority may be undertaken within the Sanctuary subject to the restrictions and conditions imposed by other authorities.

§ 929.7 Activities prohibited or controlled.

(a) Unless permitted by the Assistant Administrator in accordance with § 929.10, or as may be necessary for the national defense, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited or controlled within the Sanctuary. All prohibitions and controls must be applied consistently with international law. Refer to § 929.9 for penalties for commission of prohibited acts.

(1) *Removal or damage of natural features, marine life and archaeological and historical resources.* (i) No person shall destroy, injure, harmfully disturb, break, cut or similarly damage or remove any coral or other marine invertebrate, or any plant, soil, rock, or other material, except that commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand which is consistent with both the applicable regulations under the appropriate Fishery Management Plan and these regulations is allowed. Divers are prohibited from handling coral formations, standing on coral formations, or otherwise disturbing the corals.

(ii) No person shall catch or collect any tropical fish.

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(iii) No person shall remove, deface, damage, or tamper with archaeological or historical resources or the cargo of any submerged wrecks or other historical resources within the boundaries of the Sanctuary.

(iv) There shall be a rebuttable presumption that any items listed in these paragraphs found in the possession of a person within the Sanctuary have been collected or removed from within the Sanctuary.

(2) *Dredging, filling, excavating and building activities.* No person shall dredge, excavate, fill or otherwise alter the seabed in any way nor construct any structure of any kind, whether permanent or temporary, with the exception of navigation aids.

(3) *Discharges.* No person shall deposit or discharge any materials or substance of any kind into the waters of the Sanctuary. The only exceptions are:

(i) Fish or fish parts and chumming materials;

(ii) Cooling waters from vessels; and

(iii) Effluent from marine sanitation devices approved by the United States Coast Guard.

(4) *Tampering with markers.* No person shall mark, deface or damage in any way whatsoever, or displace, remove or tamper with any signs, notices or placards, whether temporary or permanent, or with any navigational aids, monuments, stakes, posts, mooring buoys, scientific equipment or other boundary markers installed by the Sanctuary Manager, or trap floats placed for the purpose of lobster fishing.

(5) *Use of harmful fishing methods.* No person shall use within the Sanctuary, or shall carry or possess, except while passing without interruption through the Sanctuary or for law enforcement purposes, the following firearms or weapons: Pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring loaded guns, explosive powered guns or similar devices known as spearguns. No person shall use within the Sanctuary:

(i) Wire fish traps;

(ii) Bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or net; or

(iii) Poisons, electric charges, explosives or similar devices.

(6) *Operation of watercraft and anchoring.* All watercraft shall be operated in accordance with applicable Federal rules and regulations. The following additional regulations apply within the boundaries of the Sanctuary.

(i) Watercraft shall be operated to avoid striking or otherwise causing damage to the natural features of the Sanctuary.

(ii) Watercraft must use mooring buoys, stations or anchoring arms when such facilities have been provided.

(iii) No anchor shall be cast or dragged in such a way as to damage any coral reef formations. Anchors shall be dropped only on sand flats off the reefs and be placed to avoid dragging into the coral formations.

(iv) Within 100 yards of divers, sight-seeing boats or fishermen, no watercraft shall be operated at a speed greater than 4 knots or in any manner to create a wake, except by law enforcement officials while in the performance of their official duties.

(v) All watercraft from which diving operations are being conducted shall fly in a conspicuous manner the red and white "divers down" flag. Divers shall stay within 100 yards of their diving flag.

(7) *Use of dangerous weapons.* Except for law enforcement purposes, no person shall use or discharge explosives or weapons of any description within the Sanctuary boundaries. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers are not considered weapons for purposes of this subsection.

(b) The Sanctuary may be closed to public use in the event of emergency conditions endangering life or property. The Assistant Administrator or his/her designee may also close certain areas in order to permit recovery of the living resources from overuse, or provide for scientific research relating to protection and management. However, the total closed area shall not exceed a size necessary to accomplish these purposes. Public notice of closures will be provided through the

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local news media and posting of placards at the John Pennekamp Coral Reef State Park, if deemed necessary.

(c) The regulation of activities within the Sanctuary shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be conducted consistently with all regulations to the maximum extent possible.

(d) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions and other international agreements to which the United States is signatory.

§ 929.8 Other authorities.

No license, permit or other authorization issued pursuant to any other authority may validly authorize any activity prohibited by § 929.7 unless such activity meets the criteria stated in § 929.10 (a), (c) and (d), and is specifically authorized by the Assistant Administrator.

§ 929.9 Penalties for commission of prohibited acts.

Section 303 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, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. NOAA will apply the consolidated civil procedure regulations set forth at 46 FR 61643 (1981) (to be codified at 15 CFR 904.100 through 904.243), and the seizure, forfeiture, and disposal procedure regulations set forth at 46 FR 31648 (1981) (to be codified at 50 CFR Part 219) to all enforcement matters under the Act.

§ 929.10 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct in the Sanctuary activities specified in the permit including any activity specifically prohibited under § 929.7, if such activity is: (1) Research related to the re-

sources of the Sanctuary; (2) to further the educational value of the Sanctuary; or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator, Attn: Sanctuary Programs Division, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, 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) In considering whether to grant a permit, the Assistant Administrator shall evaluate such matters as: (1) The general professional and financial responsibility of the applicant; (2) the appropriateness of the methods being proposed to the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information; and (4) the end value of the activity.

(d) In addition to meeting the criteria in § 929.10 (a) and (c), the applicant must also satisfactorily demonstrate to the Assistant Administrator:

(1) That adequate safeguards shall be provided to protect the environment; and (2) that the environment shall be returned to the condition which existed before the activity occurred.

Permits shall be appropriately conditioned, and monitored by NOAA to ensure compliance.

(e) In considering an application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of Regional Fishery Management Councils and any other person or entity, within or outside of the Federal government, and may hold a public hearing, as he/she deems appropriate.

(f) The Assistant Administrator may grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed necessary, and

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may attach to any permit granted for research related to the Sanctuary stipulations requiring that: (1) The Assistant Administrator or a designated representative may observe and monitor any activity permitted by this section; (2) any information obtained in the research site shall be made available to the public; (3) periodic reports of the status of progress of such activity be submitted; and (4) the permittee shall fly the Sanctuary research flag while working in the Sanctuary.

(g) A permit granted pursuant to this section is nontransferrable.

(h) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or Permittee has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or Permittee, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

(Information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0648-0141 for use through October 31, 1986)

[48 FR 55118, Dec. 9, 1983, as amended at 49 FR 1041, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 929.11 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, the applicant for a permit or the Permittee, or any other interested person (hereafter Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 929.10 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 reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator may request the appellant, and

the permit applicant or permittee if other than the appellant, to submit such additional information and in such form as will allow action upon the appeal. The Administrator shall decide the appeal using the criteria set out in § 929.10 (a), (c) and (d) and any information relative to the application on file, any information provided by the appellant, and such other consideration as is deemed appropriate. The Administrator shall 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 required to make the decision.

(c) If a hearing is requested or, if the Administrator determines that one is appropriate, the Administrator may grant an informal hearing before a hearing officer designated for that purpose, after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such hearing shall normally 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 if different, 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 last day 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 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 final action for the Agency 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.

[48 FR 55118, Dec. 9, 1983, as amended at 49 FR 1041, Jan. 6, 1984]

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**PART 935—THE CHANNEL ISLANDS
NATIONAL MARINE SANCTUARY
REGULATIONS**

Sec.

- 935.1 Authority.
- 935.2 Purpose.
- 935.3 Boundaries.
- 935.4 Definitions.
- 935.5 Allowed activities.
- 935.6 Hydrocarbon operations.
- 935.7 Prohibited activities.
- 935.8 Penalties for commission of prohibited acts.
- 935.9 Permit procedures and criteria.
- 935.10 Certification of other permits.
- 935.11 Appeals of administrative action.

**APPENDIX 1A—CHANNEL ISLANDS NATIONAL
MARINE SANCTUARY**

AUTHORITY: 16 U.S.C. 1431-1434.

SOURCE: 45 FR 65203, Oct. 2, 1980, unless otherwise noted.

§ 935.1 Authority.

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

§ 935.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve

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the extraordinary ecosystem including marine birds and mammals and other natural resources of the waters surrounding the northern Channel Islands and Santa Barbara Island and ensure the continued availability of the area as a research and recreational resource. This area supports a particularly rich and diverse marine biota, partially because it is located in a transition zone between northern and southern waters and partially because it is one of very few areas off the Southern California coast that has been relatively unaltered by human use.

§ 935.3 Boundaries.

The Sanctuary consists of an area of the waters off the coast of California of approximately 1252.5 square nautical miles adjacent to the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock extending seaward to a distance of 6 nautical miles (nm). The coordinates are shown in Appendix 1A.

§ 935.4 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(c) "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 or local unit of government.

(d) "Islands" means San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock.

(e) "Vessel" means watercraft of any description capable of being used as a means of transportation on the waters of the Sanctuary.

§ 935.5 Allowed activities.

All activities except those specifically prohibited by §§ 935.6 and 935.7 may be carried on in the Sanctuary

subject to all prohibitions, restrictions and conditions imposed by any other authority. Recreational use of the area is encouraged.

§ 935.6 Hydrocarbon operations.

(a) Hydrocarbon exploration, development and production pursuant to any lease executed prior to the effective date of these regulations and the laying of any pipeline is allowed subject to paragraph (b) of this section and to all prohibitions, restrictions and conditions imposed by applicable regulations, permits, licenses or other authorizations and consistency reviews including those issued by the Department of the Interior, the Coast Guard, the Corps of Engineers, the Environmental Protection Agency and under the California Coastal Management Program and its implementing regulations.

(b) No person may engage in any hydrocarbon operation unless the following oil spill contingency equipment is available at the site of such operation:

(1) 1500 feet of open ocean containment boom and a boat capable of deploying the boom;

(2) One oil skimming device capable of open ocean use; and

(3) Fifteen bales of oil sorbent material.

(c) Hydrocarbon exploration, development and production activities pursuant to leases executed on or after the effective date of these regulations are prohibited.

§ 935.7 Prohibited activities.

(a) Except as may be necessary for the national defense, in accordance with Article 5, Section 2 of the Designation, or as may be necessary to respond to an emergency threatening life, property, or the environment, the following activities are prohibited within the Sanctuary unless permitted by the Assistant Administrator in accordance with § 935.9. All prohibitions shall be applied consistently with international law.

(1) *Discharge of substances.* No person shall deposit or discharge any materials or substances of any kind except:

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(i) Fish or parts and chumming materials (bait);
(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the sanctuary generated by:

- (A) Marine sanitation devices;
- (B) Routine vessel maintenance, e.g. deck wash down;
- (C) Engine exhaust; or
- (D) Meals on board vessels;
- (iii) Effluents incidental to hydrocarbon exploration and exploitation activities as allowed by § 935.6.

(2) *Alteration of, or construction on, the seabed.* Except in connection with the laying of any pipeline as allowed by § 935.6, within 2 nautical miles of any Island, no person shall:

- (i) Construct any structure other than a navigation aid, or
- (ii) Drill through the seabed, or
- (iii) Dredge or otherwise alter the seabed in any way, other than
 - (A) To anchor vessels, or
 - (B) To bottom trawl from a commercial fishing vessel.

(3) *Commercial vessels operations.* Except to transport persons or supplies to or from an Island, no person shall operate within one nautical mile of an Island any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing (including kelp harvesting), recreational, or research vessels.

(4) *Disturbing marine mammals and birds.* No person shall disturb seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one nautical mile of any Island except:

- (i) For enforcement purposes;
- (ii) To engage in keep bed surveys; or
- (iii) To transport persons or supplies to or from an Island.

(5) *Removing or damaging historical or cultural resources.* No person shall remove or damage any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for

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the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impact shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions and other international agreements to which the United States is signatory.

§ 935.8 Penalties for commission of prohibited acts.

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

§ 935.9 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct any activity in the Sanctuary prohibited under § 935.7 if such activity is either: (1) Research related to the resources of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to:

Assistant Administrator for Coastal Zone Management
Attn: Sanctuary Programs Office, Division of Operations and Enforcement
National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, DC 20235.

An application shall provide sufficient information to enable the Assistant Administrator to make the determination called for in paragraph (c) of this

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section and 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) In considering whether to grant a permit the Assistant Administrator shall evaluate such matters as: (1) The general professional, and financial responsibility of the applicant; (2) the appropriateness of the methods envisioned to the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, or as a source of educational or scientific information; (4) the end value of the activity and (5) such other matters as may be deemed appropriate.

(d) In considering any application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of any person or entity, within or outside of the Federal government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained shall be available to the public.

(f) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

(Information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0648-0141)

[45 FR 65203, Oct. 2, 1980, as amended at 49 FR 1041, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 935.10 Certification of other permits.

(a) All permits, licenses and other authorizations issued pursuant to any other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by § 935.6 or § 935.7. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

§ 935.11 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 935.9 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 reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator will notify the permit applicant, if other than the appellant, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator will decide the appeal in accordance with the criteria set out in § 935.9(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (c) of this section, and such other considerations as deemed appropriate. The Administrator will notify all interested persons of the decision, and the reason(s) therefor, in writing, normally within 30 days of the receipt of sufficient information,

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unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines that one is appropriate, the Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the FEDERAL REGISTER. Such hearing shall normally 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 (if different) and, at the discretion of the hearing officer, 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 last day of the hearing, the hearing officer shall recommend in writing a decision 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 will notify interested persons of the decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's action shall constitute final action for the agency for the purposes of the Administrative Procedures Act.

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

[45 FR 65203, Oct. 2, 1980, as amended at 49 FR 1041, Jan. 6, 1984]

APPENDIX IA—CHANNEL ISLANDS NATIONAL
MARINE SANCTUARY

[Coordinates are furnished to 0.001 of a second]

Point No.	Latitude north	Longitude west
Northern Channel Islands Section		
01	33°56'28.959"	119°18'23.800"

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APPENDIX IA—CHANNEL ISLANDS NATIONAL
MARINE SANCTUARY—Continued

[Coordinates are furnished to 0.001 of a second]

Point No.	Latitude north	Longitude west
02	33°58'03.919"	119°14'56.964"
03	34°01'33.846"	119°14'07.740"
04	34°04'24.203"	119°15'21.308"
05	34°06'08.853"	119°17'27.002"
06	34°06'54.809"	119°19'48.048"
07	34°06'57.988"	119°23'24.905"
08	34°06'51.627"	119°24'04.198"
09	34°07'01.640"	119°25'40.819"
10	34°06'59.804"	119°26'50.959"
11	34°08'02.002"	119°28'47.501"
12	34°08'17.693"	119°29'27.698"
13	34°08'52.234"	119°30'39.562"
14	34°09'16.780"	119°35'22.667"
15	34°09'05.106"	119°36'41.694"
16	34°08'02.782"	119°39'33.421"
17	34°08'48.870"	119°41'48.621"
18	34°09'35.563"	119°45'57.264"
19	34°09'32.627"	119°46'37.335"
20	34°09'33.396"	119°47'32.285"
21	34°09'43.668"	119°48'09.018"
22	34°10'10.616"	119°50'07.659"
23	34°10'21.586"	119°51'05.146"
24	34°10'33.161"	119°53'17.044"
25	34°10'36.545"	119°55'57.373"
26	34°10'21.283"	119°57'26.403"
27	34°08'07.255"	120°01'07.233"
28	34°08'13.144"	120°02'27.930"
29	34°07'47.772"	120°05'05.449"
30	34°07'29.314"	120°06'36.262"
31	34°07'30.691"	120°09'35.238"
32	34°06'36.285"	120°12'39.335"
33	34°06'40.634"	120°13'33.940"
34	34°08'10.759"	120°15'07.017"
35	34°09'12.290"	120°17'07.048"
35A	34°09'50.706"	120°17'31.649"
36	34°10'56.346"	120°18'40.520"
36B	34°11'28.249"	120°19'29.213"
37	34°12'08.078"	120°21'00.835"
37C	34°12'25.488"	120°25'01.261"
38	34°12'18.754"	120°25'39.373"
38D	34°11'33.184"	120°27'33.921"
39	34°12'19.470"	120°30'22.620"
39E	34°12'17.540"	120°32'19.959"
40	34°10'54.592"	120°35'57.887"
40F	34°06'07.491"	120°38'27.883"
41	34°04'53.454"	120°38'16.602"
41G	34°03'30.539"	120°37'39.442"
42	34°01'09.860"	120°35'04.808"
42H	34°00'48.573"	120°34'25.106"
43	33°59'13.122"	120°33'53.385"
44	33°57'01.427"	120°31'54.590"
45	33°55'36.973"	120°27'37.188"
46	33°55'30.037"	120°25'14.587"
47	33°54'50.522"	120°22'29.536"
48	33°55'01.640"	120°19'26.722"
49	33°54'34.409"	120°18'27.344"
50	33°53'23.129"	120°17'39.927"
51	33°50'39.990"	120°15'13.874"
52	33°49'53.260"	120°13'41.904"
53	33°49'03.437"	120°12'06.750"
54	33°48'36.087"	120°11'10.821"
55	33°47'39.280"	120°07'59.707"
56	33°47'37.617"	120°06'04.002"
57	33°47'59.351"	120°04'08.370"
58	33°48'38.700"	120°02'33.188"
59	33°48'52.167"	120°01'50.244"
60	33°50'28.486"	119°57'50.820"

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APPENDIX 1A—CHANNEL ISLANDS NATIONAL
MARINE SANCTUARY—Continued

[Coordinates are furnished to 0.001 of a second]

Point No.	Latitude north	Longitude west
61	33°50'55.128"	119°55'19.934"
62	33°52'13.338"	119°52'53.439"
63	33°52'04.900"	119°52'10.719"
64	33°51'39.919"	119°47'21.152"
65	33°51'48.592"	119°48'13.213"
66	33°51'35.798"	119°44'34.589"
67	33°51'44.374"	119°41'12.738"
68	33°52'23.857"	119°39'14.708"
69	33°53'09.365"	119°37'30.784"
70	33°53'12.754"	119°35'35.793"
71	33°53'17.114"	119°34'54.567"
72	33°53'38.865"	119°32'51.578"
73	33°54'02.277"	119°31'06.274"
74	33°54'58.444"	119°28'54.052"
75	33°54'39.349"	119°27'37.512"
76	33°54'15.236"	119°25'23.779"
77	33°54'07.847"	119°24'22.849"
78	33°54'04.682"	119°22'58.006"
79	33°54'14.311"	119°21'44.573"
80	33°54'22.824"	119°21'09.003"
81	33°54'48.904"	119°19'54.677"
82	33°55'05.834"	119°19'16.027"

Santa Barbara Island Section

83	33°28'56.904"	119°10'04.092"
84	33°26'32.364"	119°10'01.326"
85	33°24'19.904"	119°08'52.236"
86	33°23'26.019"	119°07'54.826"
87	33°22'04.836"	119°05'16.716"
88	33°21'49.387"	119°04'01.551"
89	33°21'44.594"	119°02'49.887"
90	33°21'49.556"	119°01'37.839"
91	33°22'07.538"	118°59'49.357"
92	33°22'27.774"	118°58'51.623"
93	33°22'47.957"	118°58'07.633"
94	33°23'20.805"	118°57'14.375"
95	33°24'18.458"	118°56'08.450"
96	33°26'24.130"	118°54'51.352"
97	33°29'02.820"	118°54'22.276"
98	33°31'27.917"	118°54'50.367"
99	33°32'17.935"	118°55'18.396"
100	33°35'10.090"	118°59'40.091"
101	33°35'24.575"	119°01'22.108"
102	33°35'06.497"	119°03'59.483"
103	33°34'48.322"	119°05'03.374"
104	33°32'37.151"	119°08'37.201"
105	33°30'41.731"	119°09'45.845"

[47 FR 5212, Feb. 4, 1982]

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936.7 Penalties for commission of prohibited acts.

936.8 Permit procedures and criteria.

936.9 Certification of other permits.

936.10 Appeals of administrative action.

**APPENDIX I—POINT REYES-FARALLON ISLANDS
NATIONAL MARINE SANCTUARY**

AUTHORITY: Secs. 302(d), (f), (g), and 303 of Title III, Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434. Secs. 302(f), 302(g) and 303, Act.

SOURCE: 46 FR 7939, Jan. 26, 1981, unless otherwise noted.

§ 936.1 Authority.

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

§ 936.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the extraordinary ecosystem, including marine birds, mammals, and other natural resources, of the waters surrounding the Farallon Islands and Point Reyes, and to ensure the continued availability of the area as a research and recreational resource.

§ 936.3 Boundaries.

The Sanctuary consists of an area of the waters adjacent to the coast of California north and south of the Point Reyes Headlands, between Bodega Head and Rocky Point and the Farallon Islands (including Noonday Rock), and includes approximately 948 square nautical miles (nmi²). The coordinates are listed in Appendix I.

The shoreward boundary follows the mean high tide line and the seaward limit of Point Reyes National Seashore. Between Bodega Head and Point Reyes Headlands, the Sanctuary extends seaward 3 nmi beyond State waters. The Sanctuary also includes the waters within 12 nmi of the Farallon Islands, and between the Islands and the mainland from Point Reyes Headlands to Rocky Point. The Sanc-

PART 936—THE POINT REYES/FARALLON ISLANDS MARINE SANCTUARY REGULATIONS

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tuary includes Bodega Bay, but not Bodega Harbor.

§ 936.4 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Areas of Special Biological Significance" (ASBS) means those areas established by the State of California prior to the designation of the sanctuary except that for purposes of these regulations, the area established around the Farallon Islands shall not be included.

(c) "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(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 or local unit of government.

(e) "Vessel" means watercraft of any description capable of being used as a means of transportation on the waters of the Sanctuary.

§ 936.5 Allowed activities.

All activities except those specifically prohibited by § 936.6 may be carried on in the Sanctuary subject to all prohibitions, restrictions, and conditions imposed by any other authority. Recreational use of the area is encouraged.

§ 936.6 Prohibited activities.

(a) Except as may be necessary for national defense, in accordance with Article 5, Section 2 of the Designation, or as may be necessary to respond to an emergency threatening life, property or the environment, the following activities are prohibited within the Sanctuary unless permitted by the Assistant Administrator in accordance with § 936.8 or § 936.9. All prohibitions shall be applied consistently with international law.

(1) *Hydrocarbon operations.* Hydrocarbon exploration, development, and production are prohibited except that pipelines related to operations outside the Sanctuary may be placed at a distance greater than 2 nmi from the

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Farallon Islands, Bolinas Lagoon, and Areas of Special Biological Significance where certified to have no significant effect on sanctuary resources in accordance with § 936.9.

(2) *Discharge of substances.* No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts and chumming materials (bait).

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

(A) Marine sanitation devices;

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

(C) Engine exhaust; or

(D) Meals on board vessels.

(iii) Dredge material disposed of at the interim dumpsite now established approximately 10 nmi south of the southeast Farallon Island and municipal sewage provided such discharges are certified in accordance with § 936.9.

(3) *Alteration of or construction on the seabed.* Except in connection with the laying of pipelines or construction of an outfall if certified in accordance with § 936.9, no person shall:

(i) Construct any structure other than a navigation aid,

(ii) Drill through the seabed, and

(iii) Dredge or otherwise alter the seabed in any way other than by anchoring vessels or bottom trawling from a commercial fishing vessel, except for routine maintenance and navigation, ecological maintenance, mariculture, and the construction of docks and piers in Tomales Bay.

(4) *Operations of vessels.* Except to transport persons or supplies to or from islands or mainland areas adjacent to sanctuary waters, within an area extending 2 nautical miles from the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance, no person shall operate any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

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(5) *Disturbing marine mammals and birds.* No person shall disturb seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one nautical mile of the Farallon Islands, Bolinas Lagoon, or any Area of Special Biological Significance except to transport persons or supplies to or from the Islands or for enforcement purposes.

(6) *Removing or damaging historical or cultural resources.* No person shall remove or damage any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

§ 936.7 Penalties for commission of prohibited acts.

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

§ 936.3 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct any activity in the Sanctuary, prohibited under § 936.6, if such an activity is (1) research related to the resources of the

Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, Attn: Office of Coastal Zone Management, Sanctuary Programs Office, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, DC 20235. An application shall provide sufficient information to enable the Assistant Administrator to make the determination called for in paragraph (c) of this section and 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) In considering whether to grant a permit, the Assistant Administrator shall evaluate (1) the general professional and financial responsibility of the applicant, (2) the appropriateness of the methods envisioned to the purpose(s) of the activity, (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary, (4) the end value of the activity, and (5) other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of any person or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

(f) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is deter-

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mined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

(Information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0648-0141)

[46 FR 7939, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 936.9 Certification of other permits.

(a) All permits, licenses, and other authorizations issued pursuant to any other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by § 936.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

(b) A permit, license, or other authorization allowing the discharge of municipal sewage, the laying of any pipeline outside 2 nmi from the Farallon Islands, Bolinas Lagoon and Areas of Special Biological Significance, or the disposal of dredge material at the interim dumpsite now established approximately 10 nmi south of the Southeast Farallon Island prior to the selection of a permanent dumpsite shall be valid if certified by the Assistant Administrator as consistent with the purpose of the Sanctuary and having no significant effect on sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(c) In considering whether to make the certifications called for in this section, the Assistant Administrator may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

(d) Any certification called for in this section shall be presumed unless

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the Assistant Administrator acts to deny or condition certification within 60 days from the date that the Assistant Administrator receives notice of the proposed permit and the necessary supporting data.

(e) The Assistant Administrator may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.

(f) Either the holder or the issuing agency may appeal any action conditioning, denying, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 936.10.

§ 936.10 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 936.8 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 reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator will notify the permit applicant, if other than the appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator will decide the appeal in accordance with the criteria defined in § 936.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing, and the hearing officer's recommended decision, if any, as provided in paragraph (c) of this section and such other considerations as deemed appropriate. The Administrator will notify all interested persons of the de-

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cision, and the reason(s) for the decision, in writing, within 30 days of receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a designated hearing officer after first giving notice of the time, place, and subject matter of the hearing in the **FEDERAL REGISTER**. Such hearing must normally 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 (if different), and other interested persons (at the discretion of the hearing officer) may appear personally or by counsel at the hearing, and submit material and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision 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 interested persons of the decision, and the reason(s) for the decision, in writing, within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's action will constitute final action for the agency for the purposes of the Administrative Procedures Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause upon written request from the appellant or applicant stating the reason(s) for the extension.

[46 FR 7939, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984]

**APPENDIX I—POINT REYES-FARALLON ISLANDS
NATIONAL MARINE SANCTUARY**

[Coordinates are furnished to 0.001 of a second]

Point No.	Latitude north	Longitude west
1	38°15'50.349"	123°10'48.933"
2	38°12'36.338"	123°07'04.846"
3	38°09'57.033"	123°05'27.435"
4	38°08'26.872"	123°04'52.524"
5	38°07'42.125"	123°05'10.714"
6	38°06'08.017"	123°05'48.920"
7	38°05'26.765"	123°06'09.922"
8	38°04'44.587"	123°06'29.251"
9	38°03'54.439"	123°06'57.591"
10	38°03'07.527"	123°07'37.755"
11	37°59'32.425"	123°08'24.905"
12	37°59'22.344"	123°14'06.127"
13	37°57'31.931"	123°19'19.187"
14	37°54'16.943"	123°23'18.456"
15	37°50'05.522"	123°25'28.791"
16	37°45'33.799"	123°25'32.666"
17	37°41'20.351"	123°23'29.811"
18	37°38'01.053"	123°19'37.445"
19	37°36'04.665"	123°14'30.483"
20	37°35'30.191"	123°13'31.060"
21	37°33'47.197"	123°11'50.904"
22	37°31'12.270"	123°07'39.618"
23	37°30'29.706"	123°05'42.221"
24	37°29'39.287"	123°00'23.711"
25	37°30'34.337"	122°54'18.139"
26	37°31'47.784"	122°51'31.592"
27	37°34'17.533"	122°48'10.415"
28	37°36'58.627"	122°46'05.779"
29	37°39'59.303"	122°44'59.838"
30	37°52'56.355"	122°37'35.195"

[47 FR 5212, Feb. 4, 1982]

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PART 937—THE LOOE KEY NATIONAL MARINE SANCTUARY REGULATIONS

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937.1 Authority.

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937.3 Boundaries.

937.4 Definitions.

937.5 Allowed activities.

937.6 Activities prohibited without a permit.

937.7 Penalties for commission of prohibited acts.

937.8 Permit procedures and criteria.

937.9 Other permits.

937.10 Appeals from administrative action.

AUTHORITY: Secs. 302(f), 302(g), 303, Pub. L. 92-532, 86 Stat. 1061, 1062 (16 U.S.C. 1431-1434).

SOURCE: 46 FR 7949, Jan. 26, 1981, unless otherwise noted.

§ 937.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursu-

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ant to the authority of section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 through 1434 (the Act). The following regulations are issued pursuant to the authorities of sections 302(f), 302(g), and 303 of the Act.

§ 937.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the coral reef ecosystem and other natural resources of the waters at Looe Key and to ensure the continued availability of the area for public educational purposes and as a commercial, ecological, research and recreational resource. This area supports a particularly rich and diverse marine biota. The area is easily accessible to the lower Florida Keys and is widely used by boaters, charter boat operators, dive boats, recreational divers and fishermen. Consequently, both present and potential levels of use may result in harm to Looe Key in the absence of long-term planning, research, monitoring and adequate protection.

§ 937.3 Boundaries.

The Sanctuary consists of an area of 5.32 square nautical miles of high sea waters off the coast of the lower Florida Keys, 6.7 nautical miles (12.5 km) southwest of Big Pine Key. The area includes the waters overlaying a section of the submerged Florida reef tract at Looe Key. The precise boundaries are:

LATITUDE AND LONGITUDE ARE FURNISHED TO
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Pt. No.	Latitude	Longitude
2-1	24°31'37"	81°26'00"
2-2	24°33'34"	81°26'00"
2-3	24°34'09"	81°23'00"
2-4	24°32'12"	81°23'00"

§ 937.4 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Assistant Administrator" means the Assistant Administrator for Coastal

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Zone Management, National Oceanic and Atmospheric Administration.

(c) "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 or local unit of the government.

(d) "Tropical fish" means fish and invertebrates of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which live in a close interrelationship with the coral.

(e) "The Fore Reef" means the area of the well defined "spur and groove" coral reef as delineated by Loran readings 1, 2, 3, 4 as follows:

1. NW 7980-W-13973.7, 7980-Y-43532.7
2. SW 7980-W-13975.4, 7980-Y-43543.4
3. NE 7980-W-13975.0, 7980-Y-43530.1
4. SE 7980-W-13975.4, 7980-Y-43527.7

§ 937.5 Allowed activities.

All activities except those specifically prohibited by § 937.6 may be carried on in the Sanctuary subject to all prohibitions, restrictions and conditions imposed by any other authority.

§ 937.6 Activities prohibited without a permit.

(a) Unless permitted by the Assistant Administrator in accordance with § 937.8, or as may be necessary for the national defense, in accordance with Article 5, Section 2 of the Designation, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited within the Sanctuary. All prohibitions must be applied consistently with international law.

(1) *Removing or damaging distinctive natural features.* (i) No person shall break, cut or similarly damage or take any coral or marine invertebrate except as an incidental result of anchoring outside the Fore Reef where sand anchoring is encouraged but not required. Divers are prohibited from handling coral or standing on coral formations.

(ii) No person shall take, except incidentally to allowed fishing activities, any tropical fish or marine invertebrate.

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(iii) There shall be a rebuttable presumption that any items listed in this paragraph found in the possession of a person within the Sanctuary have been collected or removed from within the Sanctuary.

(2) *Operation of watercraft.* All watercraft shall be operated in accordance with Federal rules and regulations that would apply if there were no sanctuary. The following constraints also shall be imposed.

(i) No person shall place any anchor on coral within the Fore Reef of the Sanctuary nor allow any chain or rope to enter the Fore Reef in a way that injures any coral. When anchoring dive boats, the first diver down shall inspect the anchor to ensure that it is placed off the corals and will not shift in such a way as to damage corals. No further diving is permitted until the anchor is placed in accordance with these requirements.

(ii) Watercraft must use mooring buoys, stations or anchoring areas when such facilities and areas have been designated and are available.

(iii) Watercraft shall not be operated in such a manner as to strike or otherwise cause damage to the natural features of the Sanctuary.

(iv) All watercraft from which diving operations are being conducted shall fly in a conspicuous manner, the red and white "divers down" flag.

(3) *Using harmful fishing methods.* (i) No person shall use or place wire fish traps within the Sanctuary.

(ii) No person shall place lobster traps within the Fore Reef area of the Sanctuary.

(iii) No person shall use pole spears, Hawaiian slings, rubber-powered arbalests, pneumatic and spring loaded guns or similar devices known as spearguns within the Sanctuary.

(iv) No person shall use poisons, electric charges, explosives or similar methods within the Sanctuary.

(4) *Removing or damaging distinctive historical or cultural resources.* No person shall remove, damage or tamper with any historical or cultural resources, including cargo pertaining to submerged wrecks.

(5) *Discharges.* No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts and chumming materials.

(ii) Cooling water from vessels.

(iii) Effluents from marine sanitation devices.

(6) *Markers.* (i) No person shall mark, deface or damage in any way or displace, remove or tamper with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts or other boundary markers installed by the managers or markers placed for the purpose of lobster pot fishing.

(ii) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(iii) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with principles of international law, including treaties, conventions and other international agreements to which the United States is signatory.

§ 937.7 Penalties for commission of prohibited acts.

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

§ 937.8 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct the specific activity in the Sanctuary including any activity specifically prohibited under § 937.6, if such activity is (1) research

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related to the resources of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, ATTN: Sanctuary Programs Office, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, 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) In considering whether to grant a permit the Assistant Administrator shall evaluate such matters as (1) the general profession and financial responsibility of the applicant; (2) the appropriateness of the methods envisioned to the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreational, educational or scientific information; (4) the end value of the activity; and (5) such other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this section the Assistant Administrator shall seek the views of the Fishery Management Councils and may seek and consider the views of any person or entity, within or outside of the Federal government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained shall be made available to the public.

(f) The permit granted under paragraph (e) of this section may not be

transferred without written permission of the Assistant Administrator.

(g) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

(Information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0648-0141)

[46 FR 7949, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984; 49 FR 13335, Apr. 4, 1984]

§ 937.9 Other permits.

All permits, licenses and other authorizations issued pursuant to any other authority remain valid if they do not authorize any activity prohibited by § 937.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

§ 937.10 Appeals from administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 937.8 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 reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator shall notify the permit applicant, if other than the appellant, and may request such additional informa-

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tion and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator shall decide the appeal in accordance with the criteria set in § 937.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (c) of this section and such other considerations as deemed appropriate. The Administrator shall notify all interested persons of the decision, and the reason(s) therefor in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **FEDERAL REGISTER**. Such hearing shall normally 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 (if different) and, at the discretion of the hearing officer, other interested persons, may appear personally or by counsel at the hearing and submit material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision 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 interested persons of the decision, and reason(s) therefor in writing within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's action shall constitute final action for the Agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Adminis-

trator for good cause, either upon his or her own motion or upon written request from the appellant or applicant stating the reason(s) therefor.

[46 FR 7949, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984]

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§ 938.3

**PART 938—THE GRAY'S REEF NA-
TIONAL MARINE SANCTUARY
REGULATIONS**

Sec.

938.1 Authority.

938.2 Purpose.

938.3 Boundaries.

938.4 Definitions.

938.5 Allowed activities.

938.6 Prohibited activities.

938.7 Penalties for commission of prohibit-
ed acts.

938.8 Permit procedures and criteria.

938.9 Certification of other permits.

938.10 Appeals of administrative action.

AUTHORITY: Secs. 302(a), (f), (g) and 303 of
Title III, Marine Protection, Research and
Sanctuaries Act of 1972, as amended, 16
U.S.C. 1431-1434.

SOURCE: 46 FR 7944, Jan. 26, 1981, unless
otherwise noted.

§ 938.1 Authority.

The Sanctuary has been designated pursuant to the authority of section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 through 1434 (the Act). The following regulations are issued pursuant to the authorities of sections 302(f), 302(g), and 303 of the Act.

§ 938.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the live bottom ecosystem and other natural resources of the waters of Gray's Reef and to ensure the continued availability of the area as an ecological, research, and recreational resource.

§ 938.3 Boundaries.

The sanctuary consists of 16.68 square nautical miles of high sea waters off the coast of Georgia. The sanctuary boundary includes all waters within a rectangle starting at coordinate 31° 21' 45" N, 80° 55' 17" W, commencing to coordinate 31° 25' 15"

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N, 80° 55' 17" W, thence to coordinate 31° 25' 15" N, 80° 49' 42" W, thence to coordinate 31° 21' 45" N, 80° 49' 42" W, thence back to the point of origin.

§ 938.4 Definitions.

(a) "Administrator" refers to the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Assistant Administrator" refers to the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

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

§ 938.5 Allowed activities.

All activities except those specifically prohibited by § 938.6 may be carried out within the Sanctuary subject to all prohibitions, restrictions, and conditions imposed by any other authority.

§ 938.6 Prohibited activities.

(a) Except as may be necessary for national defense in accordance with Article 5, Section 2 of the Designation or as may be necessary to respond to an emergency threatening life, property, or the environment, the following activities are prohibited within the Sanctuary unless permitted by the Assistant Administrator in accordance with § 938.8. All prohibitions will be applied consistently with international law.

(1) *Alteration of or construction on the seabed.* No person shall dredge, drill, or otherwise alter the seabed in any way nor construct any structure other than a navigation aid without a permit.

(2) *Discharge of substances.* No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts, bait, and chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling waters.

(3) *Operation of watercraft.* All watercraft shall be operated in accordance with Federal rules and regula-

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tions that would apply if there were no Sanctuary.

(4) *Wire trap fishing.* No person shall use, place, or possess wire fish traps within the Sanctuary without a permit.

(5) *Bottom trawling and specimen dredging.* No person shall use a bottom trawl, specimen dredge, or similar vessel-towed bottom sampling device within the Sanctuary without a permit.

(6) *Marine specimen collecting.* (i) No person shall break, cut, or similarly damage, take, or remove any bottom formation, any marine invertebrate, or any marine plant without a permit.

(ii) No person shall take without a permit any tropical fish, which is a fish of minimal sport and food value, usually brightly colored, often used for aquaria purposes, and which lives in a direct relationship with the live bottom community.

(iii) There shall be a rebuttable presumption that any items listed in this paragraph found in the possession of a person within the Sanctuary have been collected or removed from the Sanctuary.

(iv) No person shall use poisons, electric charges, explosives, or similar methods to take any marine animal or plant.

(7) *Removing or damaging historic or cultural resources.* No person shall tamper with, damage, or remove any historic or cultural resources without a permit.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

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§ 938.7 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than \$50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding in rem against any vessel used in violation of any such regulation.

§ 938.8 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct the specific activity in the Sanctuary including any activity specifically prohibited under § 938.6, if such activity is (1) research related to the resources of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, Attn: Office of Sanctuary Programs, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, DC 20235. An application shall provide sufficient information to enable the Assistant Administrator to make the determination called for in paragraph (c) of this section and 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) In considering whether to grant a permit, the Assistant Administrator shall evaluate (1) the general professional and financial responsibility of the applicant, (2) the appropriateness of the methods envisioned to the purpose(s) of the activity, (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary, (4) the end value of the activity, and (5) other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of any person or

entity, within or outside of the Federal Government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

(f) The Administrator may suspend, revoke, modify, or deny a permit granted or sought pursuant to this section, in whole or in part, if it is determined that the applicant or permit holder has acted in violation of the terms of the permit or of these regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder, and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are found at Subpart D of 15 CFR Part 904.

(Information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under control number 0648-0141)

[46 FR 7944, Jan. 28, 1981, as amended at 49 FR 1041, Jan. 8, 1984; 49 FR 13335, Apr. 4, 1984]

§ 938.9 Certification of other permits.

(a) All permits, licenses and other authorizations issued pursuant to any other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by § 938.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

(b) The Assistant Administrator may amend, suspend, or revoke the certification made under this section whenever continued operation would violate any term or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing

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agency and shall set forth reason(s) for the action taken. Either the permit holder or the issuing agency may appeal the action as provided for in § 938.10.

§ 938.10 Appeals of administrative action.

(a) Except as provided in Subpart D of 15 CFR Part 904, any interested person (the Appellant) may appeal the granting, denial, conditioning, or suspension of any permit under § 938.8 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 reasons therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator will notify the permit applicant, if other than the appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator will decide the appeal in accordance with the criteria defined in § 938.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing, the hearing office's recommended decision, if any, as provided in paragraph (c) of this section, and such other considerations as deemed appropriate. The Administrator will notify all interested persons of the decision and the reason(s) for the decision, in writing, within 30 days of receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a designated hearing officer after first giving notice of the time, place, and subject matter of the hearing in the **FEDERAL REGISTER**. Such hearing must normally 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 (if different) and other

interested persons (at the discretion of the hearing officer) 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 last day of the hearing, the hearing officer shall recommend in writing a decision 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 interested persons of the decision and the reason(s) for the decision, in writing, within 30 days of receipt of the recommended decision of the hearing officer. The Administrator's action will constitute final action for the Agency for the purposes of the Administrative Procedures Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause upon written request from the appellant or applicant stating the reason(s) for the extension.

[46 FR 7944, Jan. 26, 1981, as amended at 49 FR 1041, Jan. 6, 1984]

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**PART 941—FAGATELE BAY
NATIONAL MARINE SANCTUARY
REGULATIONS**

Sec.

- 941.1 Authority.
- 941.2 Purpose.
- 941.3 Scope of regulations.
- 941.4 Boundaries.
- 941.5 Definitions.
- 941.6 Management and enforcement.
- 941.7 Allowed activities.
- 941.8 Activities prohibited or controlled.
- 941.9 Other authorities.
- 941.10 Penalties for commission of prohibited acts.
- 941.11 Permit procedures and criteria.
- 941.12 Appeal of permit action.

AUTHORITY: Title III of Pub. L. 98-498, 16 U.S.C. 1431-1439, (Pub. L. 92-532 as amended by Pub. L. 96-33? and Pub. L. 98-498).

SOURCE: 51 FR 15880, Apr. 29, 1986, unless otherwise noted.

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§ 941.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 303(a) of the Marine Protection, Research and Sanctuaries Act of 1972, (the Act), 16 U.S.C. 1433; (Pub. L. 98-498). The following regulations are issued pursuant to Title III of the Act.

§ 941.2 Purpose.

The purpose of designating the Fagatele Bay National Marine Sanctuary is to protect a unique deepwater terrace formation and a coral reef ecosystem representative of the warm water tropical Pacific Islands in its natural state and to regulate uses within the Sanctuary to ensure the health and integrity of the ecosystem and its associated flora and fauna.

§ 941.3 Scope of regulations.

The provisions of this part apply only to the area defined by regulation as the Fagatele Bay National Marine

Sanctuary (the Sanctuary). Neither these provisions nor any permit issued under its authority shall be construed to relieve a person from any other requirements imposed by statute or regulation of the Territory of American Samoa or of the United States. In addition, no statute or regulation of the Territory of American Samoa shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this part.

§ 941.4 Boundaries.

The Sanctuary is a 163-acre (.25 sq. mi.) coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, American Samoa. The site is divided into two Subzones, A and B, and includes Fagatele Bay in its entirety up to mean high high water (MHHW). The seaward boundaries are defined by straight lines between the following points, as approved by the NOAA Charting Services Branch, and the American Samoa Department of Public Works:

Point	Pt. No.	Sub-zone	Latitude	Longitude
Fagatele Point.....	1-1	A	14°22'15" S.....	170°46'5" W
Matautulua Benchmark.....	1-2	A	14°22'18" S.....	170°45'35" W
Fagatele Point.....	2-1	B	14°22'15" S.....	170°46'5" W
Steps Point.....	2-2	B	14°22'44" S.....	170°45'27" W

§ 941.5 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA).

(b) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration, or his or her successor, or designee.

(c) "Benthic Community" means the assemblage of organisms, substrate, and structural formations found at or near the bottom that is periodically or permanently covered by water.

(d) "Commercial Fishing" means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals.

(e) "Cultural Resources" means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.

(f) "Designation" means the action taken by the Secretary of Commerce, to prescribe, through a Designation Document and implementing rules and regulations, the terms for establishing the Sanctuary.

(g) "Director" means Director of the Development Planning Office, Territory of American Samoa or the head of any successor agency.

(h) "The Management Plan" means the document that outlines the day-to-day operations of the Fagatele Bay National Marine Sanctuary and includes but is not limited to provisions for Research, Interpretation, Surveillance and Enforcement, and Administration.

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(i) "Permit" means any document issued under Federal or territorial authority, signed by an authorized official, and specifying the permitted actions.

(j) "Permittee" means any person issued a valid permit as defined in paragraph (i) of this section and pursuant to the requirements of these regulations.

(k) "Persons" 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 or local unit of government.

(l) "The Sanctuary" means the Fagatele Bay National Marine Sanctuary.

(m) "Sanctuary Manager" means the person hired by NOAA to manage and operate the Sanctuary.

(n) "Secretary" means the Secretary of Commerce, or his or her successor or designee.

§ 941.6 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the Sanctuary pursuant to the Act. The American Samoa Development Planning Office (DPO) will assist NOAA in the administration of the Sanctuary, and act as the lead agency, in conformance with the Designation Document, these regulations, and the terms and provisions of any grant or cooperative agreement. In accordance with § 922.32(b) of the National Marine Sanctuary Program Regulations, 15 CFR Part 922, NOAA may act to deputize enforcement agents of the American Samoa Government (ASG) to enforce these regulations. If NOAA chooses to exercise this provision, a memorandum of understanding shall be executed between NOAA and the ASG or the person(s) or entity authorized to act on their behalf. Prosecution of violations will be carried out by NOAA in accordance with § 941.10 of these regulations.

§ 941.7 Allowed activities.

All activities except those specifically prohibited by § 941.8 may be carried out within the Sanctuary subject to all

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prohibitions, restrictions, and conditions imposed by other authorities.

§ 941.8 Activities prohibited or controlled.

(a) Unless permitted by the Assistant Administrator in accordance with § 941.11, or as may be necessary for national defense, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited or controlled in Subzones A and B of the Sanctuary. All prohibitions and controls will be applied consistently with international law. Refer to § 941.10 for penalties for commission of prohibited acts.

(1) *Taking and Damaging Natural Resources.* (i) No person shall gather, take, break, cut, damage, destroy, or possess any invertebrate, coral, bottom formation, or marine plant.

(ii) No person shall take, gather, cut, damage, destroy, or possess any crown-of-thorns starfish (*Acanthaster planci*).

(iii) No person shall possess or use poisons, electrical charges, explosives, or similar environmentally destructive methods.

(iv) No person shall possess or use spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, bang sticks, or any similar taking device.

(v) No person shall possess or use seines, trammel nets, or any fixed net.

(vi) There shall be a rebuttable presumption that any items listed in these paragraphs found in the possession of a person within the Sanctuary have been used, collected, or removed from within the Sanctuary.

(2) *Operation of Vessels.* (i) No vessel shall approach closer than 200 feet to a vessel displaying a dive flag except at a maximum speed of three knots.

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

(iii) All vessels shall be operated to avoid striking or otherwise causing damage to the natural features of the Sanctuary.

(3) *Discharges.* No person shall litter, deposit, or discharge any mate-

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rials or substances of any kind into the waters of the Sanctuary.

(4) *Disturbance of the Benthic Community.* Disturbance of the benthic community by dredging, filling, dynamiting, bottom trawling, or any alteration of the seabed shall be prohibited.

(5) *Removing or Damaging Cultural Resources.* No person shall remove, damage, or tamper with any historical or cultural resource within the boundaries of the Sanctuary.

(6) *Taking of Sea Turtles.* No person shall ensnare, entrap, or fish any sea turtle while it is listed as a threatened or endangered species as defined by the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(7) *Use of Dangerous Weapons.* Except for law enforcement purposes, no person shall use or discharge explosives or weapons of any description within the Sanctuary boundaries. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers are not considered weapons for purposes of this subsection.

(8) *Other Prohibitions.* No person shall mark, deface, or damage in any way, or displace or remove or tamper with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, or other boundary markers related to the Sanctuary.

(b) In addition to those activities prohibited or controlled in accordance with § 941.8(a), the following activities are prohibited or controlled in *Sub-zone A*:

(1) *Taking and Damaging Natural Resources.* (i) No person shall possess or use fishing poles, handlines, or trawls.

(ii) Commercial fishing shall be prohibited.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

§ 941.9 Other authorities.

No license, permit or other authorization issued pursuant to any other authority may validly authorize any activity prohibited by § 941.8 unless such activity meets the criteria stated in § 941.11(a), (c) and (d), and is specifically authorized by the Assistant Administrator.

§ 941.10 Penalties for commission of prohibited acts.

Section 307 of the Act, 16 U.S.C. 1437, authorizes the assessment of a civil penalty of not more than \$50,000.00 for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. NOAA will apply to all enforcement matters under the Act the consolidated civil procedure regulations set forth at 15 CFR Part 904.

§ 941.11 Permit procedures and criteria.

(a) Under special circumstances an activity otherwise prohibited by § 941.8 of these regulations may be allowed by permit. The activity must be conducted for research or educational purposes designed to enhance understanding of the Sanctuary environment or to improve resource management decisionmaking. The activity must also be judged not to cause long-term or irreparable harm to the resources of the Sanctuary. A permit may be granted by the Assistant Administrator of NOAA in consultation with the Development and Planning Office.

(b) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct the specified activity in the Sanctuary if such activity is:

(1) Related to research involving Sanctuary resources;

(2) To further the educational value of the Sanctuary; or

(3) For salvage or recovery operations.

(c) Permit applications shall be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, ATTN: Sanctuary Pro-

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grams Division, National Ocean Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235. An application shall include a description of all proposed activities, the equipment, methods, and personnel involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(d) In considering whether to grant a permit, the Assistant Administrator shall evaluate such matters as:

(1) The general professional and financial responsibility of the applicant;

(2) The appropriateness of the methods being proposed for the purpose(s) of the activity;

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information; and

(4) The end value of the activity.

(e) In addition to meeting the criteria in § 941.11(a) and (c), the applicant also must demonstrate to the Assistant Administrator that:

(1) The activity shall be conducted with adequate safeguards for the environment; and

(2) The environment shall be returned to, or will regenerate to, the condition which existed before the activity occurred.

(f) In considering an application submitted pursuant to this Section, the Assistant Administrator shall seek and consider the views of the Sanctuary Manager and Director. The Assistant Administrator also may seek and consider the views of any other person or entity, within or outside of the Territorial Government, and may hold a public hearing, as he or she deems appropriate.

(g) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject the permit to such condition(s) as the Assistant Administrator deems necessary. A permit granted for research related to the Sanctuary may include, but is not limited to, the following conditions:

(1) The Assistant Administrator, Director, or their designated representa-

tives may observe any activity permitted by this section;

(2) Any information obtained in the research site shall be made available to the public; and

(3) The submission of one or more reports of the status of such research activity may be required.

(h) A permit granted pursuant to this section is non-transferrable.

(i) The Assistant Administrator may amend, suspend, or revoke a permit granted pursuant to this section, in whole or in part, temporarily or indefinitely if, in his/her view, the permittee has acted in violation of the terms of the permit or regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder and shall set forth the reason(s) for the action taken. The permittee in relation to whom such action has been taken may appeal the action to the Administrator as provided for in § 941.12.

(Information collection requirements for § 941.11 have been approved by the Office of Management and Budget under control number 0648-0141)

§ 941.12 Appeal of permit action.

(a) Except for permit actions which are imposed for enforcement reasons and covered by the procedures at Subpart D of 15 CFR Part 904, an applicant for a permit, the permittee, or any other interested person (hereafter Appellant) may appeal the granting, denial, conditioning or suspension of any permit under § 941.11 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 Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator may request the Appellant to submit such additional information and in such form as will allow action upon the appeal. The Administrator shall decide the appeal using the criteria set out in § 941.11 (a), (c) and (d) and any information relative to the

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application on file, any information provided by the Appellant, and such other consideration as is deemed appropriate. The Administrator shall 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 required to make the decision.

(c) If a hearing is requested, or if the Administrator determines that one is appropriate, the Administrator may grant an informal hearing before a Hearing Officer appointed for that purpose. The Appellant and any other interested persons may appear personally or by counsel at the hearing and submit material and present arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day 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 interested persons of his or 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 final action by NOAA for purposes of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*

(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 or her own motion or upon written request from the Appellant, permit applicant or permittee stating the reason(s) therefor.

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Corps of Engineers, Dept. of the Army, DoD

§ 324.1

**PART 324—PERMITS FOR OCEAN
DUMPING OF DREDGED MATERIAL**

Sec.

324.1 General.

324.2 Definitions.

324.3 Activities requiring permits.

324.4 Special procedures.

AUTHORITY: 33 U.S.C. 1413.

SOURCE: 51 FR 41235, Nov. 13, 1986, unless otherwise noted.

§ 324.1 General.

This regulation prescribes in addition to the general policies of 33 CFR Part 320 and procedures of 33 CFR Part 325, those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army (DA) permits to authorize the transportation of dredged material by vessel or other vehicle for the purpose of dumping it in ocean waters at dumping sites designated under 40 CFR Part 228 pursuant to section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413) (hereinafter referred to as section 103). See 33 CFR 320.2(h). Activities involving the transportation of dredged material for the purpose of dumping in the ocean waters also require DA permits under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) for the dredging in navigable waters of the United States. Applicants for DA permits under this Part should also refer to 33 CFR Part 322 to satisfy the requirements of Section 10.

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§ 324.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(b) The term "dredged material" means any material excavated or dredged from navigable waters of the United States.

(c) The term "transport" or "transportation" refers to the conveyance and related handling of dredged material by a vessel or other vehicle.

§ 324.3 Activities requiring permits.

(a) *General.* DA permits are required for the transportation of dredged material for the purpose of dumping it in ocean waters.

(b) *Activities of Federal agencies.* (1) The transportation of dredged material for the purpose of disposal in ocean waters done by or on behalf of any Federal agency other than the activities of the Corps of Engineers is subject to the procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under these regulations. Division and district engineers will therefore advise Federal agencies accordingly and cooperate to the fullest extent in the expeditious processing of their applications. The activities of the Corps of Engineers that involve the transportation of dredged material for disposal in ocean waters are regulated by 33 CFR 209.145.

(2) The policy provisions set out in 33 CFR 320.4(j) relating to state or local authorizations do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy. Federal agencies are responsible for conformance with such laws and policies. (See EO 12088, October 18, 1978.) Federal agencies are not required to obtain and provide certification of compliance with effluent limitations and water quality standards

from state or interstate water pollution control agencies in connection with activities involving the transport of dredged material for dumping into ocean waters beyond the territorial sea.

§ 324.4 Special procedures.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny section 103 permits. The following additional procedures shall also be applicable under this regulation.

(a) *Public notice.* For all applications for section 103 permits, the district engineer will issue a public notice which shall contain the information specified in 33 CFR 325.3.

(b) *Evaluation.* Applications for permits for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine whether the proposed dumping will unreasonably degrade or endanger human health, welfare, amenities, or the marine environment, ecological systems or economic potentialities. District engineers will apply the criteria established by the Administrator of EPA pursuant to section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 in making this evaluation. (See 40 CFR Parts 220-229) Where ocean dumping is determined to be necessary, the district engineer will, to the extent feasible, specify disposal sites using the recommendations of the Administrator pursuant to section 102(c) of the Act.

(c) *EPA review.* When the Regional Administrator, EPA, in accordance with 40 CFR 225.2(b), advises the district engineer, in writing, that the proposed dumping will comply with the criteria, the district engineer will complete his evaluation of the application under this part and 33 CFR Parts 320 and 325. If, however, the Regional Administrator advises the district engineer, in writing, that the proposed dumping does not comply with the criteria, the district engineer will proceed as follows:

(1) The district engineer will determine whether there is an economically feasible alternative method or site available other than the proposed

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ocean disposal site. If there are other feasible alternative methods or sites available, the district engineer will evaluate them in accordance with 33 CFR Parts 320, 322, 323, and 325 and this Part, as appropriate.

(2) If the district engineer determines that there is no economically feasible alternative method or site available, and the proposed project is otherwise found to be not contrary to the public interest, he will so advise the Regional Administrator setting forth his reasons for such determination. If the Regional Administrator has not removed his objection within 15 days, the district engineer will submit a report of his determination to the Chief of Engineers for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain the analysis of whether there are other economically feasible methods or sites available to dispose of the dredged material.

(d) *Chief of Engineers review.* The Chief of Engineers shall evaluate the permit application and make a decision to deny the permit or recommend its issuance. If the decision of the Chief of Engineers is that ocean dumping at the proposed disposal site is required because of the unavailability of economically feasible alternatives, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator, EPA, of the criteria or of the critical site designation in accordance with 40 CFR 225.4.

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**PART 325—PROCESSING OF
DEPARTMENT OF THE ARMY
PERMITS**

Sec.

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Appendix A—Permit Form and Special Conditions

Appendix B—Reserved (For Future NEPA Regulation)

Appendix C—Reserved (For Historic Properties Regulation)

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 USC 1413.

§ 325.1 Applications for permits.

(a) *General.* The processing procedures of this Part apply to any Department of the Army (DA) permit. Special procedures and additional information are contained in 33 CFR Parts 320 through 324, 327 and Part 330. This Part is arranged in the basic timing sequence used by the Corps of Engineers in processing applications for DA permits.

(b) *Pre-application consultation for major applications.* The district staff element having responsibility for administering, processing, and enforcing federal laws and regulations relating to the Corps of Engineers regulatory program shall be available to advise potential applicants of studies or other information foreseeably required for later federal action. The district engineer will establish local procedures and policies including appropriate publicity programs which will allow potential applicants to contact the district engineer or the regulatory staff element to request pre-application consultation. Upon receipt of such request, the district engineer will assure the conduct of an orderly process which may involve other staff elements and affected agencies (Federal, state, or local) and the public. This early process should be brief but thorough so that the potential applicant may begin to assess

the viability of some of the more obvious potential alternatives in the application. The district engineer will endeavor, at this stage, to provide the potential applicant with all helpful information necessary in pursuing the application, including factors which the Corps must consider in its permit decision making process. Whenever the district engineer becomes aware of planning for work which may require a DA permit and which may involve the preparation of an environmental document, he shall contact the principals involved to advise them of the requirement for the permit(s) and the attendant public interest review including the development of an environmental document. Whenever a potential applicant indicates the intent to submit an application for work which may require the preparation of an environmental document, a single point of contact shall be designated within the district's regulatory staff to effectively coordinate the regulatory process, including the National Environmental Policy Act (NEPA) procedures and all attendant reviews, meetings, hearings, and other actions, including the scoping process if appropriate, leading to a decision by the district engineer. Effort devoted to this process should be commensurate with the likelihood of a permit application actually being submitted to the Corps. The regulatory staff coordinator shall maintain an open relationship with each potential applicant or his consultants so as to assure that the potential applicant is fully aware of the substance (both quantitative and qualitative) of the data required by the district engineer for use in preparing an environmental assessment or an environmental impact statement (EIS) in accordance with 33 CFR Part 230, Appendix B.

(c) *Application form.* Applicants for all individual DA permits must use the standard application form (ENG Form 4345, OMB Approval No. OMB 49-R0420). Local variations of the application form for purposes of facilitating coordination with federal, state and local agencies may be used. The appropriate form may be obtained from the district office having

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jurisdiction over the waters in which the activity is proposed to be located. Certain activities have been authorized by general permits and do not require submission of an application form but may require a separate notification.

(d) *Content of application.* (1) The application must include a complete description of the proposed activity including necessary drawings, sketches, or plans sufficient for public notice (detailed engineering plans and specifications are not required); the location, purpose and need for the proposed activity; scheduling of the activity; the names and addresses of adjoining property owners; the location and dimensions of adjacent structures; and a list of authorizations required by other federal, interstate, state, or local agencies for the work, including all approvals received or denials already made. See § 325.3 for information required to be in public notices. District and division engineers are not authorized to develop additional information forms but may request specific information on a case-by-case basis. (See § 325.1(e)).

(2) All activities which the applicant plans to undertake which are reasonably related to the same project and for which a DA permit would be required should be included in the same permit application. District engineers should reject, as incomplete, any permit application which fails to comply with this requirement. For example, a permit application for a marina will include dredging required for access as well as any fill associated with construction of the marina.

(3) If the activity would involve dredging in navigable waters of the United States, the application must include a description of the type, composition and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material.

(4) If the activity would include the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of disposing of it in ocean waters the application must include the source of the material; the purpose of the discharge, a description of the type, composition and quantity of the material; the method of transportation and disposal of the material; and the location of the disposal site. Certification under section 401 of the Clean Water Act is required for such discharges into waters of the United States.

(5) If the activity would include the construction of a filled area or pile or float-supported platform the project

description must include the use of, and specific structures to be erected on, the fill or platform.

(6) If the activity would involve the construction of an impoundment structure, the applicant may be required to demonstrate that the structure complies with established state dam safety criteria or that the structure has been designed by qualified persons and, in appropriate cases, independently reviewed (and modified as the review would indicate) by similarly qualified persons. No specific design criteria are to be prescribed nor is an independent detailed engineering review to be made by the district engineer.

(7) *Signature on application.* The application must be signed by the person who desires to undertake the proposed activity (i.e. the applicant) or by a duly authorized agent. When the applicant is represented by an agent, that information will be included in the space provided on the application or by a separate written statement. The signature of the applicant or the agent will be an affirmation that the applicant possesses or will possess the requisite property interest to undertake the activity proposed in the application, except where the lands are under the control of the Corps of Engineers, in which cases the district engineer will coordinate the transfer of the real estate and the permit action. An application may include the activity of more than one owner provided the character of the activity of each owner is similar and in the same general area and each owner submits a statement designating the same agent.

(8) If the activity would involve the construction or placement of an artificial reef, as defined in 33 CFR 322.2(g), in the navigable waters of the United States or in the waters overlying the outer continental shelf, the application must include provisions for siting, constructing, monitoring, and managing the artificial reef.

(9) *Complete application.* An application will be determined to be complete when sufficient information is received to issue a public notice (See 33 CFR 325.1(d) and 325.3(a).) The issuance of a public notice will not be delayed to obtain information necessary to evaluate an application.

(e) *Additional information.* In addition to the information indicated in paragraph (d) of this section, the applicant will be required to furnish only such additional information as the district engineer deems essential to make a public interest determination including, where applicable, a determination of compliance with the section 404(b)(1) guidelines or ocean

dumping criteria. Such additional information may include environmental data and information on alternate methods and sites as may be necessary for the preparation of the required environmental documentation.

(f) *Fees.* Fees are required for permits under section 404 of the Clean Water Act, section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and sections 9 and 10 of the Rivers and Harbors Act of 1899. A fee of \$100.00 will be charged when the planned or ultimate purpose of the project is commercial or industrial in nature and is in support of operations that charge for the production, distribution or sale of goods or services. A \$10.00 fee will be charged for permit applications when the proposed work is non-commercial in nature and would provide personal benefits that have no connection with a commercial enterprise. The final decision as to the basis for a fee (commercial vs. non-commercial) shall be solely the responsibility of the district engineer. No fee will be charged if the applicant withdraws the application at any time prior to issuance of the permit or if the permit is denied. Collection of the fee will be deferred until the proposed activity has been determined to be not contrary to the public interest. Multiple fees are not to be charged if more than one law is applicable. Any modification significant enough to require publication of a public notice will also require a fee. No fee will be assessed when a permit is transferred from one property owner to another. No fees will be charged for time extensions, general permits or letters of permission. Agencies or instrumentalities of federal, state or local governments will not be required to pay any fee in connection with permits.

§ 325.2 Processing of applications.

(a) *Standard procedures.* (1) When an application for a permit is received the district engineer shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it. He shall review the application for completeness, and if the application is incomplete, request from the applicant within 15 days of receipt of the application any additional information necessary for further processing.

(2) Within 15 days of receipt of an application the district engineer will either determine that the application is complete (see 33 CFR 325.1(d)(9) and issue a public notice as described in § 325.3 of this Part, unless specifically exempted by other provisions of this

regulation or that it is incomplete and notify the applicant of the information necessary for a complete application. The district engineer will issue a supplemental, revised, or corrected public notice if in his view there is a change in the application data that would affect the public's review of the proposal.

(3) The district engineer will consider all comments received in response to the public notice in his subsequent actions on the permit application. Receipt of the comments will be acknowledged, if appropriate, and they will be made a part of the administrative record of the application. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments relate to matters within the special expertise of another federal agency, the district engineer may seek the advice of that agency. If the district engineer determines, based on comments received, that he must have the views of the applicant on a particular issue to make a public interest determination, the applicant will be given the opportunity to furnish his views on such issue to the district engineer (see § 325.2(d)(5)). At the earliest practicable time other substantive comments will be furnished to the applicant for his information and any views he may wish to offer. A summary of the comments, the actual letters or portions thereof, or representative comment letters may be furnished to the applicant. The applicant may voluntarily elect to contact objectors in an attempt to resolve objections but will not be required to do so. District engineers will ensure that all parties are informed that the Corps alone is responsible for reaching a decision on the merits of any application. The district engineer may also offer Corps regulatory staff to be present at meetings between applicants and objectors, where appropriate, to provide information on the process, to mediate differences, or to gather information to aid in the decision process. The district engineer should not delay processing of the application unless the applicant requests a reasonable delay, normally not to exceed 30 days, to provide additional information or comments.

(4) The district engineer will follow Appendix B of 33 CFR Part 230 for environmental procedures and documentation required by the National Environmental Policy Act of 1969. A decision on a permit application will require either an environmental assessment or an environmental impact

statement unless it is included within a categorical exclusion.

(5) The district engineer will also evaluate the application to determine the need for a public hearing pursuant to 33 CFR Part 327.

(6) After all above actions have been completed, the district engineer will determine in accordance with the record and applicable regulations whether or not the permit should be issued. He shall prepare a statement of findings (SOF) or, where an EIS has been prepared, a record of decision (ROD), on all permit decisions. The SOF or ROD shall include the district engineer's views on the probable effect of the proposed work on the public interest including conformity with the guidelines published for the discharge of dredged or fill material into waters of the United States (40 CFR Part 230) or with the criteria for dumping of dredged material in ocean waters (40 CFR Parts 220 to 229), if applicable, and the conclusions of the district engineer. The SOF or ROD shall be dated, signed, and included in the record prior to final action on the application. Where the district engineer has delegated authority to sign permits for and in his behalf, he may similarly delegate the signing of the SOF or ROD. If a district engineer makes a decision on a permit application which is contrary to state or local decisions (33 CFR 320.4(j) (2) & (4)), the district engineer will include in the decision document the significant national issues and explain how they are overriding in importance. If a permit is warranted, the district engineer will determine the special conditions, if any, and duration which should be incorporated into the permit. In accordance with the authorities specified in Section 325.8 of this Part, the district engineer will take final action or forward the application with all pertinent comments, records, and studies, including the final EIS or environmental assessment, through channels to the official authorized to make the final decision. The report forwarding the application for decision will be in a format prescribed by the Chief of Engineers. District and division engineers will notify the applicant and interested federal and state agencies that the application has been forwarded to higher headquarters. The district or division engineer may, at his option, disclose his recommendation to the news media and other interested parties, with the caution that it is only a recommendation and not a final decision. Such disclosure is encouraged in permit cases which have become controversial and have been the subject of stories in the media or have generated

strong public interest. In those cases where the application is forwarded for decision in the format prescribed by the Chief of Engineers, the report will serve as the SOF or ROD. District engineers will generally combine the SOF, environmental assessment, and findings of no significant impact (FONSI), 404(b)(1) guideline analysis, and/or the criteria for dumping of dredged material in ocean waters into a single document.

(7) If the final decision is to deny the permit, the applicant will be advised in writing of the reason(s) for denial. If the final decision is to issue the permit and a standard individual permit form will be used, the issuing official will forward the permit to the applicant for signature accepting the conditions of the permit. The permit is not valid until signed by the issuing official. Letters of permission require only the signature of the issuing official. Final action on the permit application is the signature on the letter notifying the applicant of the denial of the permit or signature of the issuing official on the authorizing document.

(8) The district engineer will publish monthly a list of permits issued or denied during the previous month. The list will identify each action by public notice number, name of applicant, and brief description of activity involved. It will also note that relevant environmental documents and the SOF's or ROD's are available upon written request and, where applicable, upon the payment of administrative fees. This list will be distributed to all persons who may have an interest in any of the public notices listed.

(9) Copies of permits will be furnished to other agencies in appropriate cases as follows:

(i) If the activity involves the construction of artificial islands, installations or other devices on the outer continental shelf, to the Director, Defense Mapping Agency, Hydrographic Center, Washington, DC 20390 Attention, Code NS12, and to the Charting and Geodetic Services, N/CG222, National Ocean Service NOAA, Rockville, Maryland 20852.

(ii) If the activity involves the construction of structures to enhance fish propagation (e.g., fishing reefs) along the coasts of the United States, to the Defense Mapping Agency, Hydrographic Center and National Ocean Service as in paragraph (a)(9)(i) of this section and to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, DC 20235.

(iii) If the activity involves the erection of an aerial transmission line, submerged cable, or submerged pipeline

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across a navigable water of the United States, to the Charting and Geodetic Services N/CG222, National Ocean Service NOAA, Rockville, Maryland 20852.

(iv) If the activity is listed in paragraphs (a)(9) (i), (ii), or (iii) of this section, or involves the transportation of dredged material for the purpose of dumping it in ocean waters, to the appropriate District Commander, U.S. Coast Guard.

(b) *Procedures for particular types of permit situations.*—(1) *Section 401 Water Quality Certification.* If the district engineer determines that water quality certification for the proposed activity is necessary under the provisions of section 401 of the Clean Water Act, he shall so notify the applicant and obtain from him or the certifying agency a copy of such certification.

(i) The public notice for such activity, which will contain a statement on certification requirements (see § 325.3(a)(8)), will serve as the notification to the Administrator of the Environmental Protection Agency (EPA) pursuant to section 401(a)(2) of the Clean Water Act. If EPA determines that the proposed discharge may affect the quality of the waters of any state other than the state in which the discharge will originate, it will so notify such other state, the district engineer, and the applicant. If such notice or a request for supplemental information is not received within 30 days of issuance of the public notice, the district engineer will assume EPA has made a negative determination with respect to section 401(a)(2). If EPA determines another state's waters may be affected, such state has 60 days from receipt of EPA's notice to determine if the proposed discharge will affect the quality of its waters so as to violate any water quality requirement in such state, to notify EPA and the district engineer in writing of its objection to permit issuance, and to request a public hearing. If such occurs, the district engineer will hold a public hearing in the objecting state. Except as stated below, the hearing will be conducted in accordance with 33 CFR Part 327. The issues to be considered at the public hearing will be limited to water quality impacts. EPA will submit its evaluation and recommendations at the hearing with respect to the state's objection to permit issuance. Based upon the recommendations of the objecting state, EPA, and any additional evidence presented at the hearing, the district engineer will condition the permit, if issued, in such a manner as may be

necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot, in the district engineer's opinion, insure such compliance, he will deny the permit.

(ii) No permit will be granted until required certification has been obtained or has been waived. A waiver may be explicit, or will be deemed to occur if the certifying agency fails or refuses to act on a request for certification within sixty days after receipt of such a request unless the district engineer determines a shorter or longer period is reasonable for the state to act. In determining whether or not a waiver period has commenced or waiver has occurred, the district engineer will verify that the certifying agency has received a valid request for certification. If, however, special circumstances identified by the district engineer require that action on an application be taken within a more limited period of time, the district engineer shall determine a reasonable lesser period of time, advise the certifying agency of the need for action by a particular date, and that, if certification is not received by that date, it will be considered that the requirement for certification has been waived. Similarly, if it appears that circumstances may reasonably require a period of time longer than sixty days, the district engineer, based on information provided by the certifying agency, will determine a longer reasonable period of time, not to exceed one year, at which time a waiver will be deemed to occur.

(2) *Coastal Zone Management Consistency.* If the proposed activity is to be undertaken in a state operating under a coastal zone management program approved by the Secretary of Commerce pursuant to the Coastal Zone Management (CZM) Act (see 33 CFR 320.3(b)), the district engineer shall proceed as follows:

(i) If the applicant is a federal agency, and the application involves a federal activity in or affecting the coastal zone, the district engineer shall forward a copy of the public notice to the agency of the state responsible for reviewing the consistency of federal activities. The federal agency applicant shall be responsible for complying with the CZM Act's directive for ensuring that federal agency activities are undertaken in a manner which is consistent, to the maximum extent practicable, with approved CZM Programs. (See 15 CFR Part 930.) If the state coastal zone agency objects to the proposed federal activity on the basis of its inconsistency with the state's approved CZM Program,

the district engineer shall not make a final decision on the application until the disagreeing parties have had an opportunity to utilize the procedures specified by the CZM Act for resolving such disagreements.

(ii) If the applicant is not a federal agency and the application involves an activity affecting the coastal zone, the district engineer shall obtain from the applicant a certification that his proposed activity complies with and will be conducted in a manner that is consistent with the approved state CZM Program. Upon receipt of the certification, the district engineer will forward a copy of the public notice (which will include the applicant's certification statement) to the state coastal zone agency and request its concurrence or objection. If the state agency objects to the certification or issues a decision indicating that the proposed activity requires further review, the district engineer shall not issue the permit until the state concurs with the certification statement or the Secretary of Commerce determines that the proposed activity is consistent with the purposes of the CZM Act or is necessary in the interest of national security. If the state agency fails to concur or object to a certification statement within six months of the state agency's receipt of the certification statement, state agency concurrence with the certification statement shall be conclusively presumed. District engineers will seek agreements with state CZM agencies that the agency's failure to provide comments during the public notice comment period will be considered as a concurrence with the certification or waiver of the right to concur or non-concur.

(iii) If the applicant is requesting a permit for work on Indian reservation lands which are in the coastal zone, the district engineer shall treat the application in the same manner as prescribed for a Federal applicant in paragraph (b)(2)(i) of this section. However, if the applicant is requesting a permit on non-trust Indian lands, and the state CZM agency has decided to assert jurisdiction over such lands, the district engineer shall treat the application in the same manner as prescribed for a non-Federal applicant in paragraph (b)(2)(ii) of this section.

(3) *Historic Properties.* If the proposed activity would involve any property listed or eligible for listing in the National Register of Historic Places, the district engineer will proceed in accordance with Corps National Historic Preservation Act implementing regulations.

(4) *Activities Associated with Federal Projects.* If the proposed activity would consist of the dredging of an access channel and/or berthing facility associated with an authorized federal navigation project, the activity will be included in the planning and coordination of the construction or maintenance of the federal project to the maximum extent feasible. Separate notice, hearing, and environmental documentation will not be required for activities so included and coordinated, and the public notice issued by the district engineer for these federal and associated non-federal activities will be the notice of intent to issue permits for those included non-federal dredging activities. The decision whether to issue or deny such a permit will be consistent with the decision on the federal project unless special considerations applicable to the proposed activity are identified. (See § 322.5(c).)

(5) *Endangered Species.* Applications will be reviewed for the potential impact on threatened or endangered species pursuant to section 7 of the Endangered Species Act as amended. The district engineer will include a statement in the public notice of his current knowledge of endangered species based on his initial review of the application (see 33 CFR 325.2(a)(2)). If the district engineer determines that the proposed activity would not affect listed species or their critical habitat, he will include a statement to this effect in the public notice. If he finds the proposed activity may affect an endangered or threatened species or their critical habitat, he will initiate formal consultation procedures with the U.S. Fish and Wildlife Service or National Marine Fisheries Service. Public notices forwarded to the U.S. Fish and Wildlife Service or National Marine Fisheries Service will serve as the request for information on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the proposed activity, pursuant to section 7(c) of the Act. References, definitions, and consultation procedures are found in 50 CFR Part 402.

(c) [Reserved]

(d) *Timing of processing of applications.* The district engineer will be guided by the following time limits for the indicated steps in the evaluation process:

(1) The public notice will be issued within 15 days of receipt of all information required to be submitted by the applicant in accordance with paragraph 325.1(d) of this Part.

(2) The comment period on the public notice should be for a reasonable period of time within which interested parties

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may express their views concerning the permit. The comment period should not be more than 30 days nor less than 15 days from the date of the notice. Before designating comment periods less than 30 days, the district engineer will consider: (i) Whether the proposal is routine or noncontroversial, (ii) mail time and need for comments from remote areas, (iii) comments from similar proposals, and (iv) the need for a site visit. After considering the length of the original comment period, paragraphs (a)(2) (i) through (iv) of this section, and other pertinent factors, the district engineer may extend the comment period up to an additional 30 days if warranted.

(3) District engineers will decide on all applications not later than 60 days after receipt of a complete application, unless (i) precluded as a matter of law or procedures required by law (see below), (ii) the case must be referred to higher authority (see § 325.6 of this Part), (iii) the comment period is extended, (iv) a timely submittal of information or comments is not received from the applicant, (v) the processing is suspended at the request of the applicant, or (vi) information needed by the district engineer for a decision on the application cannot reasonably be obtained within the 60-day period. Once the cause for preventing the decision from being made within the normal 60-day period has been satisfied or eliminated, the 60-day clock will start running again from where it was suspended. For example, if the comment period is extended by 30 days, the district engineer will, absent other restraints, decide on the application within 90 days of receipt of a complete application. Certain laws (e.g., the Clean Water Act, the CZM Act, the National Environmental Policy Act, the National Historic Preservation Act, the Preservation of Historical and Archeological Data Act, the Endangered Species Act, the Wild and Scenic Rivers Act, and the Marine Protection, Research and Sanctuaries Act) require procedures such as state or other federal agency certifications, public hearings, environmental impact statements, consultation, special studies, and testing which may prevent district engineers from being able to decide certain applications within 60 days.

(4) Once the district engineer has sufficient information to make his public interest determination, he should decide the permit application even though other agencies which may have regulatory jurisdiction have not yet granted their authorizations, except where such authorizations are, by federal law, a prerequisite to making a decision on the

DA permit application. Permits granted prior to other (non-prerequisite) authorizations by other agencies should, where appropriate, be conditioned in such manner as to give those other authorities an opportunity to undertake their review without the applicant biasing such review by making substantial resource commitments on the basis of the DA permit. In unusual cases the district engineer may decide that due to the nature or scope of a specific proposal, it would be prudent to defer taking final action until another agency has acted on its authorization. In such cases, he may advise the other agency of his position on the DA permit while deferring his final decision.

(5) The applicant will be given a reasonable time, not to exceed 30 days, to respond to requests of the district engineer. The district engineer may make such requests by certified letter and clearly inform the applicant that if he does not respond with the requested information or a justification why additional time is necessary, then his application will be considered withdrawn or a final decision will be made, whichever is appropriate. If additional time is requested, the district engineer will either grant the time, make a final decision, or consider the application as withdrawn.

(6) The time requirements in these regulations are in terms of calendar days rather than in terms of working days.

(e) *Alternative procedures.* Division and district engineers are authorized to use alternative procedures as follows:

(1) *Letters of permission.* Letters of permission are a type of permit issued through an abbreviated processing procedure which includes coordination with Federal and state fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of an individual public notice. The letter of permission will not be used to authorize the transportation of dredged material for the purpose of dumping it in ocean waters. Letters of permission may be used:

(i) In those cases subject to section 10 of the Rivers and Harbors Act of 1899 when, in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition.

(ii) In those cases subject to section 404 of the Clean Water Act after:

(A) The district engineer, through consultation with Federal and state fish and wildlife agencies, the Regional

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Administrator, Environmental Protection Agency, the state water quality certifying agency, and, if appropriate, the state Coastal Zone Management Agency, develops a list of categories of activities proposed for authorization under LOP procedures;

(B) The district engineer issues a public notice advertising the proposed list and the LOP procedures, requesting comments and offering an opportunity for public hearing; and

(C) A 401 certification has been issued or waived and, if appropriate, CZM consistency concurrence obtained or presumed either on a generic or individual basis.

(2) *Regional permits.* Regional permits are a type of general permit as defined in 33 CFR 322.2(f) and 33 CFR 323.2(n). They may be issued by a division or district engineer after compliance with the other procedures of this regulation. After a regional permit has been issued, individual activities falling within those categories that are authorized by such regional permits do not have to be further authorized by the procedures of this regulation. The issuing authority will determine and add appropriate conditions to protect the public interest. When the issuing authority determines on a case-by-case basis that the concerns for the aquatic environment so indicate, he may exercise discretionary authority to override the regional permit and require an individual application and review. A regional permit may be revoked by the issuing authority if it is determined that it is contrary to the public interest provided the procedures of § 325.7 of this Part are followed. Following revocation, applications for future activities in areas covered by the regional permit shall be processed as applications for individual permits. No regional permit shall be issued for a period of more than five years.

(3) *Joint procedures.* Division and district engineers are authorized and encouraged to develop joint procedures with states and other Federal agencies with ongoing permit programs for activities also regulated by the Department of the Army. Such procedures may be substituted for the procedures in paragraphs (a)(1) through (a)(5) of this section provided that the substantive requirements of those sections are maintained. Division and district engineers are also encouraged to develop management techniques such as joint agency review meetings to expedite the decision-making process. However, in doing so, the applicant's rights to a full public interest review and independent decision by the district or division engineer must be strictly observed.

(4) *Emergency procedures.* Division engineers are authorized to approve special processing procedures in emergency situations. An "emergency" is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. In emergency situations, the district engineer will explain the circumstances and recommend special procedures to the division engineer who will instruct the district engineer as to further processing of the application. Even in an emergency situation, reasonable efforts will be made to receive comments from interested Federal, state, and local agencies and the affected public. Also, notice of any special procedures authorized and their rationale is to be appropriately published as soon as practicable.

§ 325.3 Public notice.

(a) *General.* The public notice is the primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment. The notice should include the following items of information:

(1) Applicable statutory authority or authorities;

(2) The name and address of the applicant;

(3) The name or title, address and telephone number of the Corps employee from whom additional information concerning the application may be obtained;

(4) The location of the proposed activity;

(5) A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be erected on fills or pile or float-supported platforms, and a description of the type, composition, and quantity of materials to be discharged or disposed of in the ocean;

(6) A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship

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of the proposed structures to the size of the impacted waterway and depth of water in the area;

(7) If the proposed activity would occur in the territorial seas or ocean waters, a description of the activity's relationship to the baseline from which the territorial sea is measured;

(8) A list of other government authorizations obtained or requested by the applicant, including required certifications relative to water quality, coastal zone management, or marine sanctuaries;

(9) If appropriate, a statement that the activity is a categorical exclusion for purposes of NEPA (see paragraph 7 of Appendix B to 33 CFR Part 230);

(10) A statement of the district engineer's current knowledge on historic properties;

(11) A statement of the district engineer's current knowledge on endangered species (see § 325.2(b)(5));

(12) A statement(s) on evaluation factors (see § 325.3(c));

(13) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest;

(14) The comment period based on § 325.2(d)(2);

(15) A statement that any person may request, in writing, within the comment period specified in the notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing;

(16) For non-federal applications in states with an approved CZM Plan, a statement on compliance with the approved Plan; and

(17) In addition, for section 103 (ocean dumping) activities:

(i) The specific location of the proposed disposal site and its physical boundaries;

(ii) A statement as to whether the proposed disposal site has been designated for use by the Administrator, EPA, pursuant to section 102(c) of the Act;

(iii) If the proposed disposal site has not been designated by the Administrator, EPA, a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible;

(iv) A brief description of known dredged material discharges at the proposed disposal site;

(v) Existence and documented effects of other authorized disposals that have been made in the disposal area (e.g.,

heavy metal background reading and organic carbon content);

(vi) An estimate of the length of time during which disposal would continue at the proposed site; and

(vii) Information on the characteristics and composition of the dredged material.

(b) *Public notice for general permits.* District engineers will publish a public notice for all proposed regional general permits and for significant modifications to, or reissuance of, existing regional permits within their area of jurisdiction. Public notices for statewide regional permits may be issued jointly by the affected Corps districts. The notice will include all applicable information necessary to provide a clear understanding of the proposal. In addition, the notice will state the availability of information at the district office which reveals the Corps' provisional determination that the proposed activities comply with the requirements for issuance of general permits. District engineers will publish a public notice for nationwide permits in accordance with 33 CFR 330.4.

(c) *Evaluation factors.* A paragraph describing the various evaluation factors on which decisions are based shall be included in every public notice.

(1) Except as provided in paragraph (c)(3) of this section, the following will be included:

"The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people."

(2) If the activity would involve the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of disposing of it in ocean waters, the public notice shall also indicate that the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, EPA, (40 CFR Part 230) or of the criteria

established under authority of section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (40 CFR Parts 220 to 229), as appropriate. (See 33 CFR Parts 323 and 324).

(3) In cases involving construction of artificial islands, installations and other devices on outer continental shelf lands which are under mineral lease from the Department of the Interior, the notice will contain the following statement: "The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on navigation and national security."

(d) *Distribution of public notices.* (1) Public notices will be distributed for posting in post offices or other appropriate public places in the vicinity of the site of the proposed work and will be sent to the applicant, to appropriate city and county officials, to adjoining property owners, to appropriate state agencies, to appropriate Indian Tribes or tribal representatives, to concerned Federal agencies, to local, regional and national shipping and other concerned business and conservation organizations, to appropriate River Basin Commissions, to appropriate state and areawide clearing houses as prescribed by OMB Circular A-95, to local news media and to any other interested party. Copies of public notices will be sent to all parties who have specifically requested copies of public notices, to the U.S. Senators and Representatives for the area where the work is to be performed, the field representative of the Secretary of the Interior, the Regional Director of the Fish and Wildlife Service, the Regional Director of the National Park Service, the Regional Administrator of the Environmental Protection Agency (EPA), the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA), the head of the state agency responsible for fish and wildlife resources, the State Historic Preservation Officer, and the District Commander, U.S. Coast Guard.

(2) In addition to the general distribution of public notices cited above, notices will be sent to other addressees in appropriate cases as follows:

(i) If the activity would involve structures or dredging along the shores of the seas or Great Lakes, to the Coastal Engineering Research Center, Washington, DC 20016.

(ii) If the activity would involve construction of fixed structures or artificial islands on the outer continental shelf or in the territorial seas, to the

Assistant Secretary of Defense (Manpower, Installations, and Logistics (ASD(MI&L))), Washington, DC 20310; the Director, Defense Mapping Agency (Hydrographic Center) Washington, DC 20390, Attention, Code NS12; and the Charting and Geodetic Services, N/CG222, National Ocean Service NOAA, Rockville, Maryland 20852, and to affected military installations and activities.

(iii) If the activity involves the construction of structures to enhance fish propagation (e.g., fishing reefs) along the coasts of the United States, to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, DC 20235.

(iv) If the activity involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane operations, to the Regional Director of the Federal Aviation Administration.

(v) If the activity would be in connection with a foreign-trade zone, to the Executive Secretary, Foreign-Trade Zones Board, Department of Commerce, Washington, DC 20230 and to the appropriate District Director of Customs as Resident Representative, Foreign-Trade Zones Board.

(3) It is presumed that all interested parties and agencies will wish to respond to public notices; therefore, a lack of response will be interpreted as meaning that there is no objection to the proposed project. A copy of the public notice with the list of the addresses to whom the notice was sent will be included in the record. If a question develops with respect to an activity for which another agency has responsibility and that other agency has not responded to the public notice, the district engineer may request its comments. Whenever a response to a public notice has been received from a member of Congress, either in behalf of a constituent or himself, the district engineer will inform the member of Congress of the final decision.

(4) District engineers will update public notice mailing lists at least once every two years.

§ 325.4. Conditioning of permits.

(a) District engineers will add special conditions to Department of the Army permits when such conditions are necessary to satisfy legal requirements or to otherwise satisfy the public interest requirement. Permit conditions will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable.

(1) Legal requirements which may be satisfied by means of Corps permit conditions include compliance with the 404(b)(1) guidelines, the EPA ocean dumping criteria, the Endangered Species Act, and requirements imposed by conditions on state section 401 water quality certifications.

(2) Where appropriate, the district engineer may take into account the existence of controls imposed under other federal, state, or local programs which would achieve the objective of the desired condition, or the existence of an enforceable agreement between the applicant and another party concerned with the resource in question, in determining whether a proposal complies with the 404(b)(1) guidelines, ocean dumping criteria, and other applicable statutes, and is not contrary to the public interest. In such cases, the Department of the Army permit will be conditioned to state that material changes in, or a failure to implement and enforce such program or agreement, will be grounds for modifying, suspending, or revoking the permit.

(3) Such conditions may be accomplished on-site, or may be accomplished off-site for mitigation of significant losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment.

(b) District engineers are authorized to add special conditions, exclusive of paragraph (a) of this section, at the applicant's request or to clarify the permit application.

(c) If the district engineer determines that special conditions are necessary to insure the proposal will not be contrary to the public interest, but those conditions would not be reasonably implementable or enforceable, he will deny the permit.

(d) *Bonds.* If the district engineer has reason to consider that the permittee might be prevented from completing work which is necessary to protect the public interest, he may require the permittee to post a bond of sufficient amount to indemnify the government against any loss as a result of corrective action it might take.

§ 325.5 Forms of permits.

(a) *General discussion.* (1) DA permits under this regulation will be in the form of individual permits or general permits. The basic format shall be ENG Form 1721, DA Permit (Appendix A).

(2) The general conditions included in ENG Form 1721 are normally applicable to all permits; however, some conditions may not apply to certain permits and may be deleted by the issuing officer. Special conditions applicable to the

specific activity will be included in the permit as necessary to protect the public interest in accordance with Section 325.4 of this Part.

(b) *Individual permits*—(1) *Standard permits.* A standard permit is one which has been processed through the public interest review procedures, including public notice and receipt of comments, described throughout this Part. The standard individual permit shall be issued using ENG Form 1721.

(2) *Letters of permission.* A letter of permission will be issued where procedures of paragraph 325.2(e)(1) have been followed. It will be in letter form and will identify the permittee, the authorized work and location of the work, the statutory authority, any limitations on the work, a construction time limit and a requirement for a report of completed work. A copy of the relevant general conditions from ENG Form 1721 will be attached and will be incorporated by reference into the letter of permission.

(c) *General permits*—(1) *Regional permits.* Regional permits are a type of general permit. They may be issued by a division or district engineer after compliance with the other procedures of this regulation. If the public interest so requires, the issuing authority may condition the regional permit to require a case-by-case reporting and acknowledgment system. However, no separate applications or other authorization documents will be required.

(2) *Nationwide permits.* Nationwide permits are a type of general permit and represent DA authorizations that have been issued by the regulation (33 CFR Part 330) for certain specified activities nationwide. If certain conditions are met, the specified activities can take place without the need for an individual or regional permit.

(3) *Programmatic permits.* Programmatic permits are a type of general permit founded on an existing state, local or other Federal agency program and designed to avoid duplication with that program.

(d) *Section 9 permits.* Permits for structures in interstate navigable waters of the United States under section 9 of the Rivers and Harbors Act of 1899 will be drafted at DA level.

§ 325.6 Duration of permits.

(a) *General.* DA permits may authorize both the work and the resulting use. Permits continue in effect until they automatically expire or are modified, suspended, or revoked.

(b) *Structures.* Permits for the existence of a structure or other activity of a permanent nature are usually for an

indefinite duration with no expiration date cited. However, where a temporary structure is authorized, or where restoration of a waterway is contemplated, the permit will be of limited duration with a definite expiration date.

(c) *Works.* Permits for construction work, discharge of dredged or fill material, or other activity and any construction period for a structure with a permit of indefinite duration under paragraph (b) of this section will specify time limits for completing the work or activity. The permit may also specify a date by which the work must be started, normally within one year from the date of issuance. The date will be established by the issuing official and will provide reasonable times based on the scope and nature of the work involved. Permits issued for the transport of dredged material for the purpose of disposing of it in ocean waters will specify a completion date for the disposal not to exceed three years from the date of permit issuance.

(d) *Extensions of time.* An authorization or construction period will automatically expire if the permittee fails to request and receive an extension of time. Extensions of time may be granted by the district engineer. The permittee must request the extension and explain the basis of the request, which will be granted unless the district engineer determines that an extension would be contrary to the public interest. Requests for extensions will be processed in accordance with the regular procedures of § 325.2 of this Part, including issuance of a public notice, except that such processing is not required where the district engineer determines that there have been no significant changes in the attendant circumstances since the authorization was issued.

(e) *Maintenance dredging.* If the authorized work includes periodic maintenance dredging, an expiration date for the authorization of that maintenance dredging will be included in the permit. The expiration date, which in no event is to exceed ten years from the date of issuance of the permit, will be established by the issuing official after evaluation of the proposed method of dredging and disposal of the dredged material in accordance with the requirements of 33 CFR Parts 320 to 325. In such cases, the district engineer shall require notification of the maintenance dredging prior to actual performance to insure continued compliance with the requirements of this regulation and 33 CFR Parts 320 to 324. If the permittee desires to continue maintenance

dredging beyond the expiration date, he must request a new permit. The permittee should be advised to apply for the new permit six months prior to the time he wishes to do the maintenance work.

§ 325.7 Modification, suspension, or revocation of permits.

(a) *General.* The district engineer may reevaluate the circumstances and conditions of any permit, including regional permits, either on his own motion, at the request of the permittee, or a third party, or as the result of periodic progress inspections, and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest. In the case of regional permits, this reevaluation may cover individual activities, categories of activities, or geographic areas. Among the factors to be considered are the extent of the permittee's compliance with the terms and conditions of the permit; whether or not circumstances relating to the authorized activity have changed since the permit was issued or extended, and the continuing adequacy of or need for the permit conditions; any significant objections to the authorized activity which were not earlier considered; revisions to applicable statutory and/or regulatory authorities; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. Significant increases in scope of a permitted activity will be processed as new applications for permits in accordance with § 325.2 of this Part, and not as modifications under this section.

(b) *Modification.* Upon request by the permittee or, as a result of reevaluation of the circumstances and conditions of a permit, the district engineer may determine that the public interest requires a modification of the terms or conditions of the permit. In such cases, the district engineer will hold informal consultations with the permittee to ascertain whether the terms and conditions can be modified by mutual agreement. If a mutual agreement is reached on modification of the terms and conditions of the permit, the district engineer will give the permittee written notice of the modification, which will then become effective on such date as the district engineer may establish. In the event a mutual agreement cannot be reached by the district engineer and the permittee, the district engineer will proceed in accordance with paragraph (c) of this section if immediate suspension is warranted. In cases where

immediate suspension is not warranted but the district engineer determines that the permit should be modified, he will notify the permittee of the proposed modification and reasons therefor, and that he may request a meeting with the district engineer and/or a public hearing. The modification will become effective on the date set by the district engineer which shall be at least ten days after receipt of the notice by the permittee unless a hearing or meeting is requested within that period. If the permittee fails or refuses to comply with the modification, the district engineer will proceed in accordance with 33 CFR Part 328. The district engineer shall consult with resource agencies before modifying any permit terms or conditions, that would result in greater impacts, for a project about which that agency expressed a significant interest in the term, condition, or feature being modified prior to permit issuance.

(c) *Suspension.* The district engineer may suspend a permit after preparing a written determination and finding that immediate suspension would be in the public interest. The district engineer will notify the permittee in writing by the most expeditious means available that the permit has been suspended with the reasons therefor, and order the permittee to stop those activities previously authorized by the suspended permit. The permittee will also be advised that following this suspension a decision will be made to either reinstate, modify, or revoke the permit, and that he may within 10 days of receipt of notice of the suspension, request a meeting with the district engineer and/or a public hearing to present information in this matter. If a hearing is requested, the procedures prescribed in 33 CFR Part 327 will be followed. After the completion of the meeting or hearing (or within a reasonable period of time after issuance of the notice to the permittee that the permit has been suspended if no hearing or meeting is requested), the district engineer will take action to reinstate, modify, or revoke the permit.

(d) *Revocation.* Following completion of the suspension procedures in paragraph (c) of this section, if revocation of the permit is found to be in the public interest, the authority who made the decision on the original permit may revoke it. The permittee will be advised in writing of the final decision.

(e) *Regional permits.* The issuing official may, by following the procedures of this section, revoke regional permits for individual activities, categories of activities, or geographic areas. Where groups of permittees are

involved, such as for categories of activities or geographic areas, the informal discussions provided in paragraph (b) of this section may be waived and any written notification may be made through the general public notice procedures of this regulation. If a regional permit is revoked, any permittee may then apply for an individual permit which shall be processed in accordance with these regulations.

§ 325.8 Authority to issue or deny permits.

(a) *General.* Except as otherwise provided in this regulation, the Secretary of the Army, subject to such conditions as he or his authorized representative may from time to time impose, has authorized the Chief of Engineers and his authorized representatives to issue or deny permits for dams or dikes in intrastate waters of the United States pursuant to section 9 of the Rivers and Harbors Act of 1899; for construction or other work in or affecting navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899; for the discharge of dredged or fill material into waters of the United States pursuant to section 404 of the Clean Water Act; or for the transportation of dredged material for the purpose of disposing of it into ocean waters pursuant to section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. The authority to issue or deny permits in interstate navigable waters of the United States pursuant to section 9 of the Rivers and Harbors Act of March 3, 1899 has not been delegated to the Chief of Engineers or his authorized representatives.

(b) *District engineer's authority.* District engineers are authorized to issue or deny permits in accordance with these regulations pursuant to sections 9 and 10 of the Rivers and Harbors Act of 1899; section 404 of the Clean Water Act; and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, in all cases not required to be referred to higher authority (see below). It is essential to the legality of a permit that it contain the name of the district engineer as the issuing officer. However, the permit need not be signed by the district engineer in person but may be signed for and in behalf of him by whomever he designates. In cases where permits are denied for reasons other than navigation or failure to obtain required local, state, or other federal approvals or certifications, the Statement of Findings must conclusively justify a denial decision. District

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engineers are authorized to deny permits without issuing a public notice or taking other procedural steps where required local, state, or other federal permits for the proposed activity have been denied or where he determines that the activity will clearly interfere with navigation except in all cases required to be referred to higher authority (see below). District engineers are also authorized to add, modify, or delete special conditions in permits in accordance with § 325.4 of this Part, except for those conditions which may have been imposed by higher authority, and to modify, suspend and revoke permits according to the procedures of § 325.7 of this Part. District engineers will refer the following applications to the division engineer for resolution:

- (1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;
- (2) When the recommended decision is contrary to the written position of the Governor of the state in which the work would be performed;
- (3) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;
- (4) When higher authority requests the application be forwarded for decision; or
- (5) When the district engineer is precluded by law or procedures required by law from taking final action on the application (e.g. section 9 of the Rivers and Harbors Act of 1899, or territorial sea baseline changes).

(c) *Division engineer's authority.* Division engineers will review and evaluate all permit applications referred by district engineers. Division engineers may authorize the issuance or denial of permits pursuant to section 10 of the Rivers and Harbors Act of 1899; section 404 of the Clean Water Act; and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the inclusion of conditions in accordance with § 325.4 of this Part in all cases not required to be referred to the Chief of Engineers. Division engineers will refer the following applications to the Chief of Engineers for resolution:

- (1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;
- (2) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;
- (3) When higher authority requests the application be forwarded for decision; or
- (4) When the division engineer is precluded by law or procedures required

by law from taking final action on the application.

§ 325.9 Authority to determine jurisdiction.

District engineers are authorized to determine the area defined by the terms "navigable waters of the United States" and "waters of the United States" except:

- (a) When a determination of navigability is made pursuant to 33 CFR 329.14 (division engineers have this authority); or
- (b) When EPA makes a section 404 jurisdiction determination under its authority.

§ 325.10 Publicity.

The district engineer will establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for activities in waters of the United States or ocean waters. Whenever the district engineer becomes aware of plans being developed by either private or public entities which might require permits for implementation, he should advise the potential applicant in writing of the statutory requirements and the provisions of this regulation. Whenever the district engineer is aware of changes in Corps of Engineers regulatory jurisdiction, he will issue appropriate public notices.

Appendix A—Permit Form and Special Conditions

A. Permit Form

Department of the Army Permit

Permittee _____
Permit No. _____
Issuing Office _____

Note.—The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: (Describe the permitted activity and its intended use with references to any attached plans or drawings that are considered to be a part of the project description. Include a description of the types and quantities of dredged or fill materials to be discharged in jurisdictional waters.)

Project Location: (Where appropriate, provide the names of and the locations on the waters where the permitted activity and any off-site disposals will take place. Also, using name, distance, and direction, locate the permitted activity in reference to a nearby landmark such as a town or city.)

Permit Conditions:**General Conditions:**

1. The time limit for completing the work authorized ends on _____. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions: (Add special conditions as required in this space with reference to a continuation sheet if necessary.)

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- () Section 404 of the Clean Water Act (33 U.S.C. 1344).
- () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(Permittee)

(Date)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(District Engineer)

(Date)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(Transferee)

(Date)

B. Special Conditions. No special conditions will be preprinted on the permit form. The following and other special conditions should be added, as appropriate, in the space provided after the general conditions or on a referenced continuation sheet:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.

2. You must have a copy of this permit available on the vessel used for the authorized transportation and disposal of dredged material.

3. You must advise this office in writing, at least two weeks before you start maintenance dredging activities under the authority of this permit.

4. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number:

5. The condition below will be used when a Corps permit authorizes an artificial reef, an aerial transmission line, a submerged cable or pipeline, or a structure on the outer continental shelf.

National Ocean Service (NOS) has been notified of this authorization. You must notify NOS and this office in writing, at least two weeks before you begin work and upon completion of the activity authorized by this permit. Your notification of completion must include a drawing which certifies the location and configuration of the completed activity (a certified permit drawing may be used). Notifications to NOS will be sent to the following address: The Director, National Ocean Service (N/CG 222), Rockville, Maryland 20852.

6. The following condition should be used for every permit where legal recordation of the permit would be reasonably practicable and recordation could put a subsequent purchaser or owner of property on notice of permit conditions.

You must take the actions required to record this permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property.

Appendix B—[Reserved] (For Future NEPA Regulation)

Appendix C—[Reserved] (For Historic Properties Regulation)

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SUBCHAPTER H—OCEAN DUMPING

PART 220—GENERAL

Sec.

220.1 Purpose and scope.

220.2 Definitions.

220.3 Categories of permits.

220.4 Authorities to issue permits.

AUTHORITY: 33 U.S.C. 1412 and 1418.

SOURCE: 42 FR 2468, Jan. 11, 1977, unless otherwise noted.

§ 220.1 Purpose and scope.

(a) *General.* This Subchapter H establishes procedures and criteria for the issuance of permits by EPA pursuant to section 102 of the Act. This Subchapter H also establishes the criteria to be applied by the Corps of Engineers in its review of activities involving the transportation of dredged material for the purpose of dumping it in ocean waters pursuant to section 103 of the Act. Except as may be authorized by a permit issued pursuant to this Subchapter H, or pursuant to section 103 of the Act, and subject to other applicable regulations promulgated pursuant to section 108 of the Act:

(1) No person shall transport from the United States any material for the purpose of dumping it into ocean waters;

(2) In the case of a vessel or aircraft registered in the United States or flying the United States flag or in the case of a United States department, agency, or instrumentality, no person shall transport from any location any material for the purpose of dumping it into ocean waters; and

(3) No person shall dump any material transported from a location outside the United States:

(i) Into the territorial sea of the United States; or

(ii) Into a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States.

(b) *Relationship to international agreements.* In accordance with sec-

tion 102(a) of the Act, the regulations and criteria included in this Subchapter H apply the standards and criteria binding upon the United States under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter to the extent that application of such standards and criteria do not relax the requirements of the Act.

(c) *Exclusions—(1) Fish wastes.* This Subchapter H does not apply to, and no permit hereunder shall be required for, the transportation for the purpose of dumping or the dumping in ocean waters of fish wastes unless such dumping occurs in:

(i) Harbors or other protected or enclosed coastal waters; or

(ii) Any other location where the Administrator finds that such dumping may reasonably be anticipated to endanger health, the environment or ecological systems.

(2) *Fisheries resources.* This Subchapter H does not apply to, and no permit hereunder shall be required for, the placement or deposit of oyster shells or other materials for the purpose of developing, maintaining or harvesting fisheries resources; provided, such placement or deposit is regulated under or is a part of an authorized State or Federal program certified to EPA by the agency authorized to enforce the regulation, or to administer the program, as the case may be; and provided further, that the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, and the U.S. Army Corps of Engineers concur in such placement or deposit as it may affect their responsibilities and such concurrence is evidenced by letters of concurrence from these agencies.

(3) *Vessel propulsion and fixed structures.* This Subchapter H does not apply to, and no permit hereunder shall be required for:

(i) Routine discharges of effluent incidental to the propulsion of vessels or the operation of motor-driven equipment on vessels; or

(ii) Construction of any fixed structure or artificial island, or the intentional placement of any device in

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ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal when such construction or such placement is otherwise regulated by Federal or State law or made pursuant to an authorized Federal or State program certified to EPA by the agency authorized to enforce the regulations or to administer the program, as the case may be.

(4) *Emergency to safeguard life at sea.* This Subchapter H does not apply to, and no permit hereunder shall be required for, the dumping of material into ocean waters from a vessel or aircraft in an emergency to safeguard life at sea to the extent that the person owning or operating such vessel or aircraft files timely reports required by § 224.2(b).

§ 220.2 Definitions.

As used in this Subchapter H:

(a) "Act" means the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401);

(b) "FWPCA" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251);

(c) "Ocean" or "ocean waters" means those waters of the open seas lying seaward of the baseline from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639); this definition includes the waters of the territorial sea, the contiguous zone and the oceans as defined in section 502 of the FWPCA.

(d) "Material" means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, industrial, municipal, agricultural, and other waste, but such term does not mean sewage from vessels within the meaning of section 312 of the FWPCA. Oil within the meaning of section 311 of the FWPCA shall constitute "material" for purposes of this Subchapter H only to the extent that it is taken on

board a vessel or aircraft for the primary purpose of dumping.

(e) "Dumping" means a disposition of material: *Provided*, That it does not mean a disposition of any effluent from any outfall structure to the extent that such disposition is regulated under the provisions of the FWPCA, under the provisions of section 13 of the River and Harbor Act of 1899, as amended (33 U.S.C. 407), or under the provisions of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011), nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: *Provided further*, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program; And provided further, That it does not include the deposit of oyster shells, or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.

(f) "Sewage Treatment Works" means municipal or domestic waste treatment facilities of any type which are publicly owned or regulated to the extent that feasible compliance schedules are determined by the availability of funding provided by Federal, State, or local governments.

(g) "Criteria" means the criteria set forth in Part 227 of this Subchapter H.

(h) "Dredged Material Permit" means a permit issued by the Corps of Engineers under section 103 of the Act (see 33 CFR 209.120) and any Federal projects reviewed under section 103(e) of the Act (see 33 CFR 209.145).

(i) Unless the context otherwise requires, all other terms shall have the meanings assigned to them by the Act.

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§ 220.3 Categories of permits.

This § 220.3 provides for the issuance of general, special, emergency, interim and research permits for ocean dumping under section 102 of the Act.

(a) *General permits.* General permits may be issued for the dumping of certain materials which will have a minimal adverse environmental impact and are generally disposed of in small quantities, or for specific classes of materials that must be disposed of in emergency situations. General permits may be issued on application of an interested person in accordance with the procedures of Part 221 or may be issued without such application whenever the Administrator determines that issuance of a general permit is necessary or appropriate.

(b) *Special permits.* Special permits may be issued for the dumping of materials which satisfy the Criteria and shall specify an expiration date no later than three years from the date of issue.

(c) *Emergency permits.* For any of the materials listed in § 227.6, except as trace contaminants, after consultation with the Department of State with respect to the need to consult with parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter that are likely to be affected by the dumping, emergency permits may be issued to dump such materials where there is demonstrated to exist an emergency requiring the dumping of such materials, which poses an unacceptable risk relating to human health and admits of no other feasible solution. As used herein, "emergency" refers to situations requiring action with a marked degree of urgency, but is not limited in its application to circumstances requiring immediate action. Emergency permits may be issued for other materials, except those prohibited by § 227.5, without consultation with the Department of State when the Administrator determines that there exists an emergency requiring the dumping of such materials which poses an unacceptable risk to human health and admits of no other feasible solution.

(d) *Interim permits.* Prior to April 23, 1978, interim permits may be

issued in accordance with Subpart A of Part 227 to dump materials which are not in compliance with the environmental impact criteria of Subpart B of Part 227, or which would cause substantial adverse effects as determined in accordance with the criteria of Subpart D or E of Part 227 or for which an ocean disposal site has not been designated on other than an interim basis pursuant to Part 228 of this Subchapter H; provided, however, no permit may be issued for the ocean dumping of any materials listed in § 227.5, or for any of the materials listed in § 227.6, except as trace contaminants; provided further that the compliance date of April 23, 1978, does not apply to the dumping of wastes by existing dumpers when the Regional Administrator determines that the permittee has exercised his best efforts to comply with all requirements of a special permit by April 23, 1978, and has an implementation schedule adequate to allow phasing out of ocean dumping or compliance with all requirements necessary to receive a special permit by December 31, 1981, at the latest. No interim permit will be granted for the dumping of waste from a facility which has not previously dumped wastes in the ocean from a new facility, or for the dumping of an increased amount of waste from the expansion or modification of an existing facility, after the effective date of these regulations (except when the facility is operated by a municipality now dumping such wastes). No interim permit will be issued for the dumping of any material in the ocean for which an interim permit had previously been issued unless the applicant demonstrates that he has exercised his best efforts to comply with all provisions of the previously issued permits. Interim permits shall specify an expiration date no later than one year from the date of issue.

(e) *Research permits.* Research permits may be issued for the dumping of any materials, other than materials specified in § 227.5 or for any of the materials listed in § 227.6 except as trace contaminants, unless subject to the exclusion of § 227.6(g), into the ocean as part of a research project when it is determined that the scien-

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tific merit of the proposed project outweighs the potential environmental or other damage that may result from the dumping. Research permits shall specify an expiration date no later than 18 months from the date of issue.

(f) *Permits for incineration at sea.* Permits for incineration of wastes at sea will be issued only as research permits or as interim permits until specific criteria to regulate this type of disposal are promulgated, except in those cases where studies on the waste, the incineration method and vessel, and the site have been conducted and the site has been designated for incineration at sea in accordance with the procedures of § 228.4(b). In all other respects the requirements of Parts 220 through 228 apply.

[42 FR 2468, Jan. 11, 1977; 43 FR 1071, Jan. 6, 1978]

§ 220.4 Authorities to issue permits.

(a) *Determination by Administrator.* The Administrator, or such other EPA employee as he may from time to time designate in writing, shall issue, deny, modify, revoke, suspend, impose conditions on, initiate and carry out enforcement activities and take any and all other actions necessary or proper and permitted by law with respect to general, special, emergency, interim, or research permits.

(b) *Authority delegated to Regional Administrators.* Regional Administrators, or such other EPA employees as they may from time to time designate in writing, are delegated the authority to issue, deny, modify, revoke, suspend, impose conditions on, initiate and carry out enforcement activities, and take any and all other actions necessary or proper and permitted by law with respect to special and interim permits for:

(1) The dumping of material in those portions of the territorial sea which are subject to the jurisdiction of any State within their respective Regions, and in those portions of the contiguous zone immediately adjacent to such parts of the territorial sea; and in the oceans with respect to approved waste disposal sites designated pursuant to Part 228 of this Subchapter H, and

(2) Where transportation for dumping is to originate in one Region and dumping is to occur at a location within another Region's jurisdiction conferred by order of the Administrator, the Region in which transportation is to originate shall be responsible for review of the application and shall prepare the technical evaluation of the need for dumping and alternatives to ocean dumping. The Region having jurisdiction over the proposed dump site shall take all other actions required by this Subchapter H with respect to the permit application, including without limitation, determining to issue or deny the permit, specifying the conditions to be imposed, and giving public notice. If both Regions do not concur in the disposition of the permit application, the Administrator will make the final decision on all issues with respect to the permit application, including without limitation, issuance or denial of the permit and the conditions to be imposed.

(c) *Review of Corps of Engineers Dredged Material Permits.* Regional Administrators have the authority to review, to approve or to disapprove or to propose conditions upon Dredged Material Permits for ocean dumping of dredged material at locations within the respective Regional jurisdictions. Regional jurisdiction to act under this paragraph (c) of § 220.4 is determined by the Administrator in accordance with § 228.4(e).

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**PART 221—APPLICATIONS FOR
OCEAN DUMPING PERMITS UNDER
SECTION 102 OF THE ACT**

Sec.

221.1 Applications for permits.

221.2 Other information.

221.3 Applicant.

221.4 Adequacy of information in application.

221.5 Processing fees.

AUTHORITY: 33 U.S.C. 1412 and 1418.

SOURCE: 42 FR 2470, Jan. 11, 1977, unless otherwise noted.

§ 221.1 Applications for permits.

Applications for general, special, emergency, interim and research permits under section 102 of the Act may be filed with the Administrator or the appropriate Regional Administrator, as the case may be, authorized by § 220.4 to act on the application. Applications shall be made in writing and shall contain, in addition to any other material which may be required, the following:

(a) Name and address of applicant;

(b) Name of the person or firm transporting the material for dumping, the name of the person(s) or firm(s) producing or processing all materials to be transported for dumping, and the name or other identification, and usual location, of the conveyance to be used in the transportation and dumping of the material to be dumped, including information on the transporting vessel's communications and navigation equipment;

(c) Adequate physical and chemical description of material to be dumped, including results of tests necessary to apply the Criteria, and the number, size, and physical configuration of any containers to be dumped;

(d) Quantity of material to be dumped;

(e) Proposed dates and times of disposal;

(f) Proposed dump site, and in the event such proposed dump site is not a dump site designated in this Subchapter H, detailed physical, chemical and biological information relating to the proposed dump site and sufficient to support its designation as a site according to the procedures of Part 228 of this Subchapter H;

(g) Proposed method of releasing the material at the dump site and means by which the disposal rate can be controlled and modified as required;

(h) Identification of the specific process or activity giving rise to the production of the material;

(i) Description of the manner in which the type of material proposed to be dumped has been previously disposed of by or on behalf of the person(s) or firm(s) producing such material;

(j) A statement of the need for the proposed dumping and an evaluation of short and long term alternative means of disposal, treatment or recycle of the material. Means of disposal shall include without limitation, landfill, well injection, incineration, spread of material over open ground; biological, chemical or physical treatment; recovery and recycle of material within the plant or at other plants which may use the material, and storage. The statement shall also include an analysis of the availability and environmental impact of such alternatives; and

(k) An assessment of the anticipated environmental impact of the proposed dumping, including without limitation, the relative duration of the effect of the proposed dumping on the marine environment, navigation, living and non-living marine resource exploitation, scientific study, recreation and other uses of the ocean.

§ 221.2 Other information.

In the event the Administrator, Regional Administrator, or a person designated by either to review permit applications, determines that additional information is needed in order to apply the Criteria, he shall so advise the applicant in writing. All additional information requested pursuant to this § 221.2 shall be deemed part of the application and for purposes of applying the time limitation of § 222.1, the application will not be considered complete until such information has been filed.

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§ 221.3 Applicant.

Any person may apply for a permit under this Subchapter H even though the proposed dumping may be carried on by a permittee who is not the applicant; provided however, that the Administrator or the Regional Administrator, as the case may be, may, in his discretion, require that an application be filed by the person or firm producing or processing the material proposed to be dumped. Issuance of a permit will not excuse the permittee from any civil or criminal liability which may attach by virtue of his having transported or dumped materials in violation of the terms or conditions of a permit, notwithstanding that the permittee may not have been the applicant.

§ 221.4 Adequacy of information in application.

No permit issued under this Subchapter H will be valid for the transportation or dumping of any material which is not accurately and adequately described in the application. No permittee shall be relieved of any liability which may arise as a result of the transportation or dumping of material which does not conform to information provided in the application solely by virtue of the fact that such information was furnished by an applicant other than the permittee.

§ 221.5 Processing fees.

(a) A processing fee of \$1,000 will be charged in connection with each application for a permit for dumping in an existing dump site designated in this Subchapter H.

(b) A processing fee of an additional \$3,000 will be charged in connection with each application for a permit for dumping in a dump site other than a dump site designated in this Subchapter H.

(c) Notwithstanding any other provision of this § 221.5, no agency or instrumentality of the United States or of a State or local government will be required to pay the processing fees specified in paragraphs (a) and (b) of this section.

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§ 222.1 General.

Decisions as to the issuance, denial, or imposition of conditions on general, special, emergency, interim and research permits under section 102 of the Act will be made by application of the criteria of Parts 227 and 228. Final action on any application for a permit will, to the extent practicable, be taken within 180 days from the date a complete application is filed.

§ 222.2 Tentative determinations.

(a) Within 30 days of the receipt of his initial application, an applicant shall be issued notification of whether his application is complete and what, if any, additional information is required. No such notification shall be deemed to foreclose the Administrator or the Regional Administrator, as the case may be, from requiring additional information at any time pursuant to § 221.2.

(b) Within 30 days after receipt of a completed permit application, the Administrator or the Regional Administrator, as the case may be, shall publish notice of such application including a tentative determination with respect to issuance or denial of the permit. If such tentative determination is to issue the permit, the following additional tentative determinations will be made:

- (1) Proposed time limitations, if any;
- (2) Proposed rate of discharge from the barge or vessel transporting the waste;
- (3) Proposed dumping site; and
- (4) A brief description of any other proposed conditions determined to be appropriate for inclusion in the permit in question.

§ 222.3 Notice of applications.

(a) *Contents.* Notice of every complete application for a general, special, interim, emergency and research permit shall, in addition to any other material, include the following:

- (1) A summary of the information included in the permit application;
- (2) Any tentative determinations made pursuant to paragraph (b) of § 222.2;
- (3) A brief description of the procedures set forth in § 222.5 for request-

**PART 222—ACTION ON OCEAN
DUMPING PERMIT APPLICATIONS
UNDER SECTION 102 OF THE ACT**

Sec.

- 222.1** General.
- 222.2** Tentative determinations.
- 222.3** Notice of applications.
- 222.4** Initiation of hearings.
- 222.5** Time and place of hearings.
- 222.6** Presiding Officer.
- 222.7** Conduct of public hearing.
- 222.8** Recommendations of Presiding Officer.
- 222.9** Issuance of permits.
- 222.10** Appeal to adjudicatory hearing.
- 222.11** Conduct of adjudicatory hearings.
- 222.12** Appeal to Administrator.
- 222.13** Computation of time.

AUTHORITY: 33 U.S.C. 1412 and 1418.

SOURCE: 42 FR 2471, Jan. 11, 1977, unless otherwise noted.

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ing a public hearing on the application including specification of the date by which requests for a public hearing must be filed;

(4) A brief statement of the factors considered in reaching the tentative determination with respect to the permit and, in the case of a tentative determination to issue the permit, the reasons for the choice of the particular permit conditions selected; and

(5) The location at which interested persons may obtain further information on the proposed dumping, including copies of any relevant documents.

(b) *Publication*—(1) *Special, interim and research permits*. Notice of every complete application for special, interim and research permits shall be given by:

(i) Publication in a daily newspaper of general circulation in the State in closest proximity to the proposed dump site; and

(ii) Publication in a daily newspaper of general circulation in the city in which is located the office of the Administrator or the Regional Administrator, as the case may be, giving notice of the permit application.

(2) *General permits*. Notice of every complete application for a general permit or notice of action proposed to be taken by the Administrator to issue a general permit, without an application, shall be given by publication in the FEDERAL REGISTER.

(3) *Emergency permits*. Notice of every complete application for an emergency permit shall be given by publication in accordance with paragraphs (b)(1)(i) and (ii) of this section; *Provided, however*, That no such notice and no tentative determination in accordance with § 222.2 shall be required in any case in which the Administrator determines:

(i) That an emergency, as defined in paragraph (c) of § 220.3 exists;

(ii) That the emergency poses an unacceptable risk relating to human health;

(iii) That the emergency admits of no other feasible solution; and

(iv) That the public interest requires the issuance of an emergency permit as soon as possible.

Notice of any determination made by the Administrator pursuant to this

paragraph (b)(3) shall be given as soon as practicable after the issuance of the emergency permit by publication in accordance with paragraphs (b)(1) (i) and (ii) and with paragraphs (a), (c) through (i) of this section.

(c) *Copies of notice sent to specific persons*. In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed by the Administrator or the Regional Administrator, as the case may be, to any person, group or Federal, State or local agency upon request. Any such request may be a standing request for copies of such notices and shall be submitted in writing to the Administrator or to any Regional Administrator and shall relate to all or any class of permit applications which may be acted upon by the Administrator or such Regional Administrator, as the case may be.

(d) *Copies of notice sent to States*. In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed to the State water pollution control agency and to the State agency responsible for carrying out the Coastal Zone Management Act, if such agency exists, for each coastal State within 500 miles of the proposed dumping site.

(e) *Copies of notice sent to Corps of Engineers*. In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed to the office of the appropriate District Engineer of the U.S. Army Corps of Engineers for purposes of section 106 (c) of the Act, (pertaining to navigation, harbor approaches, and artificial islands on the outer continental shelf).

(f) *Copies of notice sent to Coast Guard*. In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be sent to the appropriate district office of the U.S. Coast Guard for review and possible suggestion of additional conditions to be included in the permit to facilitate surveillance and enforcement.

(g) *Fish and Wildlife Coordination Act*. The Fish and Wildlife Coordination Act, Reorganization Plan No. 4 of 1970, and the Act require that the Ad-

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ministrator or the Regional Administrator, as the case may be, consult with appropriate regional officials of the Departments of Commerce and Interior, the Regional Director of the NMFS-NOAA, and the agency exercising administrative jurisdiction over the fish and wildlife resources of the States subject to any dumping prior to the issuance of a permit under this Subchapter H. Copies of the notice shall be sent to the persons noted in paragraph (g) of this section.

(h) *Copies of notice sent to Food and Drug Administration.* In addition to the publication of notice required by paragraph (b) of this section, copies of such notice will be mailed to Food and Drug Administration, Shellfish Sanitation Branch (HF-417), 200 C Street SW., Washington, DC 20204.

(i) *Failure to give certain notices.* Failure to send copies of any public notice in accordance with paragraphs (c) through (h) of this section shall not invalidate any notice given pursuant to this section nor shall such failure invalidate any subsequent administrative proceeding.

(j) *Failure of consulted agency to respond.* Unless advice to the contrary is received from the appropriate Federal or State agency within 30 days of the date copies of any public notice were dispatched to such agency, such agency will be deemed to have no objection to the issuance of the permit identified in the public notice.

§ 222.4 Initiation of hearings.

(a) In the case of any permit application for which public notice in advance of permit issuance is required in accordance with paragraph (b) of § 222.3, any person may, within 30 days of the date on which all provisions of paragraph (b) of § 222.3 have been complied with, request a public hearing to consider the issuance or denial of, or the conditions to be imposed upon, such permit. Any such request for a public hearing shall be in writing, shall identify the person requesting the hearing, shall state with particularity any objections to the issuance or denial of, or to the conditions to be imposed upon, the proposed permit, and shall state the issues which are pro-

posed to be raised by such person for consideration at a hearing.

(b) Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received and the Administrator or Regional Administrator, as the case may be, determines that such request presents genuine issues, or (2) the Administrator or Regional Administrator, as the case may be, determines in his discretion that a public hearing is necessary or appropriate, the Administrator or the Regional Administrator, as the case may be, will set a time and place for a public hearing in accordance with § 222.5, and will give notice of such hearing by publication in accordance with § 222.3.

(c) In the event the Administrator or the Regional Administrator, as the case may be, determines that a request filed pursuant to paragraph (a) of this section does not comply with the requirements of such paragraph (a) of this section or that such request does not present substantial issues of public interest, he shall advise, in writing, the person requesting the hearing of his determination.

§ 222.5 Time and place of hearings.

Hearings shall be held in the State in closest proximity to the proposed dump site, whenever practicable, and shall be set for the earliest practicable date no less than 30 days after the receipt of an appropriate request for a hearing or a determination by the Administrator or the Regional Administrator, as the case may be, to hold such a hearing without such a request.

§ 222.6 Presiding Officer.

A hearing convened pursuant to this Subchapter H shall be conducted by a Presiding Officer. The Administrator or Regional Administrator, as the case may be, may designate a Presiding Officer. For adjudicatory hearings held pursuant to § 222.11, the Presiding Officer shall be an EPA employee who has had no prior connection with the permit application in question, including without limitation, the performance of investigative or prosecuting functions or any other functions, and who is not employed in the Enforce-

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ment Division or any Regional enforcement office.

[42 FR 2471, Jan. 11, 1977; 42 FR 6583, Feb. 3, 1977]

§ 222.7 Conduct of public hearing.

The Presiding Officer shall be responsible for the expeditious conduct of the hearing. The hearing shall be an informal public hearing, not an adversary proceeding, and shall be conducted so as to allow the presentation of public comments. When the Presiding Officer determines that it is necessary or appropriate, he shall cause a suitable record, which may include a verbatim transcript, of the proceedings to be made. Any person may appear at a public hearing convened pursuant to § 222.5 whether or not he requested the hearing, and may be represented by counsel or any other authorized representative. The Presiding Officer is authorized to set forth reasonable restrictions on the nature or amount of documentary material or testimony presented at a public hearing, giving due regard to the relevancy of any such information, and to the avoidance of undue repetitiveness of information presented.

§ 222.8 Recommendations of Presiding Officer.

Within 30 days following the adjournment of a public hearing convened pursuant to § 222.5, or within such additional period as the Administrator or the Regional Administrator, as the case may be, may grant to the Presiding Officer for good cause shown, and after full consideration of the comments received at the hearing, the Presiding Officer will prepare and forward to the Administrator or to the Regional Administrator, as the case may be, written recommendations relating to the issuance or denial of, or conditions to be imposed upon, the proposed permit and the record of the hearing, if any. Such recommendations shall contain a brief statement of the basis for the recommendations including a description of evidence relied upon. Copies of the Presiding Officer's recommendations shall be provided to any interested person on request, without charge. Copies of the record

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will be provided in accordance with 40 CFR Part 2.

[42 FR 2471, Jan. 11, 1977; 42 FR 6583, Feb. 3, 1977]

§ 222.9 Issuance of permits.

(a) Within 30 days following receipt of the Presiding Officer's recommendations or, where no hearing has been held, following the close of the 30-day period for requesting a hearing as provided in § 222.4, the Administrator or the Regional Administrator, as the case may be, shall make a determination with respect to the issuance, denial, or imposition of conditions on, any permit applied for under this Subchapter H and shall give notice to the applicant and to all persons who registered their attendance at the hearing by providing their name and mailing address, if any, by mailing a letter stating the determination and stating the basis therefor in terms of the Criteria.

(b) Any determination to issue or deny any permit after a hearing held pursuant to § 222.7 shall take effect no sooner than:

(1) 10 days after notice of such determination is given if no request for an adjudicatory hearing is filed in accordance with § 222.10(a); or

(2) 20 days after notice of such determination is given if a request for an adjudicatory hearing is filed in accordance with paragraph (a) of § 222.10 and the Administrator or the Regional Administrator, as the case may be, denies such request in accordance with paragraph (c) of § 222.10; or

(3) The date on which a final determination has been made following an adjudicatory hearing held pursuant to § 222.11.

(c) The Administrator or Regional Administrator, as the case may be, may extend the term of a previously issued permit pending the conclusion of the proceedings held pursuant to §§ 222.7 through 222.9.

(d) A copy of each permit issued shall be sent to the appropriate District Office of the U.S. Coast Guard.

§ 222.10 Appeal to adjudicatory hearing.

(a) Within 10 days following the receipt of notice of the issuance or

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denial of any permit pursuant to § 222.9 after a hearing held pursuant to § 222.7, any interested person who participated in such hearing may request that an adjudicatory hearing be held pursuant to § 222.11 for the purpose of reviewing such determination, or any part thereof. Any such request for an adjudicatory hearing shall be filed with the Administrator or the Regional Administrator, as the case may be, and shall be in writing, shall identify the person requesting the adjudicatory hearing and shall state with particularity the objections to the determination, the basis therefor and the modification requested.

(b) Whenever a written request satisfying the requirements of paragraph (a) of this section has been received and the Administrator or Regional Administrator, as the case may be, determines that an adjudicatory hearing is warranted, the Administrator or the Regional Administrator, as the case may be, will set a time and place for an adjudicatory hearing in accordance with § 222.5, and will give notice of such hearing by publication in accordance with § 222.3.

(c) Prior to the conclusion of the adjudicatory hearing and appeal process, the Administrator or the Regional Administrator, as the case may be, in his discretion may extend the duration of a previously issued permit until a final determination has been made pursuant to § 222.11 or § 222.12.

(d) In the event the Administrator or the Regional Administrator, as the case may be, determines that a request filed pursuant to paragraph (a) of this section does not comply with the requirements of such paragraph (a) of this section or that such request does not present substantial issues of public interest, he shall advise, in writing, the person requesting the adjudicatory hearing of his determination.

(e) Any person requesting an adjudicatory hearing or requesting admission as a party to an adjudicatory hearing shall state in his written request, and shall by filing such request consent, that he and his employees and agents shall submit themselves to direct and cross-examination at any such hearing and to the taking of an

oath administered by the Presiding Officer.

§ 222.11 Conduct of adjudicatory hearings.

(a) *Parties.* Any interested person may at a reasonable time prior to the commencement of the hearing submit to the Presiding Officer a request to be admitted as a party. Such request shall be in writing and shall set forth the information which would be required to be submitted by such person if he were requesting an adjudicatory hearing. Any such request to be admitted as a party which satisfies the requirements of this paragraph (a) shall be granted and all parties shall be informed at the commencement of the adjudicatory hearing of the parties involved. Any party may be represented by counsel or other authorized representative. EPA staff representing the Administrator or Regional Administrator who took action with respect to the permit application shall be deemed a party.

(b) *Filing and service.* (1) An original and two (2) copies of all documents or papers required or permitted to be filed shall be filed with the Presiding Officer.

(2) Copies of all documents and papers filed with the Presiding Officer shall be served upon all other parties to the adjudicatory hearing.

(c) *Consolidation.* The Administrator, or the Regional Administrator in the case of a hearing arising within his Region and for which he has been delegated authority hereunder, may, in his discretion, order consolidation of any adjudicatory hearings held pursuant to this section whenever he determines that consolidation will expedite or simplify the consideration of the issues presented. The Administrator may, in his discretion, order consolidation and designate one Region to be responsible for the conduct of any hearings held pursuant to this section which arise in different Regions whenever he determines that consolidation will expedite or simplify the consideration of the issues presented.

(d) *Pre-hearing conference.* The Presiding Officer may hold one or more prehearing conferences and may issue a prehearing order which may include

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without limitation, requirements with respect to any or all of the following:

- (1) Stipulations and admissions;
- (2) Disputed issues of fact;
- (3) Disputed issues of law;
- (4) Admissibility of any evidence;
- (5) Hearing procedures including submission of oral or written direct testimony, conduct of cross-examination, and the opportunity for oral arguments;

(6) Any other matter which may expedite the hearing or aid in disposition of any issues raised therein.

(e) *Adjudicatory hearing procedures.*

(1) The burden of going forward with the evidence shall:

(i) In the case of any adjudicatory hearing held pursuant to § 222.10(b) (1), be on the person filing a request under § 222.10(a) as to each issue raised by the request; and

(ii) In the case of any adjudicatory hearing held pursuant to § 223.2 or pursuant to Part 226, be on the Environmental Protection Agency.

(2) The Presiding Officer shall have the duty to conduct a fair and impartial hearing, to take action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. He shall have all powers necessary or appropriate to that end, including without limitation, the following:

(i) To administer oaths and affirmations;

(ii) To rule upon offers of proof and receive relevant evidence;

(iii) To regulate the course of the hearing and the conduct of the parties and their counsel;

(iv) To consider and rule upon all procedural and other motions appropriate to the proceedings; and

(v) To take any action authorized by these regulations and in conformance with law.

(3) Parties shall have the right to cross-examine a witness who appears at an adjudicatory hearing to the extent that such cross-examination is necessary or appropriate for a full disclosure of the facts. In multi-party proceedings the Presiding Officer may limit cross-examination to one party on each side if he is satisfied that the cross-examination by one party will adequately protect the interests of other parties.

(4) When a party will not be unfairly prejudiced thereby, the Presiding Officer may order all or part of the evidence to be submitted in written form.

(5) Rulings of the Presiding Officer on the admissibility of evidence, the propriety of cross-examination, and other procedural matters, shall be final and shall appear in the record.

(6) Interlocutory appeals may not be taken.

(7) Parties shall be presumed to have taken exception to an adverse ruling.

(8) The proceedings of all hearings shall be recorded by such means as the Presiding Officer may determine. The original transcript of the hearing shall be a part of the record and the sole official transcript. Copies of the transcript shall be available from the Environmental Protection Agency in accordance with 40 CFR Part 2.

(9) The rules of evidence shall not apply.

(f) *Decision after adjudicatory hearing.* (1) Within 30 days after the conclusion of the adjudicatory hearing, or within such additional period as the Administrator or the Regional Administrator, as the case may be, may grant to the Presiding Officer for good cause shown, the Presiding Officer shall submit to the Administrator or the Regional Administrator, as the case may be, proposed findings of fact and conclusions of law, his recommendation with respect to any and all issues raised at the hearing, and the record of the hearing. Such findings, conclusions and recommendations shall contain a brief statement of the basis for the recommendations. Copies of the Presiding Officer's proposed findings of fact, conclusions of law and recommendations shall be provided to all parties to the adjudicatory hearing on request, without charge.

(2) Within 20 days following submission of the Presiding Officer's proposed findings of fact, conclusions of law and recommendations, any party may submit written exceptions, no more than 30 pages in length, to such proposed findings, conclusions and recommendations and within 30 days following the submission of the Presiding Officer's proposed findings, conclusions and recommendations any party may file written comments, no more

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than 30 pages in length, on another party's exceptions. Within 45 days following the submission of the Presiding Officer's proposed findings, conclusions and recommendations, the Administrator or the Regional Administrator, as the case may be, shall make a determination with respect to all issues raised at such hearing and shall affirm, reverse or modify the previous or proposed determination, as the case may be. Notice of such determination shall set forth the determination for each such issue, shall briefly state the basis therefor and shall be given by mail to all parties to the adjudicatory hearing.

§ 222.12 Appeal to Administrator.

(a) Within 10 days following receipt of the determination of the Regional Administrator pursuant to paragraph (f)(2) of § 222.11, any party to an adjudicatory hearing held in accordance with § 222.11 may appeal such determination to the Administrator by filing a written notice of appeal, or the Administrator may, on his own initiative, review any prior determination.

(b) The notice of appeal shall be no more than 40 pages in length and shall contain:

(1) The name and address of the person filing the notice of appeal;

(2) A concise statement of the facts on which the person relies and appropriate citations to the record of the adjudicatory hearing;

(3) A concise statement of the legal basis on which the person relies;

(4) A concise statement setting forth the action which the person proposes that the Administrator take; and

(5) A certificate of service of the notice of appeal on all other parties to the adjudicatory hearing.

(c) The effective date of any determination made pursuant to paragraph (f)(2) of § 222.11 may be stayed by the Administrator pending final determination by him pursuant to this section upon the filing of a notice of appeal which satisfies the requirements of paragraph (b) of this section or upon initiation by the Administrator of review of any determination in the absence of such notice of appeal.

(d) Within 20 days following the filing of a notice of appeal in accord-

ance with this section, any party to the adjudicatory hearing may file a written memorandum, no more than 40 pages in length, in response thereto.

(e) Within 45 days following the filing of a notice of appeal in accordance with this section, the Administrator shall render his final determination with respect to all issues raised in the appeal to the Administrator and shall affirm, reverse, or modify the previous determination and briefly state the basis for his determination.

(f) In accordance with 5 U.S.C. section 704, the filing of an appeal to the Administrator pursuant to this section shall be a prerequisite to judicial review of any determination to issue, deny or impose conditions upon any permit, or to modify, revoke or suspend any permit, or to take any other enforcement action, under this Subchapter H.

§ 222.13 Computation of time.

In computing any period of time prescribed or allowed in this part, except unless otherwise provided, the day on which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or a legal holiday in which the Environmental Protection Agency is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less.

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**PART 223—CONTENTS OF PERMITS;
REVISION, REVOCATION OR LIM-
ITATION OF OCEAN DUMPING PER-
MITS UNDER SECTION 104(d) OF
THE ACT**

**Subpart A—Contents of Ocean Dumping
Permits Issued Under Section 102 of the Act**

Sec.

223.1 Contents of special, interim, emer-
gency, general and research permits;
posting requirements.

Sec.

**Subpart B—Procedures for Revision, Revoca-
tion or Limitation of Ocean Dumping Permits
Under Section 104(d) of the Act**

223.2 Scope of these rules.

223.3 Preliminary determination; notice.

223.4 Request for, scheduling and conduct
of public hearing; determination.

223.5 Request for, scheduling and conduct
of adjudicatory hearing; determination.

AUTHORITY: Secs. 102, 104, 107, 108,
Marine Protection Research, and Sanctuar-
ies Act of 1972, as amended (33 U.S.C. 1412,
1414, 1417, 1418).

SOURCE: 42 FR 60702, Nov. 28, 1977, unless
otherwise noted.

**Subpart A—Contents of Ocean
Dumping Permits Issued Under Sec-
tion 102 of the Act**

§ 223.1 Contents of special, interim, emer-
gency, general and research permits;
posting requirements.

(a) All special, interim, emergency
and research permits shall be dis-
played on the vessel engaged in dump-
ing and shall include the following:

(1) Name of permittee;

(2) Means of conveyance and meth-
ods and procedures for release of the
materials to be dumped;

(3) The port through or from which
such material will be transported for
dumping;

(4) A description of relevant physical
and chemical properties of the materi-
als to be dumped;

(5) The quantity of the material to
be dumped expressed in tons;

(6) The disposal site;

(7) The times at which the permit-
ted dumping may occur and the effec-
tive date and expiration date of the
permit;

(8) Special provisions which, after
consultation with the Coast Guard,
are deemed necessary for monitoring
or surveillance of the transportation
or dumping;

(9) Such monitoring relevant to the
assessment of the impact of permitted
dumping activities on the marine envi-
ronment at the disposal site as the Ad-
ministrator or Regional Administra-
tor, as the case may be, determine to
be necessary or appropriate; and

(10) Any other terms and conditions
determined by the Administrator, or
Regional Administrator, as the case
may be, to be necessary or appropri-
ate, including, without limitation, re-
lease procedures and requirements for
the continued investigation or devel-
opment of alternatives to ocean dump-
ing.

(b) General permits shall contain
such terms and conditions as the Ad-
ministrator deems necessary or appro-
priate.

(c) Interim permits shall, in addition
to the information required or permit-
ted to be included in the permit pursu-
ant to paragraph (a) of this section, in-
clude terms and conditions which sat-
isfy the requirements of §§ 220.3(d)
and 227.8.

**Subpart B—Procedures for Revision,
Revocation or Limitation of Ocean
Dumping Permits Under Section
104(d) of the Act**

§ 223.2 Scope of these rules.

(a) These rules of practice shall
govern all proceedings under Section
104(d) of the Marine Protection, Re-
search, and Sanctuaries Act of 1972, as
amended (33 U.S.C. 1414(d)), to revise,
revoke or limit the terms and condi-
tions of any permit issued pursuant to
section 102 of the Act. Section 104(d)
provides that "the Administrator . . .
may limit or deny the issuance of per-
mits, or he may alter or revoke partial-
ly or entirely the terms of permits
issued by him under this title, for the
transportation for dumping, or for the
dumping, or both of specified materi-
als or classes of materials, where he
finds that such materials cannot be
dumped consistently with the criteria
and other factors required to be ap-
plied in evaluating the permit applica-
tion."

(b) In the absence of specific provi-
sions in these rules, and where appro-
priate, questions arising at any stage
of the proceedings shall be resolved at
the discretion of the Presiding Officer,
the Regional Administrator, or the
Administrator, as appropriate.

§ 223.3 Preliminary determination; notice.

(a) *General.* Any general, special,
emergency, interim or research permit
issued pursuant to section 102 of the

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Act shall be subject to revision, revocation or limitation, in whole or in part, as the result of a determination by the Administrator or Regional Administrator that:

(1) The cumulative impact of the permittee's dumping activities or the aggregate impact of all dumping activities at the dump site designated in the permit should be categorized as Impact Category I, as defined in § 228.10(c)(1) of this subchapter; or

(2) There has been a change in circumstances relating to the management of the disposal site designated in the permit; or

(3) The dumping authorized by the permit would violate applicable water quality standards; or

(4) The dumping authorized by the permit can no longer be carried out consistent with the criteria set forth in Parts 227 and 228.

(b) *Preliminary determination.* Whenever any person authorized by the Administrator or Regional Administrator to (1) periodically review permits pursuant to section 104(d) of the Act or (2) otherwise assess the need for revision, revocation or limitation of a permit makes any of the determinations listed in paragraph (a) of this section with respect to a permit issued pursuant to section 102 of the Act, and additionally determines that revision, revocation or limitation of such permit is warranted, the Administrator or Regional Administrator, as the case may be, shall provide notification of such proposed revision, revocation or limitation to the permittee named in the permit, if any, the public, and any cognizant Federal/State agencies pursuant to paragraph (c) of this section.

(c) *Form of notification.* Notice of any proposed revision, revocation or limitation of a permit shall be sent to the permittee by certified mail, return receipt requested, and shall be published and otherwise disseminated in the manner described in § 223.3(b) through (h).

(d) *Contents of notice.* The notice of any proposed revision, revocation or limitation of a permit issued pursuant to paragraph (b) of this section shall include, in addition to any other materials, the following:

(1) A brief description of the contents of the permit, as set forth in § 223.1;

(2) A description of the proposed revision, revocation, or limitation;

(3) A statement of the reason for such proposed revision, revocation, or limitation; and

(4) A statement that within thirty (30) days of the date of dissemination of the notice, any person may request a public hearing on the proposed revision, revocation or limitation.

§ 223.4 Request for, scheduling and conduct of public hearing; determination.

(a) *Request for hearing.* Within thirty (30) days of the date of the dissemination of any notice required by § 223.2(b), any person may request the Administrator or Regional Administrator, as appropriate, to hold a public hearing on the proposed revision, revocation or limitation by submitting a written request containing the following:

(1) Identification of the person requesting the hearing and his interest in the proceeding;

(2) A statement of any objections to the proposed revision, revocation or limitation or to any facts or reasons identified as supporting such revision, revocation or limitation; and

(3) A statement of the issues which such person proposes to raise for consideration at such hearing.

(b) *Grant or denial of hearing; notification.* Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received, and the Administrator or Regional Administrator, as appropriate, determines that such request presents genuine issues, or (2) the Administrator or Regional Administrator, as the case may be, determines in his discretion that a public hearing is necessary or appropriate, the Administrator or Regional Administrator, as the case may be, will set a time and place for a public hearing in accordance with paragraph (c) of this section and will give notice of such hearing by publication in accordance with § 223.3(c). In the event the Administrator or the Regional Administrator, as the case may be, determines that a request filed

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pursuant to paragraph (a) of this section does not comply with the requirements of paragraph (a) or that such request does not present genuine issues, he shall advise, in writing, the person requesting the hearing of his determination.

(c) *Time and place of hearing.* Any hearing authorized pursuant to this Section by the Administrator or Regional Administrator, as the case may be, shall be held in the city in which the Environmental Protection Agency Regional Office which issued the permit is located, whenever practicable, and shall be set for the earliest practicable date, but in no event less than thirty (30) days after the receipt of an appropriate request for a hearing or a determination by the Administrator or the Regional Administrator, as the case may be, to hold such a hearing without such a request.

(d) *Presiding Officer.* Any hearing convened pursuant to this part shall be conducted by a Presiding Officer, who shall be either a Regional Judicial Officer or a person having the qualifications of a Judicial Officer assigned by the Administrator or Regional Administrator, as appropriate. Such person shall be an attorney who is a permanent or temporary employee of the Agency, who is not employed by the Region's or Headquarter's Water Programs Division, Surveillance and Analysis Division, or Enforcement Division, and who has had no connection with the preparation or presentation of evidence for any hearing in which he participates as Judicial Officer.

(e) *Conduct of the public hearing.* The Presiding Officer shall be responsible for the expeditious conduct of the hearing. The hearing shall be an informal public hearing, not an adversary proceeding, and shall be conducted so as to allow the presentation of public comments. When the Presiding Officer determines that it is necessary or appropriate, he shall cause a suitable record, which may include a verbatim transcript, of the proceedings to be made. Any person may appear at a public hearing convened pursuant to this section whether or not he requested the hearing, and may be represented by counsel or any other authorized representative. The Presiding Officer

is authorized to set forth reasonable restrictions on the nature or amount of documentary material or testimony presented at a public hearing, giving due regard to the relevancy of any such information, and to the avoidance of undue repetitiveness of information presented.

(f) *Recommendations of Presiding Officer.* Within 30 days following the adjournment of a public hearing convened pursuant to this section or within such additional period as the Administrator or the Regional Administrator, as the case may be, may grant to the Presiding Officer for good cause shown, and after full consideration of the comments received at the hearing, the Presiding Officer will prepare and forward to the Administrator or to the Regional Administrator, as the case may be, written recommendations relating to the revision, revocation or limitation of the permit and the record of the hearing, if any. Such recommendations shall contain a brief statement of the basis therefor, including a description of evidence relied upon (1) to support any finding made pursuant to § 223.3(a); (2) to justify any proposed revision, revocation or limitation of the permit; and (3) to justify any proposed revision, revocation or limitation which differs from that set forth in the notice issued pursuant to § 223.3(b). Copies of the Presiding Officer's recommendations shall be provided to any interested person on request, without charge. Copies of the record will be provided in accordance with 40 CFR Part 2.

(g) *Determination of the Administrator or Regional Administrator.* Upon receipt of the Presiding Officer's recommendations or, where no hearing has been held, upon termination of the thirty (30)-day period for requesting a hearing provided in paragraph (a) of this section, the Administrator or the Regional Administrator, as the case may be, shall make a determination with respect to the modification, revocation or suspension of the permit. Such determination shall include a description of the permit revision, revocation or limitation, the basis therefor, and the effective date. A copy of such determination shall be mailed to the permittee and each

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person who registered his attendance at the hearing by providing his name and mailing address.

§ 223.5 Request for, scheduling and conduct of adjudicatory hearing; determination.

Within ten (10) days following the receipt of the Administrator's or Regional Administrator's determination issued pursuant to § 223.4(g), any person who participated in the public hearing held pursuant to § 223.4 may request that an adjudicatory hearing be held for the purpose of reviewing such determination or any part thereof. Such request shall be submitted and disposed of, and any adjudicatory hearing convened shall be conducted in accordance with the procedures set forth in §§ 222.10 (a), (b), (d), and (e) and 222.11.

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§ 224.2 Reports.

(a) *Periodic reports.* Information required to be recorded pursuant to § 224.1 shall be reported to the Administrator or the Regional Administrator, as the case may be, for the periods indicated within 30 days of the expiration of such periods:

(1) For each six-month period, if any, following the effective date of the permit;

(2) For any other period of less than six months ending on the expiration date of the permit; and

(3) As otherwise required in the conditions of the permit.

(b) *Reports of emergency dumping.* If material is dumped without a permit pursuant to paragraph (c)(4) of § 220.1, the owner or operator of the vessel or aircraft from which such dumping occurs shall as soon as feasible inform the Administrator, Regional Administrator, or the nearest Coast Guard district of the incident by radio, telephone, or telegraph and shall within 10 days file a written report with the Administrator or Regional Administrator containing the information required under § 224.1 and a complete description of the circumstances under which the dumping occurred. Such description shall explain how human life at sea was in danger and how the emergency dumping reduced that danger. If the material dumped included containers, the vessel owner or operator shall immediately request the U.S. Coast Guard to publish in the local Notice to Mariners the dumping location, the type of containers, and whether the contents are toxic or explosive. Notification shall also be given to the Food and Drug Administration, Shellfish Sanitation Branch, Washington, DC 20204, as soon as possible.

[42 FR 2474, Jan. 11, 1977]

**PART 224—RECORDS AND REPORTS
REQUIRED OF OCEAN DUMPING
PERMITTEES UNDER SECTION 102
OF THE ACT**

Sec.

224.1 Records of permittees.

224.2 Reports.

AUTHORITY: 33 U.S.C. 1412 and 1418.

§ 224.1 Records of permittees.

Each permittee named in a special, interim, emergency or research permit under section 102 of the Act and each person availing himself of the privilege conferred by a general permit, shall maintain complete records of the following information, which will be available for inspection by the Administrator, Regional Administrator, the Commandant of the U.S. Coast Guard, or their respective designees:

(a) The physical and chemical characteristics of the material dumped pursuant to the permit;

(b) The precise times and locations of dumping;

(c) Any other information required as a condition of a permit by the Administrator or the Regional Administrator, as the case may be.

[42 FR 2474, Jan. 11, 1977]

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**PART 225—CORPS OF ENGINEERS
DREDGED MATERIAL PERMITS**

Sec.

225.1 General.

225.2 Review of Dredged Material Permits.

225.3 Procedure for invoking economic impact.

225.4 Waiver by Administrator.

AUTHORITY: 33 U.S.C. 1412 and 1418.

SOURCE: 42 FR 2475, Jan. 11, 1977, unless otherwise noted.

§ 225.1 General.

Applications and authorizations for Dredged Material Permits under section 103 of the Act for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated by the U.S. Army Corps of Engineers in accordance with the criteria set forth in Part 227 and processed in accordance with 33 CFR 209.120 with special attention to § 209.120(g)(17) and 33 CFR 209.145.

§ 225.2 Review of Dredged Material Permits.

(a) The District Engineer shall send a copy of the public notice to the appropriate Regional Administrator, and set forth in writing all of the following information:

(1) The location of the proposed disposal site and its physical boundaries;

(2) A statement as to whether the site has been designated for use by the Administrator pursuant to section 102(c) of the Act;

(3) If the proposed disposal site has not been designated by the Administrator, a statement of the basis for the proposed determination why no previously designated site is feasible and a description of the characteristics of the proposed disposal site necessary for its designation pursuant to Part 228 of this Subchapter H;

(4) The known historical uses of the proposed disposal site;

(5) Existence and documented effects of other authorized dumpings that have been made in the dumping area (e.g., heavy metal background reading and organic carbon content);

(6) An estimate of the length of time during which disposal will continue at the proposed site;

(7) Characteristics and composition of the dredged material; and

(8) A statement concerning a preliminary determination of the need for and/or availability of an environmental impact statement.

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(b) The Regional Administrator will within 15 days of the date the public notice and other information required to be submitted by paragraph (a) of § 225.2 are received by him, review the information submitted and request from the District Engineer any additional information he deems necessary or appropriate to evaluate the proposed dumping.

(c) Using the information submitted by the District Engineer, and any other information available to him, the Regional Administrator will within 15 days after receipt of all requested information, make an independent evaluation of the proposed dumping in accordance with the criteria and respond to the District Engineer pursuant to paragraph (d) or (e) of this section. The Regional Administrator may request an extension of this 15 day period to 30 days from the District Engineer.

(d) When the Regional Administrator determines that the proposed dumping will comply with the criteria, he will so inform the District Engineer in writing.

(e) When the Regional Administrator determines that the proposed dumping will not comply with the criteria he shall so inform the District Engineer in writing. In such cases, no Dredged Material Permit for such dumping shall be issued unless and until the provisions of § 225.3 are followed and the Administrator grants a waiver of the criteria pursuant to § 225.4.

§ 225.3 Procedure for invoking economic impact.

(a) When a District Engineer's determination to issue a Dredged Material Permit for the dumping of dredged material into ocean waters has been rejected by a Regional Administrator upon application of the Criteria, the District Engineer may determine whether, under section 103(d) of the Act, there is an economically feasible alternative method or site available other than the proposed dumping in ocean waters. If the District Engineer makes any such preliminary determination that there is no economically feasible alternative method or site available, he shall so advise the Regional Administrator setting forth his reasons for such determination and shall submit a report of such determination to the Chief of Engineers in ac-

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cordance with 33 CFR 209.120 and 209.145.

(b) If the decision of the Chief of Engineers is that ocean dumping at the designated site is required because of the unavailability of feasible alternatives, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator of the Criteria or of the critical site designation in accordance with § 225.4.

§ 225.4 Waiver by Administrator.

The Administrator shall grant the requested waiver unless within 30 days of his receipt of the notice, certificate and request in accordance with paragraph (b) of § 225.3 he determines in accordance with this section that the proposed dumping will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Notice of the Administrator's final determination under this section shall be given to the Secretary of the Army.

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227.12 Insoluble wastes.

227.13 Dredged materials.

Subpart C—Need for Ocean Dumping

227.14 Criteria for evaluating the need for ocean dumping and alternatives to ocean dumping.

227.15 Factors considered.

227.16 Basis for determination of need for ocean dumping.

Subpart D—Impact of the Proposed Dumping on Esthetic, Recreational and Economic Values

227.17 Basis for determination.

227.18 Factors considered.

227.19 Assessment of impact.

Subpart E—Impact of the Proposed Dumping on Other Uses of the Ocean

227.20 Basis for determination.

227.21 Uses considered.

227.22 Assessment of impact.

Subpart F—Special Requirements for Interim Permits Under Section 102 of the Act

227.23 General requirement.

227.24 Contents of environmental assessment.

227.25 Contents of plans.

227.26 Implementation of plans.

Subpart G—Definitions

227.27 Limiting permissible concentration (LPC).

227.28 Release zone.

227.29 Initial mixing.

227.30 High-level radioactive waste.

227.31 Applicable marine water quality criteria.

227.32 Liquid, suspended particulate, and solid phases of a material.

AUTHORITY: 33 U.S.C. 1412 and 1418.

SOURCE: 42 FR 2476, Jan. 11, 1977, unless otherwise noted.

PART 227—CRITERIA FOR THE EVALUATION OF PERMIT APPLICATIONS FOR OCEAN DUMPING OF MATERIALS

Subpart A—General

Sec.

227.1 Applicability.

227.2 Materials which satisfy the environmental impact criteria of Subpart B.

227.3 Materials which do not satisfy the environmental impact criteria set forth in Subpart B.

Subpart B—Environmental Impact

227.4 Criteria for evaluating environmental impact.

227.5 Prohibited materials.

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Subpart A—General

§ 227.1 Applicability.

(a) Section 102 of the Act requires that criteria for the issuance of ocean disposal permits be promulgated after consideration of the environmental effect of the proposed dumping operation, the need for ocean dumping, alternatives to ocean dumping, and the effect of the proposed action on es-

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thetic, recreational and economic values and on other uses of the ocean. This Parts 227 and 228 of this Subchapter H together constitute the criteria established pursuant to section 102 of the Act. The decision of the Administrator, Regional Administrator or the District Engineer, as the case may be, to issue or deny a permit and to impose specific conditions on any permit issued will be based on an evaluation of the permit application pursuant to the criteria set forth in this Part 227 and upon the requirements for disposal site management pursuant to the criteria set forth in Part 228 of this Subchapter H.

(b) With respect to the criteria to be used in evaluating disposal of dredged materials, this section and Subparts C, D, E, and G apply in their entirety. To determine whether the proposed dumping of dredged material complies with Subpart B, only §§ 227.4, 227.5, 227.6, 227.9, 227.10 and 227.13 apply. An applicant for a permit to dump dredged material must comply with all of Subparts C, D, E, G and applicable sections of B, to be deemed to have met the EPA criteria for dredged material dumping promulgated pursuant to section 102(a) of the Act. If, in any case, the Chief of Engineers finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site, the utilization of which would result in noncompliance with the criteria established pursuant to Subpart B relating to the effects of dumping or with the restrictions established pursuant to section 102(c) of the Act relating to critical areas, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator pursuant to Part 225.

(c) The Criteria of this Part 227 are established pursuant to section 102 of the Act and apply to the evaluation of proposed dumping of materials under Title I of the Act. The Criteria of this Part 227 deal with the evaluation of proposed dumping of materials on a case-by-case basis from information supplied by the applicant or otherwise available to EPA or the Corps of Engineers concerning the characteristics of

the waste and other considerations relating to the proposed dumping.

(d) After consideration of the provisions of §§ 227.28 and 227.29, no permit will be issued when the dumping would result in a violation of applicable water quality standards.

§ 227.2 Materials which satisfy the environmental impact criteria of Subpart B.

(a) If the applicant satisfactorily demonstrates that the material proposed for ocean dumping satisfies the environmental impact criteria set forth in Subpart B, a permit for ocean dumping will be issued unless:

(1) There is no need for the dumping, and alternative means of disposal are available, as determined in accordance with the criteria set forth in Subpart C; or

(2) There are unacceptable adverse effects on esthetic, recreational or economic values as determined in accordance with the criteria set forth in Subpart D; or

(3) There are unacceptable adverse effects on other uses of the ocean as determined in accordance with the criteria set forth in Subpart E.

(b) If the material proposed for ocean dumping satisfies the environmental impact criteria set forth in Subpart B, but the Administrator or the Regional Administrator, as the case may be, determines that any one of the considerations set forth in paragraph (a) (1), (2) or (3) of this section applies, he will deny the permit application; provided however, that he may issue an interim permit for ocean dumping pursuant to paragraph (d) of § 220.3 and Subpart F of this Part 227 when he determines that:

(1) The material proposed for ocean dumping does not contain any of the materials listed in § 227.5 or listed in § 227.6, except as trace contaminants; and

(2) In accordance with Subpart C there is a need to ocean dump the material and no alternatives are available to such dumping; and

(3) The need for the dumping and the unavailability of alternatives, as determined in accordance with Subpart C, are of greater significance to

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the public interest than the potential for adverse effect on esthetic, recreational or economic values, or on other uses of the ocean, as determined in accordance with Subparts D and E, respectively.

§ 227.3 Materials which do not satisfy the environmental impact criteria set forth in Subpart B.

If the material proposed for ocean dumping does not satisfy the environmental impact criteria of Subpart B, the Administrator or the Regional Administrator, as the case may be, will deny the permit application; provided however, that he may issue an interim permit pursuant to paragraph (d) of § 220.3 and Subpart F of this Part 227 when he determines that:

(a) The material proposed for dumping does not contain any of the materials listed in § 227.6 except as trace contaminants, or any of the materials listed in § 227.5;

(b) In accordance with Subpart C there is a need to ocean dump the material; and

(c) Any one of the following factors is of greater significance to the public interest than the potential for adverse impact on the marine environment, as determined in accordance with Subpart B:

(1) The need for the dumping, as determined in accordance with Subpart C; or

(2) The adverse effects of denial of the permit on recreational or economic values as determined in accordance with Subpart D; or

(3) The adverse effects of denial of the permit on other uses of the ocean, as determined in accordance with Subpart E.

Subpart B—Environmental Impact

§ 227.4 Criteria for evaluating environmental impact.

This Subpart B sets specific environmental impact prohibitions, limits, and conditions for the dumping of materials into ocean waters. If the applicable prohibitions, limits, and conditions are satisfied, it is the determination of EPA that the proposed disposal will not unduly degrade or endanger

the marine environment and that the disposal will present:

(a) No unacceptable adverse effects on human health and no significant damage to the resources of the marine environment;

(b) No unacceptable adverse effect on the marine ecosystem;

(c) No unacceptable adverse persistent or permanent effects due to the dumping of the particular volumes or concentrations of these materials; and

(d) No unacceptable adverse effect on the ocean for other uses as a result of direct environmental impact.

§ 227.5 Prohibited materials.

The ocean dumping of the following materials will not be approved by EPA or the Corps of Engineers under any circumstances:

(a) High-level radioactive wastes as defined in § 227.30;

(b) Materials in whatever form (including without limitation, solids, liquids, semi-liquids, gases or organisms) produced or used for radiological, chemical or biological warfare;

(c) Materials insufficiently described by the applicant in terms of their compositions and properties to permit application of the environmental impact criteria of this Subpart B;

(d) Persistent inert synthetic or natural materials which may float or remain in suspension in the ocean in such a manner that they may interfere materially with fishing, navigation, or other legitimate uses of the ocean.

§ 227.6 Constituents prohibited as other than trace contaminants.

(a) Subject to the exclusions of paragraphs (f), (g) and (h) of this section, the ocean dumping, or transportation for dumping, of materials containing the following constituents as other than trace contaminants will not be approved on other than an emergency basis:

(1) Organohalogen compounds;

(2) Mercury and mercury compounds;

(3) Cadmium and cadmium compounds;

(4) Oil of any kind or in any form, including but not limited to petrole-

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um, oil sludge, oil refuse, crude oil, fuel oil, heavy diesel oil, lubricating oils, hydraulic fluids, and any mixtures containing these, transported for the purpose of dumping insofar as these are not regulated under the FWPCA;

(5) Known carcinogens, mutagens, or teratogens or materials suspected to be carcinogens, mutagens, or teratogens by responsible scientific opinion.

(b) These constituents will be considered to be present as trace contaminants only when they are present in materials otherwise acceptable for ocean dumping in such forms and amounts in liquid, suspended particulate, and solid phases that the dumping of the materials will not cause significant undesirable effects, including the possibility of danger associated with their bioaccumulation in marine organisms.

(c) The potential for significant undesirable effects due to the presence of these constituents shall be determined by application of results of bioassays on liquid, suspended particulate, and solid phases of wastes according to procedures acceptable to EPA, and for dredged material, acceptable to EPA and the Corps of Engineers. Materials shall be deemed environmentally acceptable for ocean dumping only when the following conditions are met:

(1) The liquid phase does not contain any of these constituents in concentrations which will exceed applicable marine water quality criteria after allowance for initial mixing; provided that mercury concentrations in the disposal site, after allowance for initial mixing, may exceed the average normal ambient concentrations of mercury in ocean waters at or near the dumping site which would be present in the absence of dumping, by not more than 50 percent; and

(2) Bioassay results on the suspended particulate phase of the waste do not indicate occurrence of significant mortality or significant adverse sublethal effects including bioaccumulation due to the dumping of wastes containing the constituents listed in paragraph (a) of this section. These bioassays shall be conducted with appropriate sensitive marine organisms as de-

fined in § 227.27(c) using procedures for suspended particulate phase bioassays approved by EPA, or, for dredged material, approved by EPA and the Corps of Engineers. Procedures approved for bioassays under this section will require exposure of organisms for a sufficient period of time and under appropriate conditions to provide reasonable assurance, based on consideration of the statistical significance of effects at the 95 percent confidence level, that, when the materials are dumped, no significant undesirable effects will occur due either to chronic toxicity or to bioaccumulation of the constituents listed in paragraph (a) of this section; and

(3) Bioassay results on the solid phase of the wastes do not indicate occurrence of significant mortality or significant adverse sublethal effects due to the dumping of wastes containing the constituents listed in paragraph (a) of this section. These bioassays shall be conducted with appropriate sensitive benthic marine organisms using benthic bioassay procedures approved by EPA, or, for dredged material, approved by EPA and the Corps of Engineers. Procedures approved for bioassays under this section will require exposure of organisms for a sufficient period of time to provide reasonable assurance, based on considerations of statistical significance of effects at the 95 percent confidence level, that, when the materials are dumped, no significant undesirable effects will occur due either to chronic toxicity or to bioaccumulation of the constituents listed in paragraph (a) of this section; and

(4) For persistent organohalogenes not included in the applicable marine water quality criteria, bioassay results on the liquid phase of the waste show that such compounds are not present in concentrations large enough to cause significant undesirable effects due either to chronic toxicity or to bioaccumulation in marine organisms after allowance for initial mixing.

(d) When the Administrator, Regional Administrator or District Engineer, as the case may be, has reasonable cause to believe that a material proposed for ocean dumping contains compounds identified as carcinogens,

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mutagens, or teratogens for which criteria have not been included in the applicable marine water quality criteria, he may require special studies to be done prior to issuance of a permit to determine the impact of disposal on human health and/or marine ecosystems. Such studies must provide information comparable to that required under paragraph (c)(3) of this section.

(e) The criteria stated in paragraphs (c) (2) and (3) of this section will become mandatory as soon as announcement of the availability of acceptable procedures is made in the **FEDERAL REGISTER**. At that time the interim criteria contained in paragraph (e) of this section shall no longer be applicable. As interim measures the criteria of paragraphs (c) (2) and (3) of this section may be applied on a case-by-case basis where interim guidance on acceptable bioassay procedures is provided by the Regional Administrator or, in the case of dredged material, by the District Engineer; or, in the absence of such guidance, permits may be issued for the dumping of any material only when the following conditions are met, except under an emergency permit:

(1) Mercury and its compounds are present in any solid phase of a material in concentrations less than 0.75 mg/kg, or less than 50 percent greater than the average total mercury content of natural sediments of similar lithologic characteristics as those at the disposal site; and

(2) Cadmium and its compounds are present in any solid phase of a material in concentrations less than 0.6 mg/kg, or less than 50 percent greater than the average total cadmium content of natural sediments of similar lithologic characteristics as those at the disposal site; and

(3) The total concentration of organohalogen constituents in the waste as transported for dumping is less than a concentration of such constituents known to be toxic to marine organisms. In calculating the concentration of organohalogens, the applicant shall consider that these constituents are all biologically available. The determination of the toxicity value will be based on existing scientific data or developed by the use of bioassays con-

ducted in accordance with approved EPA procedures; and

(4) The total amounts of oils and greases as identified in paragraph (a)(4) of this section do not produce a visible surface sheen in an undisturbed water sample when added at a ratio of one part waste material to 100 parts of water.

(f) The prohibitions and limitations of this section do not apply to the constituents identified in paragraph (a) of this section when the applicant can demonstrate that such constituents are (1) present in the material only as chemical compounds or forms (e.g., inert insoluble solid materials) non-toxic to marine life and non-bioaccumulative in the marine environment upon disposal and thereafter, or (2) present in the material only as chemical compounds or forms which, at the time of dumping and thereafter, will be rapidly rendered non-toxic to marine life and non-bioaccumulative in the marine environment by chemical or biological degradation in the sea; provided they will not make edible marine organisms unpalatable; or will not endanger human health or that of domestic animals, fish, shellfish, or wildlife.

(g) The prohibitions and limitations of this section do not apply to the constituents identified in paragraph (a) of this section for the granting of research permits if the substances are rapidly rendered harmless by physical, chemical or biological processes in the sea; provided they will not make edible marine organisms unpalatable and will not endanger human health or that of domestic animals.

(h) The prohibitions and limitations of this section do not apply to the constituents identified in paragraph (a) of this section for the granting of permits for the transport of these substances for the purpose of incineration at sea if the applicant can demonstrate that the stack emissions consist of substances which are rapidly rendered harmless by physical, chemical or biological processes in the sea. Incinerator operations shall comply with requirements which will be established on a case-by-case basis.

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[42 FR 2476, Jan. 11, 1977; 43 FR 1071, Jan. 6, 1978]

§ 227.7 Limits established for specific wastes or waste constituents.

Materials containing the following constituents must meet the additional limitations specified in this section to be deemed acceptable for ocean dumping:

(a) Liquid waste constituents immiscible with or slightly soluble in seawater, such as benzene, xylene, carbon disulfide and toluene, may be dumped only when they are present in the waste in concentrations below their solubility limits in seawater. This provision does not apply to materials which may interact with ocean water to form insoluble materials;

(b) Radioactive materials, other than those prohibited by § 227.5, must be contained in accordance with the provisions of § 227.11 to prevent their direct dispersion or dilution in ocean waters;

(c) Wastes containing living organisms may not be dumped if the organisms present would endanger human health or that of domestic animals, fish, shellfish and wildlife by:

(1) Extending the range of biological pests, viruses, pathogenic microorganisms or other agents capable of infesting, infecting or extensively and permanently altering the normal populations of organisms;

(2) Degrading uninfected areas; or

(3) Introducing viable species not indigenous to an area.

(d) In the dumping of wastes of highly acidic or alkaline nature into the ocean, consideration shall be given to:

(1) The effects of any change in acidity or alkalinity of the water at the disposal site; and

(2) The potential for synergistic effects or for the formation of toxic compounds at or near the disposal site. Allowance may be made in the permit conditions for the capability of ocean waters to neutralize acid or alkaline wastes; provided, however, that dumping conditions must be such that the average total alkalinity or total acidity of the ocean water after allowance for initial mixing, as defined in § 227.29, may be changed, based on stoichiomet-

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ric calculations, by no more than 10 percent during all dumping operations at a site to neutralize acid or alkaline wastes.

(e) Wastes containing biodegradable constituents, or constituents which consume oxygen in any fashion, may be dumped in the ocean only under conditions in which the dissolved oxygen after allowance for initial mixing, as defined in § 227.29, will not be depressed by more than 25 percent below the normally anticipated ambient conditions in the disposal area at the time of dumping.

§ 227.8 Limitations on the disposal rates of toxic wastes.

No wastes will be deemed acceptable for ocean dumping unless such wastes can be dumped so as not to exceed the limiting permissible concentration as defined in § 227.27; *Provided*, That this § 227.8 does not apply to those wastes for which specific criteria are established in § 227.11 or § 227.12. Total quantities of wastes dumped at a site may be limited as described in § 228.8.

§ 227.9 Limitations on quantities of waste materials.

Substances which may damage the ocean environment due to the quantities in which they are dumped, or which may seriously reduce amenities, may be dumped only when the quantities to be dumped at a single time and place are controlled to prevent long-term damage to the environment or to amenities.

§ 227.10 Hazards to fishing, navigation, shorelines or beaches.

(a) Wastes which may present a serious obstacle to fishing or navigation may be dumped only at disposal sites and under conditions which will insure no unacceptable interference with fishing or navigation.

(b) Wastes which may present a hazard to shorelines or beaches may be dumped only at sites and under conditions which will insure no unacceptable danger to shorelines or beaches.

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§ 227.11 Containerized wastes.

(a) Wastes containerized solely for transport to the dumping site and expected to rupture or leak on impact or shortly thereafter must meet the appropriate requirements of §§ 227.6, 227.7, 227.8, 227.9, and 227.10.

(b) Other containerized wastes will be approved for dumping only under the following conditions:

(1) The materials to be disposed of decay, decompose or radiodecay to environmentally innocuous materials within the life expectancy of the containers and/or their inert matrix; and

(2) Materials to be dumped are present in such quantities and are of such nature that only short-term localized adverse effects will occur should the containers rupture at any time; and

(3) Containers are dumped at depths and locations where they will cause no threat to navigation, fishing, shorelines, or beaches.

§ 227.12 Insoluble wastes.

(a) Solid wastes consisting of inert natural minerals or materials compatible with the ocean environment may be generally approved for ocean dumping provided they are insoluble above the applicable trace or limiting permissible concentrations and are rapidly and completely settleable, and they are of a particle size and density that they would be deposited or rapidly dispersed without damage to benthic, demersal, or pelagic biota.

(b) Persistent inert synthetic or natural materials which may float or remain in suspension in the ocean as prohibited in paragraph (d) of § 227.5 may be dumped in the ocean only when they have been processed in such a fashion that they will sink to the bottom and remain in place.

§ 227.13 Dredged materials.

(a) Dredged materials are bottom sediments or materials that have been dredged or excavated from the navigable waters of the United States, and their disposal into ocean waters is regulated by the U.S. Army Corps of Engineers using the criteria of applicable sections of Parts 227 and 228. Dredged material consists primarily of natural sediments or materials which may be

contaminated by municipal or industrial wastes or by runoff from terrestrial sources such as agricultural lands.

(b) Dredged material which meets the criteria set forth in the following paragraphs (b) (1), (2), or (3) of this section is environmentally acceptable for ocean dumping without further testing under this section:

(1) Dredged material is composed predominantly of sand, gravel, rock, or any other naturally occurring bottom material with particle sizes larger than silt, and the material is found in areas of high current or wave energy such as streams with large bed loads or coastal areas with shifting bars and channels; or

(2) Dredged material is for beach nourishment or restoration and is composed predominantly of sand, gravel or shell with particle sizes compatible with material on the receiving beaches; or

(3) *When:* (i) The material proposed for dumping is substantially the same as the substrate at the proposed disposal site; and

(ii) The site from which the material proposed for dumping is to be taken is far removed from known existing and historical sources of pollution so as to provide reasonable assurance that such material has not been contaminated by such pollution.

(c) *When* dredged material proposed for ocean dumping does not meet the criteria of paragraph (b) of this section, further testing of the liquid, suspended particulate, and solid phases, as defined in § 227.32, is required. Based on the results of such testing, dredged material can be considered to be environmentally acceptable for ocean dumping only under the following conditions:

(1) The material is in compliance with the requirements of § 227.6; and

(2)(i) All major constituents of the liquid phase are in compliance with the applicable marine water quality criteria after allowance for initial mixing; or

(ii) When the liquid phase contains major constituents not included in the applicable marine water quality criteria, or there is reason to suspect synergistic effects of certain contaminants,

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bioassays on the liquid phase of the dredged material show that it can be discharged so as not to exceed the limiting permissible concentration as defined in paragraph (a) of § 227.27; and

(3) Bioassays on the suspended particulate and solid phases show that it can be discharged so as not to exceed the limiting permissible concentration as defined in paragraph (b) of § 227.27.

(d) For the purposes of paragraph (c)(2) of this section, major constituents to be analyzed in the liquid phase are those deemed critical by the District Engineer, after evaluating and considering any comments received from the Regional Administrator, and considering known sources of discharges in the area.

Subpart C—Need for Ocean Dumping

§ 227.14 Criteria for evaluating the need for ocean dumping and alternatives to ocean dumping.

This Subpart C states the basis on which an evaluation will be made of the need for ocean dumping, and alternatives to ocean dumping. The nature of these factors does not permit the promulgation of specific quantitative criteria of each permit application. These factors will therefore be evaluated if applicable for each proposed dumping on an individual basis using the guidelines specified in this Subpart C.

§ 227.15 Factors considered.

The need for dumping will be determined by evaluation of the following factors:

(a) Degree of treatment useful and feasible for the waste to be dumped, and whether or not the waste material has been or will be treated to this degree before dumping;

(b) Raw materials and manufacturing or other processes resulting in the waste, and whether or not these materials or processes are essential to the provision of the applicant's goods or services, or if other less polluting materials or processes could be used;

(c) The relative environmental risks, impact and cost for ocean dumping as opposed to other feasible alternatives including but not limited to:

(1) Land fill;

(2) Well injection;
(3) Incineration;
(4) Spread of material over open ground;

(5) Recycling of material for reuse;
(6) Additional biological, chemical, or physical treatment of intermediate or final waste streams;

(7) Storage.
(d) Irreversible or irretrievable consequences of the use of alternatives to ocean dumping.

§ 227.16 Basis for determination of need for ocean dumping.

(a) A need for ocean dumping will be considered to have been demonstrated when a thorough evaluation of the factors listed in § 227.15 has been made, and the Administrator, Regional Administrator or District Engineer, as the case may be, has determined that the following conditions exist where applicable:

(1) There are no practicable improvements which can be made in process technology or in overall waste treatment to reduce the adverse impacts of the waste on the total environment;

(2) There are no practicable alternative locations and methods of disposal or recycling available, including without limitation, storage until treatment facilities are completed, which have less adverse environmental impact or potential risk to other parts of the environment than ocean dumping.

(b) For purposes of paragraph (a) of this section, waste treatment or improvements in processes and alternative methods of disposal are practicable when they are available at reasonable incremental cost and energy expenditures, which need not be competitive with the costs of ocean dumping, taking into account the environmental benefits derived from such activity, including the relative adverse environmental impacts associated with the use of alternatives to ocean dumping.

(c) The duration of permits issued under Subchapter H and other terms and conditions imposed in those permits shall be determined after taking into account the factors set forth in this section. Notwithstanding compli-

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ance with Subparts B, D, and E of this Part 227 permittees may, on the basis of the need for and alternatives to ocean dumping, be required to terminate all ocean dumping by a specified date, to phase out all ocean dumping over a specified period or periods, to continue research and development of alternative methods of disposal and make periodic reports of such research and development in order to provide additional information for periodic review of the need for and alternatives to ocean dumping, or to take such other action as the Administrator, the Regional Administrator, or District Engineer, as the case may be, determines to be necessary or appropriate.

Subpart D—Impact of the Proposed Dumping on Esthetic, Recreational and Economic Values

§ 227.17 Basis for determination.

(a) The impact of dumping on esthetic, recreational and economic values will be evaluated on an individual basis using the following considerations:

(1) Potential for affecting recreational use and values of ocean waters, inshore waters, beaches, or shorelines;

(2) Potential for affecting the recreational and commercial values of living marine resources.

(b) For all proposed dumping, full consideration will be given to such nonquantifiable aspects of esthetic, recreational and economic impact as:

(1) Responsible public concern for the consequences of the proposed dumping;

(2) Consequences of not authorizing the dumping including without limitation, the impact on esthetic, recreational and economic values with respect to the municipalities and industries involved.

§ 227.18 Factors considered.

The assessment of the potential for impacts on esthetic, recreational and economic values will be based on an evaluation of the appropriate characteristics of the material to be dumped, allowing for conservative rates of dilution, dispersion, and biochemical degradation during movement of the materials from a disposal site to an area

of significant recreational or commercial value. The following specific factors will be considered in making such an assessment:

(a) Nature and extent of present and potential recreational and commercial use of areas which might be affected by the proposed dumping;

(b) Existing water quality, and nature and extent of disposal activities, in the areas which might be affected by the proposed dumping;

(c) Applicable water quality standards;

(d) Visible characteristics of the materials (e.g., color, suspended particulates) which result in an unacceptable esthetic nuisance in recreational areas;

(e) Presence in the material of pathogenic organisms which may cause a public health hazard either directly or through contamination of fisheries or shellfisheries;

(f) Presence in the material of toxic chemical constituents released in volumes which may affect humans directly;

(g) Presence in the material of chemical constituents which may be bioaccumulated or persistent and may have an adverse effect on humans directly or through food chain interactions;

(h) Presence in the material of any constituents which might significantly affect living marine resources of recreational or commercial value.

§ 227.19 Assessment of impact.

An overall assessment of the proposed dumping and possible alternative methods of disposal or recycling will be made based on the effect on esthetic, recreational and economic values based on the factors set forth in this Subpart D, including where applicable, enhancement of these values, and the results of the assessment will be expressed, where possible, on a quantitative basis, such as percentage of a resource lost, reduction in use days of recreational areas, or dollars lost in commercial fishery profits or the profitability of other commercial enterprises.

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Subpart E—Impact of the Proposed Dumping on Other Uses of the Ocean

§ 227.20 Basis for determination.

(a) Based on current state of the art, consideration must be given to any possible long-range effects of even the most innocuous substances when dumped in the ocean on a continuing basis. Such a consideration is made in evaluating the relationship of each proposed disposal activity in relationship to its potential for long-range impact on other uses of the ocean.

(b) An evaluation will be made on an individual basis for each proposed dumping of material of the potential for effects on uses of the ocean for purposes other than material disposal. The factors to be considered in this evaluation include those stated in Subpart D, but the evaluation of this Subpart E will be based on the impact of the proposed dumping on specific uses of the ocean rather than on overall esthetic, recreational and economic values.

§ 227.21 Uses considered.

An appraisal will be made of the nature and extent of existing and potential uses of the disposal site itself and of any areas which might reasonably be expected to be affected by the proposed dumping, and a quantitative and qualitative evaluation made, where feasible, of the impact of the proposed dumping on each use. The uses considered shall include, but not be limited to:

- (a) Commercial fishing in open ocean areas;
- (b) Commercial fishing in coastal areas;
- (c) Commercial fishing in estuarine areas;
- (d) Recreational fishing in open ocean areas;
- (e) Recreational fishing in coastal areas;
- (f) Recreational fishing in estuarine areas;
- (g) Recreational use of shorelines and beaches;
- (h) Commercial navigation;
- (i) Recreational navigation;
- (j) Actual or anticipated exploitation of living marine resources;

(k) Actual or anticipated exploitation of non-living resources, including without limitation, sand and gravel places and other mineral deposits, oil and gas exploration and development and offshore marine terminal or other structure development; and

- (l) Scientific research and study.

§ 227.22 Assessment of impact.

The assessment of impact on other uses of the ocean will consider both temporary and long-range effects within the state of the art, but particular emphasis will be placed on any irreversible or irretrievable commitment of resources that would result from the proposed dumping.

Subpart F—Special Requirements for Interim Permits Under Section 102 of the Act

§ 227.23 General requirement.

Each interim permit issued under section 102 of the Act will include a requirement for the development and implementation, as soon as practicable, of a plan which requires, at the discretion of the Administrator or Regional Administrator, as the case may be, either:

- (a) Elimination of ocean disposal of the waste, or
- (b) Bringing the waste into compliance with all the criteria for acceptable ocean disposal.

§ 227.24 Contents of environmental assessment.

A plan developed pursuant to this Subpart F must include an environmental assessment of the proposed action, including without limitation:

- (a) Description of the proposed action;
- (b) A thorough review of the actual need for dumping;
- (c) Environmental impact of the proposed action;
- (d) Adverse impacts which cannot be avoided should the proposal be implemented;
- (e) Alternatives to the proposed action;
- (f) Relationship between short-term uses of man's environment and the

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maintenance and enhancement of long-term productivity;

(g) Irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented; and

(h) A discussion of problems and objections raised by other Federal, State and local agencies and by interested persons in the review process.

§ 227.25 Contents of plans.

In addition to the environmental assessment required by § 227.24, a plan developed pursuant to this Subpart F must include a schedule for eliminating ocean dumping or bringing the wastes into compliance with the environmental impact criteria of Subpart B, including without limitation, the following:

(a) If the waste is treated to the degree necessary to bring it into compliance with the ocean dumping criteria, the applicant should provide a description of the treatment and a scheduled program for treatment and a subsequent analysis of treated material to prove the effectiveness of the process.

(b) If treatment cannot be effected by post-process techniques the applicant should, determining the offending constituents, examine his raw materials and his total process to determine the origin of the pollutant. If the offending constituents are found in the raw material the applicant should consider a new supplier and provide an analysis of the new material to prove compliance. Raw materials are to include all water used in the process. Water from municipal sources complying with drinking water standards is acceptable. Water from other sources such as private wells should be analyzed for contaminants. Water that has been used in the process should be considered for treatment and recycling as an additional source of process water.

(c) If offending constituents are a result of the process, the applicant should investigate and describe the source of the constituents. A report of this information will be submitted to EPA and the applicant will then submit a proposal describing possible alternatives to the existing process or

processes and level of cost and effectiveness.

(d) If an acceptable alternative to ocean dumping or additional control technology is required, a schedule and documentation for implementation of the alternative or approved control process shall be submitted and shall include, without limitation:

- (1) Engineering plan;
- (2) Financing approval;
- (3) Starting date for change;
- (4) Completion date;
- (5) Operation starting date.

(e) If an acceptable alternative does not exist at the time the application is submitted, the applicant will submit an acceptable in-house research program or employ a competent research institution to study the problem. The program of research must be approved by the Administrator or Regional Administrator, as the case may be, before the initiation of the research. The schedule and documentation for implementation of a research program will include, without limitation:

- (1) Approaches;
- (2) Experimental design;
- (3) Starting date;
- (4) Reporting intervals;
- (5) Proposed completion date;
- (6) Date for submission of final report.

§ 227.26 Implementation of plans.

Implementation of each phase of a plan shall be initiated as soon as it is approved by the Administrator or Regional Administrator, as the case may be.

Subpart G—Definitions

§ 227.27 Limiting permissible concentration (LPC).

(a) The limiting permissible concentration of the liquid phase of a material is:

(1) That concentration of a constituent which, after allowance for initial mixing as provided in § 227.29, does not exceed applicable marine water quality criteria; or, when there are no applicable marine water quality criteria,

(2) That concentration of waste or dredged material in the receiving

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water which, after allowance for initial mixing, as specified in § 227.29, will not exceed a toxicity threshold defined as 0.01 of a concentration shown to be acutely toxic to appropriate sensitive marine organisms in a bioassay carried out in accordance with approved EPA procedures.

(3) When there is reasonable scientific evidence on a specific waste material to justify the use of an application factor other than 0.01 as specified in paragraph (a)(2) of this section, such alternative application factor shall be used in calculating the LPC.

(b) The limiting permissible concentration of the suspended particulate and solid phases of a material means that concentration which will not cause unreasonable acute or chronic toxicity or other sublethal adverse effects based on bioassay results using appropriate sensitive marine organisms in the case of the suspended particulate phase, or appropriate sensitive benthic marine organisms in the case of the solid phase; and which will not cause accumulation of toxic materials in the human food chain. These bioassays are to be conducted in accordance with procedures approved by EPA, or, in the case of dredged material, approved by EPA and the Corps of Engineers.¹

(c) "Appropriate sensitive marine organisms" means at least one species each representative of phytoplankton or zooplankton, crustacean or mollusk, and fish species chosen from among the most sensitive species documented in the scientific literature or accepted by EPA as being reliable test organisms to determine the anticipated impact of the wastes on the ecosystem at the disposal site. Bioassays, except on phytoplankton or zooplankton, shall be run for a minimum of 96 hours under temperature, salinity, and

dissolved oxygen conditions representing the extremes of environmental stress at the disposal site. Bioassays on phytoplankton or zooplankton may be run for shorter periods of time as appropriate for the organisms tested at the discretion of EPA, or EPA and the Corps of Engineers, as the case may be.

(d) "Appropriate sensitive benthic marine organisms" means at least one species each representing filter-feeding, deposit-feeding, and burrowing species chosen from among the most sensitive species accepted by EPA as being reliable test organisms to determine the anticipated impact on the site; provided, however, that until sufficient species are adequately tested and documented, interim guidance on appropriate organisms available for use will be provided by the Administrator, Regional Administrator, or the District Engineer, as the case may be.

[42 FR 2476, Jan. 11, 1977; 43 FR 1071, Jan. 6, 1978]

§ 227.28 Release zone.

The release zone is the area swept out by the locus of points constantly 100 meters from the perimeter of the conveyance engaged in dumping activities, beginning at the first moment in which dumping is scheduled to occur and ending at the last moment in which dumping is scheduled to occur. No release zone shall exceed the total surface area of the dumpsite.

§ 227.29 Initial mixing.

(a) Initial mixing is defined to be that dispersion or diffusion of liquid, suspended particulate, and solid phases of a waste which occurs within four hours after dumping. The limiting permissible concentration shall not be exceeded beyond the boundaries of the disposal site during initial mixing, and shall not be exceeded at any point in the marine environment after initial mixing. The maximum concentration of the liquid, suspended particulate, and solid phases of a dumped material after initial mixing shall be estimated by one of these methods, in order of preference:

(1) When field data on the proposed dumping are adequate to predict ini-

¹An implementation manual is being developed jointly by EPA and the Corps of Engineers, and announcement of the availability of the manual will be published in the FEDERAL REGISTER. Until this manual is available, interim guidance on the appropriate procedures can be obtained from the Marine Protection Branch, WH-548, Environmental Protection Agency, 401 M Street SW, Washington DC 20460, or the Corps of Engineers, as the case may be.

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tial dispersion and diffusion of the waste, these shall be used, if necessary, in conjunction with an appropriate mathematical model acceptable to EPA or the District Engineer, as appropriate.

(2) When field data on the dispersion and diffusion of a waste of characteristics similar to that proposed for discharge are available, these shall be used in conjunction with an appropriate mathematical model acceptable to EPA or the District Engineer, as appropriate.

(3) When no field data are available, theoretical oceanic turbulent diffusion relationships may be applied to known characteristics of the waste and the disposal site.

(b) When no other means of estimation are feasible.

(1) The liquid and suspended particulate phases of the dumped waste may be assumed to be evenly distributed after four hours over a column of water bounded on the surface by the release zone and extending to the ocean floor, thermocline, or halocline if one exists, or to a depth of 20 meters, whichever is shallower, and

(2) The solid phase of a dumped waste may be assumed to settle rapidly to the ocean bottom and to be distributed evenly over the ocean bottom in an area equal to that of the release zone as defined in § 227.28.

(c) When there is reasonable scientific evidence to demonstrate that other methods of estimating a reasonable allowance for initial mixing are appropriate for a specific material, such methods may be used with the concurrence of EPA after appropriate scientific review.

§ 227.30 High-level radioactive waste.

High-level radioactive waste means the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels or irradiated fuel from nuclear power reactors.

§ 227.31 Applicable marine water quality criteria.

Applicable marine water quality criteria means the criteria given for marine waters in the EPA publication "Quality Criteria for Water" as published in 1976 and amended by subsequent supplements or additions.

§ 227.32 Liquid, suspended particulate, and solid phases of a material.

(a) For the purposes of these regulations, the liquid phase of a material, subject to the exclusions of paragraph (b) of this section, is the supernatant remaining after one hour undisturbed settling, after centrifugation and filtration through a 0.45 micron filter. The suspended particulate phase is the supernatant as obtained above prior to centrifugation and filtration. The solid phase includes all material settling to the bottom in one hour. Settling shall be conducted according to procedures approved by EPA.

(b) For dredged material, other material containing large proportions of insoluble matter, materials which may interact with ocean water to form insoluble matter or new toxic compounds, or materials which may release toxic compounds upon deposition, the Administrator, Regional Administrator, or the District Engineer, as the case may be, may require that the separation of liquid, suspended particulate, and solid phases of the material be performed upon a mixture of the waste with ocean water rather than on the material itself. In such cases the following procedures shall be used:

(1) For dredged material, the liquid phase is considered to be the centrifuged and 0.45 micron filtered supernatant remaining after one hour undisturbed settling of the mixture resulting from a vigorous 30-minute agitation of one part bottom sediment from the dredging site with four parts water (vol/vol) collected from the dredging site or from the disposal site, as appropriate for the type of dredging operation. The suspended particulate phase is the supernatant as obtained above prior to centrifugation and filtration. The solid phase is considered to be all material settling to

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the bottom within one hour. Settling shall be conducted by procedures approved by EPA and the Corps of Engineers.

(2) For other materials, the proportion of ocean water used shall be the minimum amount necessary to produce the anticipated effect (e.g., complete neutralization of an acid or alkaline waste) based on guidance provided by EPA on particular cases, or in accordance with approved EPA procedures. For such materials the liquid phase is the filtered and centrifuged supernatant resulting from the mixture after 30 minutes of vigorous shaking followed by undisturbed settling for one hour. The suspended particulate phase is the supernatant as obtained above prior to centrifugation and filtration. The solid phase is the insoluble material settling to the bottom in that period.

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requirements for effective management of ocean disposal sites to prevent unreasonable degradation of the marine environment from all wastes being dumped in the ocean. This Part 228 is applicable to dredged material disposal sites only as specified in §§ 228.4(e), 228.9, and 228.12.

§ 228.2 Definitions.

(a) The term "disposal site" means an interim or finally approved and precise geographical area within which ocean dumping of wastes is permitted under conditions specified in permits issued under sections 102 and 103 of the Act. Such sites are identified by boundaries established by (1) coordinates of latitude and longitude for each corner, or by (2) coordinates of latitude and longitude for the center point and a radius in nautical miles from that point. Boundary coordinates shall be identified as precisely as is warranted by the accuracy with which the site can be located with existing navigational aids or by the implantation of transponders, buoys or other means of marking the site.

(b) The term "baseline" or "trend assessment" survey means the planned sampling or measurement of parameters at set stations or in set areas in and near disposal sites for a period of time sufficient to provide synoptic data for determining water quality, benthic, or biological conditions as a result of ocean disposal operations. The minimum requirements for such surveys are given in § 228.13.

(c) The term "disposal site evaluation study" means the collection, analysis, and interpretation of all pertinent information available concerning an existing disposal site, including but not limited to, data and information from trend assessment surveys, monitoring surveys, special purpose surveys of other Federal agencies, public data archives, and social and economic studies and records of affected areas.

(d) The term "disposal site designation study" means the collection, analysis and interpretation of all available pertinent data and information on a proposed disposal site prior to use, including but not limited to, that from

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

Sec.

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- 228.5 General criteria for the selection of sites.
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- 228.9 Disposal site monitoring.
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- 228.11 Modification in disposal site use.
- 228.12 Delegation of management authority for interim ocean dumping sites.
- 228.13 Guidelines for ocean disposal site baseline or trend assessment surveys under section 102 of the Act.

AUTHORITY: 33 U.S.C. 1412 and 1418.

SOURCE: 42 FR 2482, Jan. 11, 1977, unless otherwise noted.

§ 228.1 Applicability.

The criteria of this Part 228 are established pursuant to section 102 of the Act and apply to the evaluation of proposed ocean dumping under Title I of the Act. The criteria of this Part 228 deal with the evaluation of the proposed dumping of material in ocean waters in relation to continuing

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baseline surveys, special purpose surveys of other Federal agencies, public data archives, and social and economic studies and records of areas which would be affected by use of the proposed site.

(e) The term "management authority" means the EPA organizational entity assigned responsibility for implementing the management functions identified in § 228.3.

(f) "Statistical significance" shall mean the statistical significance determined by using appropriate standard techniques of multivariate analysis with results interpreted at the 95 percent confidence level and based on data relating species which are present in sufficient numbers at control areas to permit a valid statistical comparison with the areas being tested.

(g) "Valuable commercial and recreational species" shall mean those species for which catch statistics are compiled on a routine basis by the Federal or State agency responsible for compiling such statistics for the general geographical area impacted, or which are under current study by such Federal or State agencies for potential development for commercial or recreational use.

(h) "Normal ambient value" means that concentration of a chemical species reasonably anticipated to be present in the water column, sediments, or biota in the absence of disposal activities at the disposal site in question.

§ 228.3 Disposal site management responsibilities.

(a) Management of a site consists of regulating times, rates, and methods of disposal and quantities and types of materials disposed of; developing and maintaining effective ambient monitoring programs for the site; conducting disposal site evaluation and designation studies; and recommending modifications in site use and/or designation (e.g., termination of use of the site for general use or for disposal of specific wastes).

(b) Each site, upon interim or continuing use designation, will be assigned to either an EPA Regional office or to EPA Headquarters for management. These designations will

be consistent with the delegation of authority in § 220.4. The designated management authority is fully responsible for all aspects of the management of sites within the general requirements specified in § 220.4 and this section. Specific requirements for meeting the management responsibilities assigned to the designated management authority for each site are outlined in §§ 228.5 and 228.6.

§ 228.4 Procedures for designation of sites.

(a) *General Permits.* Geographical areas or regions within which materials may be dumped under a general permit will be published as part of the promulgation of each general permit.

(b) *Special and Interim Permits.* Areas where ocean dumping is permitted subject to the specific conditions of individual special or interim permits, will be designated by promulgation in this Part 228, and such designation will be made based on environmental studies of each site, regions adjacent to the site, and on historical knowledge of the impact of waste disposal on areas similar to such sites in physical, chemical, and biological characteristics. All studies for the evaluation and potential selection of dumping sites will be conducted in accordance with the requirements of §§ 228.5 and 228.6.

The Administrator may, from time to time, designate specific locations for temporary use for disposal of small amounts of materials under a special permit only without disposal site designation studies when such materials satisfy the Criteria and the Administrator determines that the quantities to be disposed of at such sites will not result in significant impact on the environment. Such designations will be done by promulgation in this Part 228, and will be for a specified period of time and for specified quantities of materials.

(c) *Emergency Permits.* Dumping sites for materials disposed of under an emergency permit will be specified by the Administrator as a permit condition and will be based on an individual appraisal of the characteristics of

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the waste and the safest means for its disposal.

(d) *Research Permits.* Dumping sites for research permits will be determined by the nature of the proposed study. Dumping sites will be specified by the Administrator as a permit condition.

(e) *Dredged Material Permits.*

(1) Areas where ocean dumping of dredged material is permitted subject to the specific conditions of Dredged Material permits issued by the U.S. Army Corps of Engineers will be designated by EPA promulgation in this Part 228, and such designation will be made based on environmental studies of each site, regions adjacent to the site, and on historical knowledge of the impact of dredged material disposal on areas similar to such sites in physical, chemical, and biological characteristics. All studies for the evaluation and potential selection of dredged material disposal sites will be conducted in accordance with the appropriate requirements of §§ 228.5 and 228.6, except that:

(i) Baseline or trend assessment requirements may be developed on a case-by-case basis from the results of research, including that now in progress by the Corps of Engineers.

(ii) An environmental impact assessment for all sites within a particular geographic area may be prepared based on complete disposal site designation or evaluation studies on a typical site or sites in that area. In such cases, sufficient studies to demonstrate the generic similarity of all sites within such a geographic area will be conducted.

(2) In those cases where a recommended disposal site has not been designated by the Administrator, or where it is not feasible to utilize a recommended disposal site that has been designated by the Administrator, the District Engineer shall, in consultation with EPA, select a site in accordance with the requirements of §§ 228.5 and 228.6(a). Concurrence by EPA in permits issued for the use of such site for the dumping of dredged material at the site will constitute EPA approval of the use of the site for dredged material disposal only.

(3) Sites designated for the ocean dumping of dredged material in accordance with the procedures of paragraph (e)(1) or (2) of this section shall be used only for the ocean dumping of dredged material under permits issued by the U.S. Army Corps of Engineers.

§ 228.5 General criteria for the selection of sites.

(a) The dumping of materials into the ocean will be permitted only at sites or in areas selected to minimize the interference of disposal activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation.

(b) Locations and boundaries of disposal sites will be so chosen that temporary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

(c) If at any time during or after disposal site evaluation studies, it is determined that existing disposal sites presently approved on an interim basis for ocean dumping do not meet the criteria for site selection set forth in §§ 228.5 through 228.6, the use of such sites will be terminated as soon as suitable alternate disposal sites can be designated.

(d) The sizes of ocean disposal sites will be limited in order to localize for identification and control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. The size, configuration, and location of any disposal site will be determined as a part of the disposal site evaluation or designation study.

(e) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have been historically used.

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§ 228.6 Specific criteria for site selection.

(a) In the selection of disposal sites, in addition to other necessary or appropriate factors determined by the Administrator, the following factors will be considered:

(1) Geographical position, depth of water, bottom topography and distance from coast;

(2) Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases;

(3) Location in relation to beaches and other amenity areas;

(4) Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any;

(5) Feasibility of surveillance and monitoring;

(6) Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any;

(7) Existence and effects of current and previous discharges and dumping in the area (including cumulative effects);

(8) Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean;

(9) The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys;

(10) Potentiality for the development or recruitment of nuisance species in the disposal site;

(11) Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

(b) The results of a disposal site evaluation and/or designation study based on the criteria stated in paragraphs (b) (1) through (11) of this section will be presented in support of the site designation promulgation as an environmental assessment of the impact of the use of the site for disposal, and will be used in the preparation of an environmental impact statement for each site where such a statement is required by EPA policy. By publication of a notice in accordance with this Part 228, an environmental

impact statement, in draft form, will be made available for public comment not later than the time of publication of the site designation as proposed rulemaking, and a final EIS will be made available at the time of final rulemaking.

§ 228.7 Regulation of disposal site use.

Where necessary, disposal site use will be regulated by setting limitations on times of dumping and rates of discharge, and establishing a disposal site monitoring program.

§ 228.8 Limitations on times and rates of disposal.

Limitations as to time for and rates of dumping may be stated as part of the promulgation of site designation. The times and the quantities of permitted material disposal will be regulated by the EPA management authority so that the limits for the site as specified in the site designation are not exceeded. This will be accomplished by the denial of permits for the disposal of some materials, by the imposition of appropriate conditions on other permits and, if necessary, the designation of new disposal sites under the procedures of § 228.4. In no case may the total volume of material disposed of at any site under special or interim permits cause the concentration of the total materials or any constituent of any of the materials being disposed of at the site to exceed limits specified in the site designation.

§ 228.9 Disposal site monitoring.

(a) The monitoring program, if deemed necessary by the Regional Administrator or the District Engineer, as appropriate, may include baseline or trend assessment surveys by EPA, NOAA, other Federal agencies, or contractors, special studies by permittees, and the analysis and interpretation of data from remote or automatic sampling and/or sensing devices. The primary purpose of the monitoring program is to evaluate the impact of disposal on the marine environment by referencing the monitoring results to a set of baseline conditions. When disposal sites are being used on a continu-

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ing basis, such programs may consist of the following components:

(1) Trend assessment surveys conducted at intervals frequent enough to assess the extent and trends of environmental impact. Until survey data or other information are adequate to show that changes in frequency or scope are necessary or desirable, trend assessment and baseline surveys should generally conform to the applicable requirements of § 228.13. These surveys shall be the responsibility of the Federal government.

(2) Special studies conducted by the permittee to identify immediate and short-term impacts of disposal operations.

(b) These surveys may be supplemented, where feasible and useful, by data collected from the use of automatic sampling buoys, satellites or in situ platforms, and from experimental programs.

(c) EPA will require the full participation of permittees, and encourage the full participation of other Federal and State and local agencies in the development and implementation of disposal site monitoring programs. The monitoring and research programs presently supported by permittees may be incorporated into the overall monitoring program insofar as feasible.

§ 228.10 Evaluating disposal impact.

(a) Impact of the disposal at each site designated under section 102 of the Act will be evaluated periodically and a report will be submitted as appropriate as part of the Annual Report to Congress. Such reports will be prepared by or under the direction of the EPA management authority for a specific site and will be based on an evaluation of all data available from baseline and trend assessment surveys, monitoring surveys, and other data pertinent to conditions at and near a site.

(b) The following types of effects, in addition to other necessary or appropriate considerations, will be considered in determining to what extent the marine environment has been impacted by materials disposed of at an ocean disposal site:

(1) Movement of materials into estuaries or marine sanctuaries, or onto oceanfront beaches, or shorelines;

(2) Movement of materials toward productive fishery or shellfishery areas;

(3) Absence from the disposal site of pollution-sensitive biota characteristic of the general area;

(4) Progressive, non-seasonal, changes in water quality or sediment composition at the disposal site, when these changes are attributable to materials disposed of at the site;

(5) Progressive, non-seasonal, changes in composition or numbers of pelagic, demersal, or benthic biota at or near the disposal site, when these changes can be attributed to the effects of materials disposed of at the site;

(6) Accumulation of material constituents (including without limitation, human pathogens) in marine biota at or near the site.

(c) The determination of the overall severity of disposal at the site on the marine environment, including without limitation, the disposal site and adjacent areas, will be based on the evaluation of the entire body of pertinent data using appropriate methods of data analysis for the quantity and type of data available. Impacts will be categorized according to the overall condition of the environment of the disposal site and adjacent areas based on the determination by the EPA management authority assessing the nature and extent of the effects identified in paragraph (b) of this section in addition to other necessary or appropriate considerations. The following categories shall be used:

(1) *Impact Category I*: The effects of activities at the disposal site shall be categorized in Impact Category I when one or more of the following conditions is present and can reasonably be attributed to ocean dumping activities;

(i) There is identifiable progressive movement or accumulation, in detectable concentrations above normal ambient values, of any waste or waste constituent from the disposal site within 12 nautical miles of any shoreline, marine sanctuary designated under Title III of the Act, or critical area

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designated under section 102(c) of the Act; or

(ii) The biota, sediments, or water column of the disposal site, or of any area outside the disposal site where any waste or waste constituent from the disposal site is present in detectable concentrations above normal ambient values, are adversely affected by the toxicity of such waste or waste constituent to the extent that there are statistically significant decreases in the populations of valuable commercial or recreational species, or of specific species of biota essential to the propagation of such species, within the disposal site and such other area as compared to populations of the same organisms in comparable locations outside such site and area; or

(iii) Solid waste material disposed of at the site has accumulated at the site or in areas adjacent to it, to such an extent that major uses of the site or of adjacent areas are significantly impaired and the Federal or State agency responsible for regulating such uses certifies that such significant impairment has occurred and states in its certificate the basis for its determination of such impairment; or

(iv) There are adverse effects on the taste or odor of valuable commercial or recreational species as a result of disposal activities; or

(v) When any toxic waste, toxic waste constituent, or toxic byproduct of waste interaction, is consistently identified in toxic concentrations above normal ambient values outside the disposal site more than 4 hours after disposal.

(2) *Impact Category II:* The effects of activities at the disposal site which are not categorized in Impact Category I shall be categorized in Impact Category II.

§ 228.11 Modification in disposal site use.

(a) Modifications in disposal site use which involve the withdrawal of designated disposal sites from use or permanent changes in the total specified quantities or types of wastes permitted to be discharged to a specific disposal site will be made through promulgation of an amendment to the disposal site designation set forth in this Part 228 and will be based on the results of

the analyses of impact described in § 228.10 or upon changed circumstances concerning use of the site.

(b) Modifications in disposal site use promulgated pursuant to paragraph (a) of this section shall not automatically modify conditions of any outstanding permit issued pursuant to this Subchapter H, and provided further that unless the EPA management authority for such site modifies, revokes or suspends such permit or any of the terms or conditions of such permit in accordance with the provisions of § 232.2 based on the results of impact analyses as described in § 228.10 or upon changed circumstances concerning use of the site, such permit will remain in force until its expiration date.

(c) When the EPA management authority determines that activities at a disposal site have placed the site in Impact Category I, the Administrator or the Regional Administrator, as the case may be, shall place such limitations on the use of the site as are necessary to reduce the impacts to acceptable levels.

(d) The determination of the Administrator as to whether to terminate or limit use of a disposal site will be based on the impact of disposal at the site itself and on the Criteria.

[42 FR 2482, Jan. 11, 1977; 43 FR 1071, Jan. 6, 1978]

§ 228.12 Delegation of management authority for interim ocean dumping sites.

(a) The following sites are approved for dumping the indicated materials on an interim basis pending completion of baseline or trend assessment surveys and designation for continuing use or termination of use. Management authority for all sites is delegated to the EPA organizational entity under which each site is listed. The sizes and use specifications are based on historical usage and do not necessarily meet the criteria stated in this part.

(1) The following sites for disposal of dredged material under Corps of Engineers permits under section 103 of the Act will remain in force according to the following schedule:

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(i) Until such time as formal rule-making is completed or until December 31, 1988, whichever is sooner:

- (A) Morehead City, NC.
- (B) Georgetown, SC.
- (C) Pascagoula, MS.
- (D) Humboldt Bay, CA.
- (E) Long Beach, CA.
- (F) San Diego, CA (2 sites).
- (G) New Jersey/Long Island Sites (8 sites): Absecon Inlet, NJ; Cold Spring Inlet, NJ; Manasquan Inlet, NJ; East Rockaway, NY; Jones Inlet, NY; Fire Island, NY; Shark River, NJ; and Rockaway Inlet, NY.
- (H) Gulfport/Mobile/Pensacola (4 sites): Mobile, AL; Gulfport, MS (2 sites); and Pensacola, FL.

(ii) Until such time as formal rule-making is completed or until July 31, 1988, whichever is sooner:

- (A) Portland, ME.
- (B) San Juan, PR.
- (C) [Reserved]

(D) [Reserved]

(F)-(J) [Reserved]

(L) San Juan, PR.

(M) Charleston/Savannah/Wilmington (3 sites): Wilmington Harbor, NC; Charleston Harbor, SC; and Savannah River, GA.

(N) [Reserved]

(O) Mouth of Columbia River, OR (5 sites).

(2) The interim designations of the following sites are terminated effective immediately:

(i) Both Region I industrial waste sites.

(ii) Region II wreck site.

(iii) Region III acid wastes site.

(iv) Region IV industrial wastes site.

(v) The Region VI industrial waste site located at 28d 00' to 28d 10' N, and 89d 15' to 89d 30' W.

(vi) Port Mansfield Channel Disposal Area 1-A.

(3) The interim designations of all other dredged material sites listed in § 228.12(a) and the Region II wood incineration site are extended indefinitely, pending completion of the present studies and determination of the need for continuing use of these sites, the completion of any necessary studies, and evaluation of their suitability. Designation studies for particular sites within this group will begin as soon as feasible after the completion of nearby sites presently being studied.

Amended 9/10/87
52 FR 34222

Amended 8/21/86
51 FR 29931

Amended 7/2/87
52 FR 25011

Amended 9/10/87
52 FR 34222

Amended 8/21/86
51 FR 29927
Amended 9/24/87
52 FR 35917

APPROVED INTERIM DUMPING SITES

Location (latitude, longitude)	EPA region	Primary use
43°33'00" N., 69°55'00" W., 1 nautical mile radius	I	Industrial wastes.
42°25'42" N., 70°35'00" W., 1 nautical mile radius	I	Do.
40°22'30" N. to 40°25'00" N., 73°41'30" W. to 78°45'00" W.	II	Municipal sewage sludge.
40°16'00" N. to 40°20'00" N., 73°36'00" W. to 73°40'00" W.	II	Acid wastes.
40°23'00" N., 73°49'00" W., 0.6 nautical mile radius	II	Cellar dirt.
40°10'00" N., 73°42'00" W., 0.5 nautical mile radius	II	Wrecks.
19°10'00" N. to 19°20'00" N., 66°35'00" W. to 66°50'00" W.	II	Industrial wastes.
38°30'00" N. to 38°35'00" N., 74°15'00" W. to 74°25'00" W.	III	Acid wastes.
38°20'00" N. to 38°25'00" N., 74°10'00" W. to 74°20'00" W.	III	Municipal sewage sludge.
31°46'00" N., 80°30'00" W., 31°47'06" N., 80°29'00" W., 31°48'00" N., 80°30'30" W., 31°46'30" N., 80°32'00" W.	IV	Industrial wastes.
27°12'00" N. to 27°28'00" N., 94°28'00" W. to 94°44'00" W.	VI	Do.
28°00'00" N. to 28°10'00" N., 89°15'00" W. to 89°30'00" W.	VI	Do.
40°00'00" N. to 40°04'20" N., 73°41'00" W. to 73°38'10" W.	II	Incineration of wood.

DREDGED MATERIAL SITES

(All dredged material sites will be retained under EPA Headquarters management until formally approved for continuing use or otherwise assigned for Regional management prior to such designation.)

LOCATION (LAT., LONG.)

Newburyport, MA—42°48'50" N., 70°47'00" W.; (½ N. Mi. square).
Marblehead, MA—42°25'42" N., 70°34'00" W. (2 N. Mi. diameter).
Boston, MA—41°49'00" N., 70°25'00" W. (1 N. Mi. diameter).

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Portland, ME—43°32'18" N., 70°06'06" W. (1 Mi. diameter).
Cape Arundel, ME—43°17'45" N., 70°27'12" W. (500 yds. diameter).
Absecon Inlet—39°21'07" N., 74°23'40" W.; 39°21'18" N., 74°23'53" W.
Cold Spring Inlet—38°55'41" N., 74°53'05" W.; 38°55'33" N., 74°53'23" W.
Manasquan Inlet—40°06'22" N., 74°01'46" W.; 40°06'38" N., 74°01'39" W.
East Rockaway—40°34'36" N., 73°49'00" W.; 40°35'06" N., 73°47'06" W.; 40°34'10" N., 73°48'36" W.; 40°34'12" N., 73°47'17" W.
Jones Inlet—40°34'32" N., 73°39'14" W.; 40°34'32" N., 73°37'06" W.; 40°33'48" N., 73°37'06" W.; 40°33'48" N., 73°39'14" W.
Fire Island—40°36'49" N., 73°23'50" W.; 40°37'12" N., 73°21'30" W.; 40°36'41" N., 73°21'20" W.; 40°36'10" N., 73°23'40" W.
Mud Dump—40°23'48" N., 73°51'28" W.; 40°21'48" N., 73°50'00" W.; 40°21'48" N., 73°51'28" W.; 40°23'48" N., 73°50'00" W.
Shark River—40°12'48" N., 73°59'45" W.; 40°12'44" N., 73°59'06" W.; 40°11'36" N., 73°59'28" W.; 40°11'42" N., 74°00'12" W.
Rockaway Inlet—40°32'30" N., 73°55'00" W.; 40°32'30" N., 73°54'00" W.; 40°32'00" N., 73°54'00" W.; 40°32'00" N., 73°55'00" W.
San Juan Harbor, PR—18°30'10" N., 66°09'31" W.; 18°30'10" N., 66°08'29" W.; 18°31'10" N., 66°08'29" W.; 18°31'10" N., 66°09'31" W.
Mayaguez Harbor, PR—18°15'30" N., 67°14'31" W.; 18°15'30" N., 67°13'29" W.; 18°14'30" N., 67°13'29" W.; 18°14'30" N., 67°14'31" W.
Arecibo Harbor, PR—18°30'00" N., 66°42'45" W.; 18°30'00" N., 66°43'47" W.; 18°31'00" N., 66°43'47" W.; 18°31'00" N., 66°42'45" W.
Ponce Harbor, PR—17°55'30" N., 66°38'29" W.; 17°55'30" N., 66°39'31" W.; 17°54'30" N., 66°38'29" W.; 17°54'30" N., 66°39'31" W.
Yabucoa Harbor, PR—18°00'54" N., 65°44'23" W.; 18°01'33" N., 65°45'58" W.; 18°03'12" N., 65°45'42" W.; 18°02'30" N., 65°43'43" W.
Dam Neck—36°50'06" N., 75°53'17" W.; 36°46'28" N., 75°53'17" W.; 36°46'28" N., 75°54'19" W.; 36°50'05" N., 75°54'19" W.
Wilmington Harbor, NC—Hopper dredge disposal in area east of a line beginning 33°50'00" and 78°02'30" to 33°48'45" and 78°04'00" to 33°45'00" and 78°05'00".

Port Royal Harbor—32°05'46" N., 80°35'30" W.; 32°05'42" N., 80°36'27" W.; 32°04'22" N., 80°36'16" W.; 32°04'27" N., 80°35'18" W.
Brunswick Harbor—Atlantic outlet, Ga., St. Simons Sound, Brunswick Harbor Bar Channel, maintenance dredging disposal area 1 nautical mile wide by 2 nautical miles long adjacent to the channel located on the south side of the entrance and being 6.6 nautical miles from shore at a point of beginning at 31°02'35" N. and 81°17'40" W., thence due east to 31°02'35" N. and 81°16'30" W., thence due south to 31°00'30" N. and 81°16'30" W., thence due west to 31°00'30" N. and 81°17'40" W., thence due north to the point of beginning.
Savannah River—Atlantic outlet, Ga., Savannah River Bar Channel, maintenance dredging disposal area 2 nautical miles wide by 2 nautical miles long adjacent to the channel, located on the southeast side and being 6 nautical miles from shore at point of beginning at 31°57'55" N. and 80°46'48" W., thence due east to 31°57'55" N. and 80°44'20" W., thence due south to 31°55'53" N. and 80°46'48" W., thence northward to the point of beginning.
Canaveral Harbor—28°19'53" N., 80°31'08" W.; 28°18'50" N., 80°29'40" W.; 28°17'35" N., 80°30'52" W.; 28°18'38" N., 80°32'20" W.
Fort Pierce Harbor—27°28'30" N., 80°12'33" W.; 27°28'30" N., 80°11'27" W.; 27°27'30" N., 80°11'27" W.; 27°27'30" N., 80°12'33" W.
Jacksonville Harbor—30°21'30" N., 81°18'34" W.; 30°21'30" N., 81°17'26" W.; 30°20'30" N., 81°17'26" W.; 30°20'30" N., 81°18'34" W.
Miami Beach—25°45'30" N., 80°03'54" W.; 25°45'30" N., 80°02'50" W.; 25°44'30" N., 80°02'50" W.; 25°44'30" N., 80°03'54" W.
Palm Beach Harbor—26°46'10" N., 80°02'00" W.; 26°45'54" N., 80°02'06" W.; 26°45'54" N., 80°02'13" W.; 26°46'10" N., 80°02'07" W.
Port Everglades Harbor—26°07'00" N., 80°04'30" W.; 26°07'00" N., 80°03'30" W.; 26°06'00" N., 80°03'30" W.; 26°06'00" N., 80°04'30" W.

Amended 8/12/87
52 FR 29846

Amended 8/14/87
52 FR 30362

Georgetown Harbor—33°11'18" N., 79°07'20" W.; 33°11'18" N., 79°05'23" W.; 33°10'38" N., 79°07'21" W.; 33°10'38" N., 79°07'21" W.
Charleston Harbor—32°38'06" N., 79°41'57" W.; 32°40'42" N., 79°47'30" W.; 32°39'04" N., 79°49'21" W.; 32°36'28" N., 79°43'48" W.
Port Royal Harbor—32°10'11" N., 80°36'00" W.; 32°10'06" N., 80°36'35" W.; 32°08'38" N., 80°36'23" W.; 32°08'41" N., 80°35'49" W.

Charlotte Harbor—26°37'36" N., 82°19'55" W.; 26°37'36" N., 82°18'47" W.; 26°36'36" N., 82°18'47" W.; 26°36'36" N., 82°19'55" W.
Tampa Harbor—27°38'08" N., 82°55'06" W.; 27°38'08" N., 82°54'00" W.; 27°37'08" N., 82°54'00" W.; 27°37'08" N., 82°55'06" W.

Amended 2/27/87
52 FR 5967

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Tampa Harbor—27°37'28" N., 83°00'09" W.;
27°37'34" N., 82°59'19" W.; 27°36'43" N.,
82°59'13" W.; 27°36'37" N., 83°00'03" W.

Amended 2/27/87
52 FR 5461

Amended 8/12/87
52 FR 29846

Amended 2/27/87
52 FR 5967

Palm Beach Harbor—26°46'00" N., 79°58'55"
W.; 26°46'00" N., 79°57'47" W.; 26°45'00" N.,
79°57'47" W.; 26°45'00" N., 79°58'55" W.

Amended 2/27/87
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Key West—24°27'24" N., 81°45'38" W.;
24°27'24" N., 81°44'32" W.; 24°26'20" N.,
81°44'32" W.; 24°26'20" N., 81°45'38" W.

Amended 2/27/87
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Mobile, AL—30°10.0' N., 88°07.7' W.; 30°10.4'
N., 88°05.2' W.; 30°09.4' N., 88°04.7' W.;
30°08.5' N., 88°05.2' W.; 30°08.5' N., 88°08.2'
W.

Pascagoula, MS—30°11.9' N., 88°33.1' W.;
30°11.9' N., 88°32.3' W.; 30°11.6' N., 88°32.4'
W.; 30°11.6' N., 88°32.1' W.; 30°10.5' N.,
88°33.2' W.; 30°10.6' N., 88°34.0' W.

Gulfport, MS—30°12.0' N., 89°00.5' W.;
30°12.0' N., 88°59.5' W.; 30°11.0' N., 89°00.0'
W.; 30°07.0' N., 88°56.5' W.; 30°06.6' N.,
88°57.0' W.; 30°10.5' N., 89°00.6' W.

Gulfport, MS—30°11.3' N., 88°58.4' W.;
30°11.2' N., 88°57.5' W.; 30°07.6' N., 88°54.4'
W.; 30°07.4' N., 88°54.8' W.

Pensacola, FL—30°16.8' N., 87°19.0' W.;
30°16.7' N., 87°18.3' W.; 30°16.3' N., 87°18.2'
W.; 30°16.0' N., 87°19.4' W.; 30°16.5' N.,
87°19.4' W.

Panama City, FL—30°07.1' N., 85°45.9' W.;
30°07.2' N., 85°45.5' W.; 30°06.9' N., 85°45.1'
W.; 30°06.7' N., 85°45.6' W.

Port St. Joe, FL—29°50.9' N., 85°29.9' W.;
29°51.3' N., 85°29.5' W.; 29°49.2' N., 85°28.2'
W.; 29°49.0' N., 85°28.8' W.

Port St. Joe, FL—29°53.9' N., 85°31.8' W.;
29°54.1' N., 85°31.3' W.; 29°52.2' N., 85°30.1'
W.; 29°52.2' N., 85°30.8' W.

SABINE-NECHES WATERWAY, TEXAS

Disposal Area No. 1—Beginning at lat.
29°28'03", long. 93°41'14"; thence to lat.
29°26'11", long. 93°41'14"; thence to lat.
29°26'11", long. 93°44'11"; thence to point
of beginning.

Disposal Area No. 2—Beginning at lat.
29°30'41", long. 93°43'49"; thence to lat.
29°28'42", long. 93°41'33"; thence to lat.
29°28'42", long. 93°44'49"; thence to lat.
29°30'08", long. 93°46'27"; thence to point
of beginning.

Disposal Area No. 3—Beginning at lat.
29°34'24", long. 93°48'13"; thence to lat.
29°32'47", long. 93°46'16"; thence to lat.
29°32'06", long. 93°46'29"; thence to lat.
29°31'42", long. 93°48'16"; thence to lat.
29°32'59", long. 93°49'48"; thence to point
of beginning.

Disposal Area No. 4—Beginning at lat.
29°38'09", long. 93°49'23"; thence to lat.
29°35'53", long. 93°48'18"; thence to lat.
29°35'06", long. 93°50'24"; thence to lat.
29°36'37", long. 93°51'09"; thence to lat.
29°37'00", long. 93°50'06"; thence to lat.
29°37'46", long. 93°50'26"; thence to point
of beginning.

GALVESTON HARBOR AND CHANNEL, TEXAS

Disposal Area No. 1—Beginning at lat.
29°18'00", long. 94°39'30"; thence to lat.
29°15'54", long. 94°37'06"; thence to lat.
29°14'24", long. 94°38'42"; thence to lat.
29°16'54", long. 94°41'30"; thence to point
of beginning.

FREEPORT HARBOR, TEXAS

Disposal Area No. 1—Beginning at lat.
28°54'42", long. 95°17'38"; thence to lat.
28°54'43", long. 95°16'54"; thence to lat.
28°53'48", long. 95°17'27"; thence to lat.
28°54'21", long. 95°18'03"; thence to point
of beginning.

MATAGORDA SHIP CHANNEL

Disposal Area No. 1—Beginning at lat.
28°24'31", long. 96°18'48"; thence to lat.
28°23'27", long. 96°17'38"; thence to lat.
28°23'15", long. 96°17'54"; thence to lat.
28°24'18", long. 96°19'03"; thence to point
of beginning.

CORPUS CHRISTI SHIP CHANNEL

Disposal Area No. 1—Beginning at lat.
27°49'34", long. 97°01'51"; thence to lat.
27°48'28", long. 96°59'49"; thence to lat.
27°48'18", long. 96°59'56"; thence to lat.
27°49'23", long. 97°01'58"; thence to point
of beginning.

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PORT MANSFIELD CHANNEL

Disposal Area No. 1—Beginning at lat. 26°34'09", long. 97°15'52"; thence to lat. 26°34'09", long. 97°15'18"; thence to lat. 26°33'57", long. 97°15'18"; thence to lat. 26°33'57", long. 97°15'52"; thence to point of beginning.

Disposal Area No. 1-A—Beginning at lat. 26°34'17", long. 97°16'12"; thence to lat. 26°34'18", long. 97°15'55"; thence to lat. 26°33'59", long. 97°15'52"; thence to lat. 26°33'58", long. 97°16'11"; thence to point of beginning.

BRAZOS ISLAND HARBOR

Disposal Area No. 1—Beginning at lat. 26°04'38", long. 97°07'52"; thence to lat. 26°04'38", long. 97°07'42"; thence to lat. 26°04'05", long. 97°06'42"; thence to lat. 26°04'05", long. 97°07'52"; thence to point of beginning.

Mississippi River, Gulf Outlet, La.—Breton Sound and Bar Channel. Maintenance dredging disposal area 0.5 mile wide by 12.5 miles long, parallel to the channel and located on the south side. Beginning at 29°32'23" N. and 89°12'20" W., following channel centerline (azimuth 308°47') in Breton Sound to 29°29'15" N. and 89°07'06" W., following centerline (azimuth 300°36') of the gulf entrance channel to 29°25'06" N. and 88°59'54" W., thence to 29°24'45" N. and 89°00'09" W., thence to 29°28'53" N. and 89°08'08" W., thence to 29°31'41" N. and 89°12'09" W., thence to the point of beginning.

Mississippi River, Baton Rouge to the Gulf of Mexico, La.—South Pass. Maintenance dredging disposal area 0.5 mile square, parallel to the channel and located on the west side. Beginning at 28°58'33" N. and 89°07'00" W., following channel centerline (azimuth 295°41') of the gulf entrance channel to 28°58'24" N. and 89°06'30" W., thence to 28°57'54" N. and 89°06'42" W., thence to 28°58'06" N. and 89°07'18" W., thence to the point of beginning.

Mississippi River, Baton Rouge to the Gulf of Mexico, La.—Southwest Pass. Maintenance dredging disposal area 2 miles square, parallel to the channel and located on the west side. Beginning at 28°54'24" N. and 89°26'03" W., following channel centerline (azimuth 0°09') of the gulf entrance channel to 28°52'18" N. and 89°26'03" W., thence to 28°52'18" N. and 89°27'48" W., thence to 28°54'24" N. and 89°27'48" W., thence to the point of beginning.

Mississippi River Outlets, Venice, La.—Tiger Pass. Maintenance dredging disposal area 0.5 mile wide by 2.5 miles long, parallel and adjacent to the channel and located on the south side. Beginning at 29°08'24" W. and 89°25'35" N. following 270° azimuth to 29°08'24" W. and 89°28'05" N., thence to

29°07'54" W. and 89°28'05" N., thence to 29°07'54" W. and 89°25'35" N., thence to the point of beginning.

Waterway from Empire, La. to the Gulf of Mexico—Bar channel. Maintenance dredging disposal area 0.5 mile wide by 1 mile long, parallel to the channel and located on the west side. Beginning at 29°15'06" N. and 89°36'30" W., following channel centerline (azimuth 11°08') of the gulf entrance channel to 29°14'30" N. and 89°36'36" W., thence to 29°14'36" N. and 89°36'48" W., thence to 29°15'12" N. and 89°36'42" W., thence to the point of beginning.

Barataria Bay Waterway, La.—Bar channel. Maintenance dredging disposal area 0.5 mile wide by 2 miles long, parallel to the channel and located on the east side 1,500 feet distance from the channel. Beginning at 29°16'13" N. and 89°55'54" W., following azimuth 312°07' to 29°14'45" N. and 89°54'05" W., thence to 29°14'30.5" N. and 89°53'45" W., thence to 29°15'54" N. and 89°55'34", thence to the point of beginning.

Bayou Lafourche and Lafourche—Jump Waterway, La.—Bell Pass. Maintenance dredging disposal area 2,000 feet wide by 1.5 miles long, parallel to the channel and located on the west side. Beginning at 29°05'00" N. and 90°13'45" W., following Bell Pass centerline (azimuth 12°55') in the gulf entrance channel to 29°03'51" N. and 90°14'06" W., thence to 29°03'57" N. and 90°14'21" W., thence to 29°05'06" N. and 90°14'03" W., thence to the point of beginning.

Houma Navigation Canal, La.—Cat Island Pass. Maintenance dredging disposal area approximately 0.5 miles wide by 5 miles long parallel to the Cat Island Channel and located on the west side 1,000 feet from the channel centerline. Beginning at 29°05'30" N. and 90°34'41" W., following azimuth 358°41' to 29°03'39.5" N. and 90°34'38.5" W., following azimuth 354° to 29°01'10" N. and 90°34'20" W., thence to 29°01'10" N. and 90°34'54" W., thence to 29°03'39.5" N. and 90°35'12" W., thence to 29°05'30" N. and 90°35'14" W., thence to the point of beginning.

Atchafalaya River—Morgan City to the Gulf of Mexico, La. and Atchafalaya River and Bayous Chene, Boeuf and Black, La.—Bar channel. Maintenance dredging disposal area 0.5 mile wide by 12 miles long, parallel to the bar channel and located on the east side. Beginning at 29°20'50" N. and 91°24'03" W., following channel centerline (azimuth 37°57') of the gulf entrance channel to 29°11'35" N. and 91°32'10" W., thence to 29°11'21" N. and 91°31'37" W., thence to 29°20'36" N. and 91°23'27" W., thence to the point of beginning.

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Freshwater Bayou, La.—Bar channel. Maintenance dredging disposal area 2,000 feet wide by 3.5 miles long, parallel to the channel and located on the west side. Beginning at 29°32'00" N. and 92°18'48" W., following channel centerline (azimuth 09°25') of the gulf entrance to 29°28'24" N. and 92°19'30" W., thence to 29°28'25" N. and 92°19'42" W., thence to 29°32'01" N. and 92°19'00" W., thence to the point of beginning.

Mermentau River, La. Maintenance dredging disposal areas 0.5 mile wide and 1.5 miles long, parallel to the entrance channels in the Lower Mermentau River and in the Lower Mud Lake, both located on the west side:

Disposal Area "A", Mermentau River, La. Beginning at 29°44'48" N. and 93°07'12" W., following channel centerline (azimuth 256°59') of the gulf entrance to 29°43'39" N. and 93°07'36" W., thence to 29°43'42" N. and 93°07'48" W., thence to 29°44'51" N. and 93°07'24" W., thence to the point of beginning.

Disposal Area "B", Mermentau River, La. Beginning at 29°43'24" N. and 93°01'54" W., following channel centerline (azimuth 359°50') of the gulf centerline to 29°42'33" N. and 93°02'12" W., thence to 29°42'36" N. and 93°02'24" W., thence to 29°43'36" N. and 93°02'06" W., thence to the point of beginning.

Calcasieu River and Pass, La.—Bar channel. Maintenance dredging disposal areas A through G parallel to the channel and located on the east and west side:

Disposal Area "A", Calcasieu River and Pass, La. Maintenance dredging disposal area one mile square parallel to the bar channel on the west bank. Beginning at 29°45'09" N. and 93°20'42" W., following channel centerline (azimuth 351°50') of the first tangent gulfward in the gulf entrance channel to 29°44'39" N. and 93°20'36" W., thence to 29°44'36" N. and 93°21'33" W., thence to 29°45'12" N. and 93°21'42" W., thence to the point of beginning.

Disposal Area "B", Calcasieu River and Pass, La. Maintenance dredging disposal area 1 mile square parallel to the bar channel and located on the east bank. Beginning at 29°45'27" N. and 93°20'33" W., following channel centerline (azimuth 351°50') of the first tangent gulfward in the gulf entrance channel to 29°44'42" N. and 93°20'24" W., thence to 29°44'45" N. and 93°19'30" W., thence to 29°45'39" N. and 93°19'36" W., thence to the point of beginning.

Disposal Area "C", Calcasieu River and Pass, La. Maintenance dredging disposal area 1 mile wide by 5.5 miles long, parallel to the bar channel and located on the west side. Beginning at 29°44'30" N. and 93°20'36" W., following channel centerline (azimuth 351°50') of the first tangent gulfward in the gulf entrance channel to 29°39'48" N. and 93°19'48" W., thence to 29°39'42" N. and 93°20'48" W., thence to 29°44'24" N. and 93°21'30" W., thence to the point of beginning.

Disposal Area "D", Calcasieu River and Pass, La. Maintenance dredging disposal area 1 mile wide by 5.5 miles long, parallel to the bar channel and located on the west side. Beginning at 29°37'48" N. and 93°19'24" W., following channel centerline (azimuth 351°50') of the first tangent gulfward in the gulf entrance channel to 29°37'24" N. and 93°19'24" W., following channel centerline (azimuth 321°37') of the second tangent gulfward in the gulf entrance channel to 29°34'12" N. and 93°16'18" W., thence to 29°33'06" N. and 93°16'16" W., thence to 29°37'24" N. and 93°20'24" W., thence to 29°37'48" N. and 93°20'24" W., thence to the point of beginning.

Disposal Area "E", Calcasieu River and Pass, La. Maintenance dredging disposal area 0.75 mile wide by 6.75 miles long, parallel to the bar channel and located on the west side. Beginning at 29°33'54" N. and 93°16'24" W., following channel centerline (azimuth 321°37') of the second tangent gulfward in the gulf entrance channel to 29°31'00" N. and 93°13'48" W., following channel centerline (azimuth 358°56') of the third tangent gulfward in the gulf entrance channel to 29°29'00" N. and 93°13'42" W., thence to 29°28'54" N. and 93°14'24" W., thence to 29°30'54" N. and 93°14'24" W., thence to 29°33'12" N. and 93°16'36" W., thence to the point of beginning.

Disposal Area "F", Calcasieu River and Pass, La. Maintenance dredging disposal area 0.75 mile wide by 2.5 miles long, parallel to the bar channel and located on the east side. Beginning at 29°44'42" N. and 93°20'12" W., following channel centerline (azimuth 351°50') of the first tangent gulfward in the gulf entrance channel to 29°42'36" N. and 93°19'48" W., thence to 29°42'42" N. and 93°19'06" W., thence to 29°44'48" N. and 93°19'24" W., thence to the point of beginning.

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Disposal Area "G", Calcasieu River and Pass, La. Maintenance dredging disposal area 1 mile wide by 0.5 mile long, parallel to the bar channel and located on the west side. Beginning at 29°44'54" N., and 93°20'36" W., following channel centerline (azimuth 351°50') of the first tangent gulfward in the gulf entrance channel to 29°44'42" N., and 93°20'36" W., thence to 29°44'42" N., and 93°20'48" W., following channel centerline again to 29°44'30" N., and 93°20'42" W., thence to 29°44'24" N., and 93°21'30" W., thence to 29°44'48" N., and 93°21'30" W., thence to the point of beginning.

Crescent City Harbor—41°43'15" N., 124°12'10" W. (1,000 yd. diameter)
Humboldt Bay Harbor—40°45'44" N., 124°15'42" W. (500 yd. diameter)
Noyo River—39°25'45" N., 123°49'42" W. (500 yd. diameter)
Farallon Islands—37°31'45" N., 122°59'00" W. (1,000 yd. radius)
San Francisco Channel Bar—37°45'06" N., 122°35'45" W. (5,000 yds. x 1,000 yds.)
Moss Landing 100 fathom—36°47'53" N., 121°49'04" W. (500 yd. radius)
Moss Landing—36°48'05" N., 121°47'22" W. (50 yds. seaward of pier)
Port Hueneme—34°05'00" N., 119°14'00" W. (1,000 yd. radius)
Los Angeles—33°37'06" N., 118°17'24" W. (1,000 yd. radius)
Newport Beach—33°31'42" N., 117°54'48" W. (1,000 yd. radius)
San Diego—Point Loma—32°35'00" N., 117°17'30" W. (1,000 yd. radius)
San Diego 100 fathom—32°36'50" N., 117°20'40" W. (1,000 yd. radius)
Honolulu Harbor—21°14'30" N., 157°54'30" W. (1,000 yd. radius)
Kauai—Nawiliwili—21°55'30" N., 159°17'00" W. (1,000 yd. radius)
Kauai—Hanapepe—21°50'18" N., 159°35'30" W. (1,000 yd. radius)
Guam—Apra Harbor—13°29'30" N., 144°34'30" E. (1,000 yd. radius)
Mouth of Columbia River—46°14'37" N., 124°10'34" W.; 46°13'53" N., 124°10'01" W.; 46°13'43" N., 124°10'26" W.; 46°14'28" N., 124°10'59" W.
Mouth of Columbia River—46°13'03" N., 124°06'17" W.; 46°12'50" N., 124°05'55" W.; 46°12'13" N., 124°06'43" W.; 46°12'26" N., 124°07'05" W.
Mouth of Columbia River—46°15'43" N., 124°05'21" W.; 46°15'38" N., 124°05'11" W.; 46°15'11" N., 124°05'53" W.; 46°15'18" N., 124°06'03" W.
Mouth of Columbia River—46°12'12" N., 124°09'00" W.; 46°12'00" N., 124°08'42" W.; 46°11'48" N., 124°09'00" W.; 46°12'00" N., 124°09'18" W.
Mouth of Columbia River—46°12'05" N., 124°05'46" W.; 46°11'52" N., 124°05'25" W.; 46°11'15" N., 124°06'14" W.; 46°11'28" N., 124°06'35" W.

Chetco River Entrance—42°01'56" N., 124°16'33" W.; 42°01'56" N., 124°16'09" W.; 42°01'38" N., 124°16'09" W.; 42°01'38" N., 124°16'33" W.
Rogue River Entrance—42°24'16" N., 124°26'48" W.; 42°24'04" N., 124°26'35" W.; 42°23'40" N., 124°27'13" W.; 42°23'52" N., 124°27'26" W.
Coquille River Entrance—43°07'54" N., 124°27'04" W.; 43°07'30" N., 124°26'27" W.; 43°07'20" N., 124°26'40" W.; 43°07'44" N., 124°27'17" W.
Coos Bay Entrance—43°21'59" N., 124°22'45" W.; 43°21'48" N., 124°21'59" W.; 43°21'35" N., 124°22'05" W.; 43°21'46" N., 124°22'51" W.
Coos Bay Entrance—43°22'44" N., 124°22'18" W.; 43°22'29" N., 124°21'34" W.; 43°22'18" N., 124°21'42" W.; 43°22'31" N., 124°22'26" W.
Umpqua River Entrance—43°40'07" N., 124°14'18" W.; 43°40'07" N., 124°13'42" W.; 43°39'53" N., 124°13'42" W.; 43°39'53" N., 124°14'18" W.
Suislaw River Entrance—44°01'32" N., 124°09'37" W.; 44°01'22" N., 124°09'02" W.; 44°01'14" N., 124°09'07" W.; 44°01'24" N., 124°09'42" W.
Tillamook Bay Entrance—45°34'09" N., 123°59'37" W.; 45°34'09" N., 123°58'45" W.; 45°33'55" N., 123°58'45" W.; 45°33'55" N., 123°59'37" W.
Depoe Bay—44°48'33" N., 124°03'53" W.; 44°48'32" N., 124°03'43" W.; 44°48'15" N., 124°03'45" W.; 44°48'16" N., 124°03'55" W.
Depoe Bay—44°48'09" N., 124°05'05" W.; 44°48'09" N., 124°04'55" W.; 44°47'53" N., 124°04'55" W.; 44°47'53" N., 124°05'05" W.
Yaquina Bay and Harbor Entrance—44°38'31" N., 124°06'04" W.; 44°38'31" N., 124°05'16" W.; 44°36'17" N., 124°05'16" W.; 44°36'17" N., 124°06'04" W.
Port Orford—42°44'08" N., 124°29'38" W.; 42°44'08" N., 124°29'28" W.; 42°43'52" N., 124°29'28" W.; 42°43'52" N., 124°29'38" W.
Willapa Bay—46°44'00" N., 124°10'00" W.; 46°39'00" N., 124°09'00" W.
Nome—West Site—64°30'04" N.
Nome—East Site—64°29'54" N., 165°24'41" W.; 64°29'45" N., 165°23'27" W.; 64°28'57" N., 165°23'29" W.; 64°29'07" N., 165°24'25" W.
Anchorage Harbor—61°14'07" N., 149°53'56" W.; 61°14'16" N., 149°54'15" W.; 61°14'45" N., 149°53'36" W.; 61°14'36" N., 149°53'17" W.
Fish Cannery Wastes Site—Region IX.
Location: Latitude—14d22'S; Longitude—170d41'W (center point).
Size: 1 nautical mile in diameter.
Depth: 1,200 meters (4,000 feet).
Primary Use: Fish cannery wastes.
Period of Use: Site will expire (36 months after date of publication).

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Restriction: Disposal shall be limited to not more than 130,000 tons per year of fish cannery wastes generated on the island of Tutuila, American Samoa.

(b) The following sites are designated "Approved Ocean Dumping Sites" for continuing use, subject to the listed restrictions:

(1) Gulf Ocean Incineration Site—Headquarters.

Location—Latitude and Longitude—26°20'00" N. to 27°00'00" N.; 93°20'00" to 94°00'00" W.

Size—(square miles) 1892.

Depth—(feet) 4500.

Primary Use: At sea incineration primarily for organochlorine wastes. Incineration of other wastes will require research studies or equivalent technical documentation to determine acceptability for ocean incineration.

Period of use: Continuing use.

Restriction: Only one ship will be permitted to burn wastes at a time, except under extreme emergencies.

(2) Herbicide Orange Incineration Site—Headquarters.

Location—Latitude and Longitude—15°45' to 17°45' north latitude; 171°30' to 173°30' west longitude.

Size—14,400 sq. n. mi.

Depth—greater than 15,000 feet.

Use—solely for at sea incineration of Herbicide Orange by the United States Air Force aboard the *M/T Vulcanus*, owned and operated by Ocean Combustion Service.

Period of Use—May 15, 1977, to September 30, 1977. The designation of this site will be withdrawn after this period of use.

(3) Kwajalein Ocean dumping site—Region IX.

Location—Latitude and Longitude—08° 47' north latitude, 167° 36' east longitude.

Size—1,000 yard radius.

Depth—1,655 fathoms (9,930 feet).

Primary use—waste materials resulting from the operation of the Kwajalein Missile Range.

Period of use—Three years after issuance of an ocean dumping permit for use of this site.

(4) Sewage Sludge Site—Region II.

Location: Latitude—40°22'30"N to 40°25'00"N;

Longitude: 73°41'30"W to 73° 45' 00"W.

Size: 22.7 square kilometers (8.6 square nautical miles).

Depth: 27 meters (90 feet).

Primary Use: Sewage sludge.

Period of Use: Until December 31, 1981.

Restriction: Disposal shall be limited to sewage sludge generated by those permits holding ocean dumping permits which were in force on January 1, 1979.

Disposal of other wastes at this site is not permitted until adequate studies of the probable impacts of those wastes on the site have been completed.

(5) Alternate Sewage Sludge Site—Region II.

Location: Latitude—40°10'30"N to 40°13'30"N;

Longitude: 72°40'30"W to 72°43'30"W.

Size: 31 square kilometers (9 square nautical miles).

Depth: 55 meters (180 feet).

Primary Use: Sewage sludge.

Period of Use: Until December 31, 1981.

Restriction: Disposal of sewage sludge at this site shall take place only upon a finding by EPA that the existing site cannot safely accommodate any more sewage sludge without endangering public health or degrading coastal water quality. Disposal of other wastes at this site is not permitted until adequate studies of the probable impacts of those wastes on the site have been completed.

(6) San Nicolas Basin Ocean Dumping Site—Region IX.

Location—Latitude and Longitude (northwest corner)—32°55' north latitude, 119°17' west longitude.

Size—1 square nautical mile.

Depth—400 fathoms (2,400 feet).

Primary use—disposal of formation cuttings, waste drilling mud, and non-perishable solid waste.

Period of use—three years after issuance of an ocean dumping permit for use of this site.

(7) Acid Waste Site—Region II.

Location: Latitude—40d 16' N. to 40d 20' N. Longitude—73d 36' W. to 73d 40' W.

Size: 41 square kilometers.

Depth: Ranges from 22.6 meters to 28.3 meters.

Primary Use: Aqueous acid waste (note restriction below).

Period of Use: Continuing use.

Restriction: Aqueous acid wastes are those that are miscible with seawater and will not form or include a significant solid phase.

(8) South Oahu Site—Region IX.

Location (center point): Latitude—21°15'10" N. Longitude—157°56'50" W.

Size: 2 kilometers wide and 2.6 kilometers long.

Depth: Ranges from 400 to 475 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material.

(9) Nawiliwili Site—Region IX.

Location (center point): Latitude—21°55'00" N. Longitude—159°17'00" W.

Size: Circular with a radius of approximately 920 meters.

Depth: Ranges from 840 to 1,120 meters.

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Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material.

(10) Port Allen Site—Region IX.

Location (center point): Latitude—21°50'00" N. Longitude—159°35'00" W.

Size: Circular with a radius of approximately 920 meters.

Depth: Ranges from 1,460 to 1,610 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material.

(11) Kahului Site—Region IX.

Location (center point): Latitude—21°04'42" N. Longitude—156°29'00" W.

Size: Circular with a radius of approximately 920 meters.

Depth: Ranges from 345 to 365 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material.

(12) Hilo Site—Region IX.

Location (center point): Latitude—19°48'30" N. Longitude—154°58'30" W.

Size: Circular with a radius of approximately 920 meters.

Depth: Ranges from 330 to 340 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material.

(13) Cellar Dirt Site—Region II.

Location (center point): Latitude—40° 23' 00" N. Longitude—73° 49' 00" W.

Size: 1.1 square nautical miles.

Depth: Ranges from 29 to 38 meters.

Primary Use: Cellar dirt.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to excavation dirt and rock, broken concrete, rubble, tile, and other nonfloatable debris.

(14) Tampa Harbor Site 4—Region IV.

Location: 27°32'27"N., 83°03'46"W.; 27°30'27"N., 83°03'46"W.; 27°30'27"N., 83°06'02"W.; 27°32'27"N., 83°06'02"W.

Size: 4 nautical square miles.

Depth: Ranges from 21.8 to 24.1 meters.

Primary Use: Dredged material.

Period of Use: Three years.

Restrictions: Disposal shall be limited to dredged material from the Tampa Harbor Project.

(15) New York Bight Dredged Material Disposal Site—Region II.

Location: 40°23'48" N., 73°51'28" W.; 40°21'48" N., 73°50'00" W.; 40°21'48" N., 73°51'28" W.; 40°23'48" N., 73°50'00" W.

Size: 2.2 square nautical miles.

Depth: Ranges from 16 to 29 meters.

Use Restricted To: Dredged materials.

Period of Use: Continuing use, subject to volumetric restriction as noted below.

Restriction: Disposal shall be limited to 100 million cubic yards of dredged materials generated in the Port of New York and New Jersey and nearby harbors. Dumping within the area described by the following coordinates shall be limited to projects determined by the Corps and EPA to demonstrate a specific need, such as research or final capping. 40°23'48" N., 73°51'28" W.; 40°23'23" N., 73°51'28" W.; 40°23'23" N., 73°51'06" W.; 40°23'48" N., 73°51'06" W. Dumping in the southeast quadrant of the site shall not be authorized except as part of a research project on capping.

(16) Gulf of Mexico Platform jacket site—Region VI.

Location: 27d 39°44.665' N, 91d 10°03.059' W; 27d 39°42.304' N, 91d 07°06.927' W; 27d 37°05.471' N, 91d 07°09.610' W; 27d 37°07.828' N, 91d 10°05.672' W.

Size: 3 statute miles on the side (9 square statute miles total area).

Depth: 600 fathoms.

Primary Use: One-time disposal of damaged platform jacket. Period of Use: Until the one-time dump of the damaged jacket is concluded; however, the period of use shall not exceed three years from the date of publication of this Notice.

(17) Deepwater Industrial Wastes Dump Site—Region II.

Location (center point): Latitude—38°45'00"N. Longitude—72°20'00"W.

Size: Circular with a radius of 3.0 nautical miles—28.3 square nautical miles.

Depth: Ranges from 2,250 to 2,750 meters.

Use Restricted To: Aqueous industrial materials.

Period of Use: Continuing use.

Definition: Aqueous industrial materials are defined as those wastes generated by a manufacturing or processing plant (i) with solid concentrations sufficiently low so that waste material is dispersed within the upper water column; or (ii) neutrally buoyant or slightly denser than seawater, such that, upon mixing with seawater, the material does not float.

(18) Deepwater Municipal Sludge Dump Site—Region II.

Location: Latitude—38°40'00" to 39°00'00"N; Longitude—72°00'00" to 72°05'00"W.

Size: 100 square nautical miles.

Depth: Ranges from 2,250 to 2,750 meters.

Use Restricted To: Municipal sewage treatment sludge.

Period of Use: Five years after commencement of dumping of municipal sewage treatment sludge at the site.

Restriction: Municipal sludges generated at Publicly Owned or Operated Treatment Works (POTW's). Biologically treated industrial waste sludges are to be excluded.

(19) Jacksonville Dredged Material Site—Region IV.

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Location: 30°21'30" N., 81°18'34" W.;
30°21'30" N., 81°17'26" W.; 30°20'30" N.,
81°17'26" W.; 30°20'30" N., 81°18'34" W.
Size: One square nautical mile.
Depth: Ranges from 12 to 16 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to
dredged material from the Jacksonville,
Florida, area.

(20) Galveston Dredged Material Site—
Region VI.
Location: 29°18'00" N., 94°39'30" W.;
29°15'54" N., 94°37'06" W.; 29°14'24" N.,
94°38'42" W.; 29°16'54" N., 94°41'30" W.
Size: 6.6 square nautical miles.
Depth: Ranges from 10 to 15.5 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to
dredged material from the Galveston,
Texas, area.

(21) Drilling muds and cuttings site—Region
IX.
Center point location: 33°34'30" N latitude,
118°27'30" W longitude.
Size: A circle with a diameter of 3.0 nautical
miles.
Depth: Approximately 485 fathoms (2910
feet).
Primary Use: Drilling muds and cuttings.
Period of Use: 3 years from effective date of
site designation.
Volumes: To be determined by EPA Region-
al Administrator, Region IX.
Restriction: Disposal shall be limited to
water-based drilling muds and cuttings
which meet the requirements of the
Ocean Dumping Evaluation Criteria of 40
CFR Part 227. Permittees must imple-
ment monitoring program acceptable to
EPA Regional Administrator responsible
for management of the site.

(22) San Francisco Channel Bar Dredged
Material Site—Region IX.
Location: 37°44'55" N., 122°37'18" W;
37°45'45" N., 122°34'24" W; 37°44'24" N.,
122°37'08" W; 37°45'15" N., 122°34'12" W.
Size: 4,572 x 914 meters.
Depth: Ranges from 11 to 14.3 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to ma-
terial from required dredging operations
at the entrance of the San Francisco main
ship channel which is composed primarily
of sand having grain sizes compatible with
naturally occurring sediments at the dis-
posal site and containing approximately 5
percent of particles having grain sizes
finer than that normally attributed to
very fine sand (.075 millimeters). Other
dredged materials meeting the require-
ments of 40 CFR 227.13 but having small-
er grain sizes may be dumped at this site
only upon completion of an appropriate
case-by-case evaluation of the impact of

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such material on the site which demon-
strates that such impact will be accepta-
ble.

(23) Mouth of Columbia River Dredged
Material Site A—Region X. Location: 46d 13'
03" N., 124d 06' 17" W.; 46d 12' 50" N., 124d
05' 55" W.; 46d 12' 13" N., 124d 06' 43" W.; 46d
12' 26" N., 124d 07' 05" W.

Size: 0.27 square nautical miles.
Depth: Ranges from 14–25 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.

Restriction: Disposal shall be limited to
dredged material from the Columbia River
entrance channel and adjacent areas.

(24) Mouth of Columbia River Dredged
Material Site B—Region X. Location: 46d 14'
37" N., 124d 10' 34" W.; 46d 13' 53" N., 124d
10' 01" W.; 46d 13' 43" N., 124d 10' 28" W.; 46d
14' 28" N., 124d 10' 59" W.

Size: 0.25 square nautical miles.
Depth: Ranges from 24–39 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.

Restriction: Disposal shall be limited to
dredged material from the Columbia River
entrance channel and adjacent areas.

(25) Mouth of Columbia River Dredged
Material Site E—Region X. Location: 46d 15'
43" N., 124d 05' 21" W.; 46d 15' 36" N., 124d
05' 11" W.; 46d 15' 11" N., 124d 05' 53" W.; 46d
15' 18" N., 124d 06' 03" W.

Size: 0.08 square nautical miles.
Depth: Ranges from 16–21 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.

Restriction: Disposal shall be limited to
dredged material from the Columbia River
entrance channel and adjacent areas.

(26) Mouth of Columbia River Dredged
Material Site F—Region X. Location: 46d 12'
12" N., 124d 09' 00" W.; 46d 12' 00" N., 124d
08' 42" W.; 46d 11' 48" N., 124d 09' 00" W.; 46d
12' 00" N., 124d 09' 18" W.

Size: 0.08 square nautical miles.
Depth: Ranges from 38–42 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.

Restriction: Disposal shall be limited to
dredged material from the Columbia River
entrance channel and adjacent areas.

Added 8/21/86
51 FR 29927

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(27) Coos Bay Dredged Material Site E—
Region X.

Location: 43d 21' 59" N., 124d 22' 45" W.;
43d 21' 48" N., 124d 21' 59" W.; 43d 21' 35" N.,
124d 22' 05" W.; 43d 21' 46" N., 124d 22' 51" W.

Size: 0.13 square nautical mile.

Depth: Averages 17 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to
dredged material in the Coos Bay area of type
1, as defined in the site designation final EIS.

(28) Coos Bay Dredged Material Site F—
Region X.

Location: 43d 22' 44" N., 124d 22' 18" W.;
43d 22' 29" N., 124d 21' 34" W.; 43d 22' 16" N.,
124d 21' 42" W.; 43d 22' 31" N., 124d 22' 26"
W.

Size: 0.13 square nautical mile.

Depth: Averages 24 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to
dredged material in the Coos Bay area of type
1, as defined in the site designation final EIS.

(29) Coos Bay Dredged Material Site H—
Region X.

Location: 43d 23' 53" N., 124d 22' 48" W.;
43d 23' 42" N., 124d 23' 01" W.; 43d 24' 16" N.,
124d 23' 26" W.; 43d 24' 05" N., 124d 23' 38"
W.

Size: 0.13 square nautical mile.

Depth: Averages 55 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to
dredged material in the Coos Bay area of type
2 and 3, as defined in the site designation
final EIS.

(30) Fernandina Beach, Florida
Dredged Material Disposal Site—Region
IV.

Location:

30°33'00" N.; 81°16'52" W.

30°31'00" N.; 81°16'52" W.

30°31'00" N.; 81°19'08" W.

30°33'00" N.; 81°19'08" W.

Size: 4 square nautical miles

Depth: Average 16 meters

Primary use: Dredged Material

Period of Use: Continuing use

Restrictions: Disposal shall be limited to
dredged material which meets the
criteria given in the Ocean Dumping
Regulations, Part 227.

(31) Morehead City, North Carolina,
Dredged Material Disposal Site—Region IV.

Location: 34°38'30" N., 76°45'0" W.;
34°38'30" N., 76°41'42" W.; 34°38'08" N.,
76°41'0" W.; 34°36'0" N., 76°41'0" W., 34°36'0"
N., 76°45'0" W.

Size: 8 square nautical miles.

Depth: Average 12.0 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to
dredged material from the Morehead City
Harbor, North Carolina area. All material
disposed must satisfy the requirements of the
ocean dumping regulations.

(32) Savannah, GA, Dredged Material
Disposal Site—Region IV.

Location: 31d, 55' 53"N., 80d 44' 20"W.; 31d
57' 55"N., 80d 46' 48"W.; 31d 57' 55"N., 80d 44'
20"W.; 31d 55' 53"N., 80d 46' 48"W.

Size: 4.28 square nautical miles.

Depth: Averages 11.4 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to
dredged material from the Savannah Harbor
area.

(33) Charleston, SC, Dredged Material
Disposal Site—Region IV.

Location: 32d 40' 27"N., 79d 47' 22"W.; 32d
39' 04"N., 79d 44' 25"W.; 32d 38' 07"N., 79d 45'
03"W.; 32d 39' 30"N., 79d 48' 00"W.

Size: 3 square nautical miles.

Depth: Averages 11 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to
dredged material from the Charleston Harbor
area.

(34) Charleston, SC, Harbor Deepening
Project Dredged Material Disposal Site—
Region IV.

Location: 32d 38' 06"N., 79d 41' 57"W.; 32d
40' 42"N., 79d 47' 30"W.; 32d 39' 04"N., 79d 49'
21"W.; 32d 36' 28"N., 79d 43' 48"W.

Size: 11.8 square nautical miles.

Depth: Averages 11 meters.

Primary Use: Dredged material from the
Charleston Harbor deepening project.

Period of Use: Not to exceed seven years
from the initiation of the Charleston Harbor
deepening project.

Restriction: Disposal shall be limited to
dredged material from the Charleston Harbor
deepening project.

Added 8/14/87
52 FR 30362

Added 7/2/87
52 FR 25011

d 8/21/86
R 29931

d 2/23/87
R 5461

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(35) Wilmington, NC, Dredged Material Disposal Site—Region IV.
Location: 33d 49' 30"N., 78d 03' 06"W.; 33d 48' 18"N., 78d 01' 39"W.; 33d 47' 19"N., 78d 02' 48"W.; 33d 48' 30"N., 78d 04' 16"W.
Size: 2.3 square nautical miles.
Depth: Averages 13 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from Wilmington Harbor area.

Added 7/2/87
52 FR 25011

(42) Sabine-Neches Dredged Material Site 1—Region VI.
Location: 29°28'03" N., 93°41'14" W.; 29°26'11" N., 93°41'14" W.; 29°26'11" N., 93°44'11" W.
Size: 2.4 square nautical miles.
Depth: Ranges from 11–13 meters.
Primary Use: Dredged material.
Period of Use: Continuing Use.
Restriction: Disposal shall be limited to dredged material from the Sabine-Neches area.

Added 5/10/87
52 FR 34222

(43) Sabine-Neches Dredged Material Site 2—Region VI.
Location: 29°30'41" N., 93°43'49" W.; 29°28'42" N., 93°41'33" W.; 29°28'42" N., 93°44'49" W.; 29°30'08" N., 93°46'27" W.
Size: 4.2 square nautical miles.
Depth: Ranges from 9–13 meters.
Primary Use: Dredged material.
Period of Use: Continuing Use.
Restriction: Disposal shall be limited to dredged material from the Sabine-Neches area.

(44) Sabine-Neches Dredged Material Site 3—Region VI.
Location: 29°34'24" N., 93°48'13" W.; 29°32'47" N., 93°46'16" W.; 29°32'06" N., 93°46'29" W.; 29°31'42" N., 93°48'16" W.; 29°32'59" N., 93°49'48" W.
Size: 4.7 square nautical miles.
Depth: 10 meters.
Primary Use: Dredged material.
Period of Use: Continuing Use.
Restriction: Disposal shall be limited to dredged material from the Sabine-Neches area.

(45) Sabine-Neches Dredged Material Site 4—Region VI.
Location: 29°38'09" N., 93°49'23" W.; 29°35'53" N., 93°48'18" W.; 29°35'06" N., 93°50'24" W.; 29°36'37" N., 93°51'09" W.; 29°37'00" N., 93°50'06" W.; 29°37'46" N., 93°50'26" W.
Size: 4.2 square nautical miles.
Depth: Ranges from 5–9 meters.
Primary Use: Dredged material.
Period of Use: Continuing Use.
Restriction: Disposal shall be limited to dredged material from the Sabine-Neches area.

(47) Portland, Maine, Dredged Material Disposal Site—Region 1
Location:

43°33'36" N, 70°02'42" W;
43°33'36" N, 70°01'18" W;
43°34'36" N, 70°02'42" W;
43°34'36" N, 70°01'18" W;

Size: 1 square nautical mile.
Depth: 50 meters.
Primary Use: Dredged material.
Period of Use: Continuing Use.
Restrictions: Disposal shall be limited to dredged material.

Added 9/24/87
52 FR 35917

[42 FR 2482, Jan. 11, 1977; 42 FR 5975, Feb. 1, 1977, as amended at 42 FR 22144, May 2, 1977; 43 FR 1071, Jan. 6, 1978; 43 FR 33712, Aug. 1, 1978; 44 FR 27662, May 11, 1979; 44 FR 29052, May 18, 1979; 45 FR 3055, Jan. 16, 1980; 45 FR 77435, Nov. 24, 1980; 45 FR 79810, Dec. 2, 1980; 45 FR 81044, Dec. 9, 1980; 46 FR 31414, June 16, 1981; 47 FR 17818, Apr. 26, 1982; 47 FR 43380, Oct. 1, 1982; 48 FR 5558, Feb. 7, 1983; 48 FR 14899, Apr. 6, 1983; 48 FR 50321, Nov. 1, 1983; 49 FR 4944, Feb. 9, 1984; 49 FR 19012, 19019, May 4, 1984; 49 FR 23150, June 4, 1984; 49 FR 33647, Aug. 24, 1984; 49 FR 34487, Aug. 31, 1984; 50 FR 6943, Feb. 19, 1985; 50 FR 9279, Mar. 7, 1985; 50 FR 10012, Mar. 13, 1985; 50 FR 33339, Aug. 19, 1985; 50 FR 38524, Sept. 23, 1985]

§ 228.13 Guidelines for ocean disposal site baseline or trend assessment surveys under section 102 of the Act.

The purpose of a baseline or trend assessment survey is to determine the physical, chemical, geological, and biological structure of a proposed or existing disposal site at the time of the survey. A baseline or trend assessment survey is to be regarded as a comprehensive synoptic and representative picture of existing conditions; each such survey is to be planned as part of a continual monitoring program through which changes in conditions at a disposal site can be documented and assessed. Surveys will be planned in coordination with the ongoing programs of NOAA and other Federal, State, local, or private agencies with missions in the marine environment. The field survey data collection phase of a disposal site evaluation or designation study shall be planned and conducted to obtain a body of information both representative of the site at the time of study and obtained by techniques reproducible in precision and accuracy in future studies. A full plan of study which will provide a record of sampling, analytical, and data reduction procedures must be developed, documented and approved by the EPA management authority. Plans for all surveys which will produce information to be used in the preparation of environmental impact statements will be approved by the Administrator or

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his designee. This plan of study also shall be incorporated as an appendix into a technical report on the study, together with notations describing deviations from the plan required in actual operations. Relative emphasis on individual aspects of the environment at each site will depend on the type of wastes disposed of at the site and the manner in which such wastes are likely to affect the local environment, but no major feature of the disposal site may be neglected. The observations made and the data obtained are to be based on the information necessary to evaluate the site for ocean dumping. The parameters measured will be those indicative, either directly or indirectly, of the immediate and long-term impact of pollutants on the environment at the disposal site and adjacent land or water areas. An initial disposal site evaluation or designation study should provide an immediate baseline appraisal of a particular site, but it should also be regarded as the first of a series of studies to be continued as long as the site is used for waste disposal.

(a) *Timing.* Baseline or trend assessment surveys will be conducted with due regard for climatic and seasonal impact on stratification and other conditions in the upper layers of the water column. Where a choice of season is feasible, trend assessment surveys should be made during those months when pollutant accumulation within disposal sites is likely to be most severe, or when pollutant impact within disposal sites is likely to be most noticeable.

(1) Where disposal sites are near large riverine inflows to the ocean, surveys will be done with due regard for the seasonal variation in river flow. In some cases several surveys at various river flows may be necessary before a site can be approved.

(2) When initial surveys show that seasonal variation is not significant and surveys at greater than seasonal intervals are adequate for characterizing a site, resurveys shall be carried out in climatic conditions as similar to those of the original surveys as possible, particularly in depths less than 200 meters.

(b) *Duration.* The actual duration of a field survey will depend upon the size and depth of the site, weather conditions during the survey, and the types of data to be collected. For example, for a survey of an area of 100 square miles on the continental shelf, including an average dump site and the region contiguous to it, an on-site operation would be scheduled for completion within one week of weather suitable for on-site operations. More on-site operating time may be scheduled for larger or highly complex sites.

(c) *Numbers and locations of sampling stations.* The numbers and locations of sampling stations will depend in part on the local bathymetry with minimum numbers of stations per site fixed as specified in the following sections. Where the bottom is smooth or evenly sloping, stations for water column measurements and benthic sampling and collections, other than trawls, shall be spaced throughout the survey area in a manner planned to provide maximum coverage of both the disposal site and contiguous control areas, considering known water movement characteristics. Where there are major irregularities in the bottom topography, such as canyons or gullies, or in the nature of the bottom, sampling stations for sediments and benthic communities shall be spaced to provide representative sampling of the major different features.

Sampling shall be done within the dump site itself and in the contiguous area. Sufficient control stations outside a disposal site shall be occupied to characterize the control area environment at least as well as the disposal site itself. Where there are known persistent currents, sampling in contiguous areas shall include at least two stations downcurrent of the dump site, and at least two stations upcurrent of the site.

(d) *Measurements in the water column at and near the dump site—(1) Water quality parameters measured.* These shall include the major indicators of water quality, particularly those likely to be affected by the waste proposed to be dumped. Specifically included at all stations are meas-

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urements of temperature, dissolved oxygen, salinity, suspended solids, turbidity, total organic carbon, pH, inorganic nutrients, and chlorophyll *a*.

(i) At one station near the center of the disposal site, samples of the water column shall be taken for the analysis of the following parameters: Mercury, cadmium, copper, chromium, zinc, lead, arsenic, selenium, vanadium, beryllium, nickel, pesticides, petroleum hydrocarbons, and persistent organohalogens. These samples shall be preserved for subsequent analysis by or under the direct supervision of EPA laboratories in accordance with the approved plan of study.

(ii) These parameters are the basic requirements for all sites. For the evaluation of any specific disposal site additional measurements may be required, depending on the present or intended use of the site. Additional parameters may be selected based on the materials likely to be in wastes dumped at the site, and on parameters likely to be affected by constituents of such wastes. Analysis for other constituents characteristic of wastes discharged to a particular disposal site, or of the impact of such wastes on water quality, will be included in accordance with the approved plan of study.

(2) *Water quality sampling requirements.* The number of samples collected from the water column should be sufficient to identify representative changes throughout the water column such as to avoid short-term impact due to disposal activities. The following key locations should be considered in selecting water column depths for sampling:

(i) Surface, below interference from surface waves;

(ii) Middle of the surface layer;

(iii) Bottom of the surface layer;

(iv) Middle of the thermocline or halocline, or both if present;

(v) Near the top of the stable layer beneath a thermocline or halocline;

(vi) Near the middle of a stable layer;

(vii) As near the bottom as feasible;

(viii) Near the center of any zone showing pronounced biological activity or lack thereof.

In very shallow waters where only a few of these would be pertinent, as a

minimum, surface, mid-depth and bottom samples shall be taken, with samples at additional depths being added as indicated by local conditions. At disposal sites far enough away from the influence of major river inflows, ocean or coastal currents, or other features which might cause local perturbations in water chemistry, a minimum of 5 water chemistry stations should be occupied within the boundaries of a site. Additional stations should be added when the area to be covered in the survey is more than 20 square miles or when local perturbations in water chemistry may be expected because of the presence of one of the features mentioned above. In zones where such impacts are likely, stations shall be distributed so that at least 3 stations are occupied in the transition from one stable regime to another. Each water column chemistry station shall be replicated a minimum of 2 times during a survey except in waters over 200 meters deep.

(3) *Water column biota.* Sampling stations for the biota in the water column shall be as near as feasible to stations used for water quality; in addition at least two night-time stations in the disposal site and contiguous area are required. At each station vertical or oblique tows with appropriately-meshed nets shall be used to assess the microzooplankton, the nekton, and the macrozooplankton. Towing times and distances shall be sufficient to obtain representative samples of organisms near water quality stations. Organisms shall be sorted and identified to taxonomic levels necessary to identify dominant organisms, sensitive or indicator organisms and organism diversity. Tissue samples of representative species shall be analyzed for pesticides, persistent organohalogens, and heavy metals. Discrete water samples shall also be used to quantitatively assess the phytoplankton at each station.

These requirements are the minimum necessary in all cases. Where there are discontinuities present, such as thermoclines, haloclines, convergences, or upwelling, additional tows shall be made in each water mass as appropriate.

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(e) *Measurements of the benthic region*—(1) *Bottom sampling*. Samples of the bottom shall be taken for both sediment composition and structure, and to determine the nature and numbers of benthic biota.

(i) At each station sampling may consist of core samples, grab samples, dredge samples, trawls, and bottom photography or television, where available and feasible, depending on the nature of the bottom and the type of disposal site. Each type of sampling shall be replicated sufficiently to obtain a representative set of samples. The minimum numbers of replicates of successful samples at each continental shelf station for each type of device mentioned above are as follows:

Cores.....	3.
Grabs.....	5.
Dredge.....	3.
Trawl.....	20-min. tow.

Lesser numbers of replicates may be allowed in water deeper than 200 meters, at those sites where pollution impacts on the bottom are unlikely in the judgment of the EPA management authority.

(ii) Selection of bottom stations will be based to a large extent on the bottom topography and hydrography as determined by the bathymetric survey. On the continental shelf, where the bottom has no significant discontinuities, a bottom station density of at least three times the water column stations is recommended, depending on the type of site being evaluated. Where there are significant differences in bottom topography, additional stations shall be occupied near the discontinuity and on each side of it. Beyond the continental shelf, lesser densities may be used.

(2) *Bathymetric survey*. Sufficient tracklines shall be run to develop complete bottom coverage of bathymetry with reasonable assurance of accurate coverage of bottom topography, with trackline direction and spacing as close as available control allows. The site itself is to be developed at the greatest density possible, with data to be collected to a suitable distance about the site as is required to identify major changes in bathymetry which might

affect the site. Specifications for each bathymetric survey will vary, depending on control, bottom complexity, depths, equipment, and map scale required. In most cases, a bathymetric map at a scale of 1:25,000 to 1:10,000 will be required, with a minimum of 1-5 meter contour interval except in very flat areas. When the foregoing bathymetric detail is available from recent surveys of the disposal site, bathymetry during a baseline or trend assessment survey may be limited to sonar profiles of bathymetry on transects between sampling stations.

(3) *Nature of bottom*. The size distribution of sediments, mineral character and chemical quality of the bottom will be determined to a depth appropriate for the type of bottom. The following parameters will be measured at all stations: particle size distribution, major mineral constituents, texture, settling rate, and organic carbon.

(i) At several stations near the center of the disposal site, samples of sediments shall be taken for the analysis of the following parameters: mercury, cadmium, copper, chromium, zinc, lead, arsenic, selenium, vanadium, beryllium, nickel, pesticides, persistent organohalogens, and petroleum hydrocarbons. These samples shall be preserved for subsequent analysis by or under the direct supervision of EPA laboratories in accordance with the approved plan of study.

(ii) These parameters are the basic requirements for all sites. For the evaluation of any specific disposal site additional measurements may be required, depending on the present or intended use of the site. Additional parameters may be selected based on the materials likely to be in wastes dumped at the site, and on parameters likely to be affected by constituents of such wastes. Such additional parameters will be selected by the EPA management authority.

(4) *Benthic biota*. This shall consist of a quantitative and qualitative evaluation of benthic communities including macroinfauna and macroepifauna, meiobenthos, and microbenthos, and should include an appraisal, based on existing information, of the sensitivity of indigenous species to the waste proposed to be discharged. Organisms,

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shall be sorted, and identified to taxonomic levels necessary to identify dominant organisms, sensitive or indicator organisms, and organism diversity. Tissue samples of the following types of organisms shall be analyzed for persistent organohalogens, pesticides, and heavy metals:

(i) A predominant species of demersal fish;

(ii) The most abundant macroinfaunal species; and

(iii) A dominant epifaunal species, with particular preference for a species of economic importance.

(f) *Other measurements*—(1) *Hydrodynamic features*. The direction and speed of water movement shall be characterized at levels appropriate for the site and type of waste to be dumped. Where depths and climatic conditions are great enough for a thermocline or halocline to exist, the relationship of water movement to such a feature shall be characterized.

(i) *Current measurements*. When current meters are used as the primary source of hydrodynamic data, at least 4 current meter stations with at least 3 meters at depths appropriate for the observed or expected discontinuities in the water column should be operated for as long as possible during the survey. Where feasible, current meters should be deployed at the initiation of the survey and recovered after its completion. Stations should be at least a mile apart, and should be placed along the long axis of the dumping site. For dumping sites more than 10 miles along the long axis, one current meter station every 5 miles should be operated. Where there are discontinuities in surface layers, e.g., due to land runoff, stations should be operated in each water mass.

(ii) *Water mass movement*. Acceptable methods include: dye, drogues, surface drifters, side scan sonar, bottom drifters, and bottom photography or television. When such techniques are the primary source of hydrodynamic data, coverage should be such that all significant hydrodynamic features likely to affect waste movement are measured.

(2) *Sea state*. Observations of sea state and of standard meteorological

parameters shall be made at 8-hour intervals.

(3) *Surface phenomena*. Observations shall be made of oil slicks, floating materials, and other visible evidence of pollution; and, where possible, collections of floating materials shall be made.

(g) *Survey procedures and techniques*. Techniques and procedures used for sampling and analysis shall represent the state-of-the-art in oceanographic survey and analytical practice. Survey plans shall specify the methods to be used and will be subject to approval by EPA.

(h) *Quality assurance*. The EPA management authority may require that certain samples be submitted on a routine basis to EPA laboratories for analysis as well as being analyzed by the surveyor, and that EPA personnel participate in some field surveys.

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PART 229—GENERAL PERMITS

Sec.

229.1 Burial at sea.

229.2 Transport of target vessels.

229.3 Transportation and disposal of vessels.

AUTHORITY: 33 U.S.C. 1412 and 1418.

SOURCE: 42 FR 2489, Jan. 11, 1977, unless otherwise noted.

§ 229.1 Burial at sea.

(a) All persons subject to Title I of the Act are hereby granted a general permit to transport human remains from the United States and all persons owning or operating a vessel or aircraft registered in the United States or flying the United States flag and all departments, agencies, or instrumentalities of the United States are hereby granted a general permit to transport human remains from any location for the purpose of burial at sea and to bury such remains at sea subject to the following conditions:

(1) Except as herein otherwise provided, human remains shall be prepared for burial at sea and shall be buried in accordance with accepted practices and requirements as may be deemed appropriate and desirable by the United States Navy, United States Coast Guard, or civil authority charged with the responsibility for making such arrangements;

(2) Burial at sea of human remains which are not cremated shall take place no closer than 3 nautical miles from land and in water no less than one hundred fathoms (six hundred feet) deep and in no less than three hundred fathoms (eighteen hundred feet) from (i) 27°30'00" to 31°00'00" North Latitude off St. Augustine and Cape Canaveral, Florida; (ii) 82°20'00" to 84°00'00" West Longitude off Dry Tortugas, Florida; and (iii) 87°15'00" to 89°50'00" West Longitude off the Mississippi River Delta, Louisiana, to Pensacola, Florida. All necessary measures shall be taken to ensure that the remains sink to the bottom rapidly and permanently; and

(3) Cremated remains shall be buried in or on ocean waters without regard to the depth limitations specified in paragraph (a)(2) of this section provided that such burial shall take place no closer than 3 nautical miles from land.

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(b) For purposes of this section and §§ 229.2 and 229.3, "land" means that portion of the baseline from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone, which is in closest proximity to the proposed disposal site.

(c) Flowers and wreaths consisting of materials which are readily decomposable in the marine environment may be disposed of under the general permit set forth in this section at the site at which disposal of human remains is authorized.

(d) All burials conducted under this general permit shall be reported within 30 days to the Regional Administrator of the Region from which the vessel carrying the remains departed.

§ 229.2 Transport of target vessels.

(a) The U.S. Navy is hereby granted a general permit to transport vessels from the United States or from any other location for the purpose of sinking such vessels in ocean waters in testing ordnance and providing related data subject to the following conditions:

(1) Such vessels may be sunk at times determined by the appropriate Navy official;

(2) Necessary measures shall be taken to insure that the vessel sinks to the bottom rapidly and permanently, and that marine navigation is not otherwise impaired by the sunk vessel;

(3) All such vessel sinkings shall be conducted in water at least 1,000 fathoms (6,000 feet) deep and at least 50 nautical miles from land, as defined in § 229.1(b); and

(4) Before sinking, appropriate measures shall be taken by qualified personnel at a Navy or other certified facility to remove to the maximum extent practicable all materials which may degrade the marine environment, including without limitation (i) emptying of all fuel tanks and fuel lines to the lowest point practicable, flushing of such tanks and lines with water, and again emptying such tanks and lines to the lowest point practicable so that such tanks and lines are essentially free of petroleum, and (ii) removing from the hulls other pollutants and all readily detachable material capable of creating debris or contributing to chemical pollution.

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(b) An annual report will be made to the Administrator of the Environmental Protection Agency setting forth the name of each vessel used as a target vessel, its approximate tonnage, and the location and date of sinking.

§ 229.3 Transportation and disposal of vessels.

(a) All persons subject to Title I of the Act are hereby granted a general permit to transport vessels from the United States, and all departments, agencies, or instrumentalities of the United States are hereby granted a general permit to transport vessels from any location for the purpose of disposal in the ocean subject to the following conditions:

(1) Except in emergency situations, as determined by the U.S. Army Corps of Engineers and/or the U.S. Coast Guard, the person desiring to dispose of a vessel under this general permit shall, no later than 1 month prior to the proposed disposal date, provide the following information in writing to the EPA Regional Administrator for the Region in which the proposed disposal will take place:

(i) A statement detailing the need for the disposal of the vessel;

(ii) Type and description of vessel to be disposed of and type of cargo normally carried;

(iii) Detailed description of the proposed disposal procedures;

(iv) Information on the potential effect of the vessel disposal on the marine environment; and

(v) Documentation of an adequate evaluation of alternatives to ocean disposal (i.e., scrap, salvage, and reclamation).

(2) Transportation for the purpose of ocean disposal may be accomplished under the supervision of the District Commander of the U.S. Coast Guard or his designee.

(3) Except in emergency situations, as determined by the U.S. Army Corps of Engineers and/or the District Commander of the U.S. Coast Guard, appropriate measures shall be taken, prior to disposal, by qualified personnel to remove to the maximum extent practicable all materials which may degrade the marine environment, including without limitation (i) emptying of all fuel lines and fuel tanks to

the lowest point practicable, flushing of such lines and tanks with water, and again emptying such lines and tanks to the lowest point practicable so that such lines and tanks are essentially free of petroleum, and (ii) removing from the hulls other pollutants and all readily detachable material capable of creating debris or contributing to chemical pollution.

(4) Except in emergency situations, as determined by the U.S. Army Corps of Engineers and/or the U.S. Coast Guard, the dumper shall, no later than 10 days prior to the proposed disposal date, notify the EPA Regional Administrator and the District Commander of the U.S. Coast Guard that the vessel has been cleaned and is available for inspection; the vessel may be transported for dumping only after EPA and the Coast Guard agree that the requirements of paragraph (a)(3) of this section have been met.

(5) Disposal of these vessels shall take place in a site designated on current nautical charts for the disposal of wrecks or no closer than 22 kilometers (12 miles) from the nearest land and in water no less than 50 fathoms (300 feet) deep, and all necessary measures shall be taken to insure that the vessels sink to the bottom rapidly and that marine navigation is not otherwise impaired.

(6) Disposal shall not take place in established shipping lanes unless at a designated wreck site, nor in a designated marine sanctuary, nor in a location where the hulk may present a hazard to commercial trawling or national defense (see 33 CFR Part 205).

(7) Except in emergency situations, as determined by the U.S. Army Corps of Engineers and/or the U.S. Coast Guard, disposal of these vessels shall be performed during daylight hours only.

(8) Except in emergency situations, as determined by the U.S. Army Corps of Engineers and/or the District Commander of the U.S. Coast Guard, the Captain-of-the-Port (COTP), U.S. Coast Guard, and the EPA Regional Administrator shall be notified forty-eight (48) hours in advance of the proposed disposal. In addition, the COTP and the EPA Regional Administrator shall be notified by telephone at least twelve (12) hours in advance of the vessel's departure from port with such

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details as the proposed departure time and place, disposal site location, estimated time of arrival on site, and the name and communication capability of the towing vessel. Schedule changes are to be reported to the COTP as rapidly as possible.

(9) The National Ocean Survey, NOAA, 6010 Executive Blvd., Rockville, MD 20852, shall be notified in writing, within 1 week, of the exact coordinates of the disposal site so that it may be marked on appropriate charts.

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- 13.26 Right of succession by certain persons.
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Subpart D—Conditions

- 13.41 Recall and amendment of permit during its term.
- 13.42 Permits are specific.
- 13.43 Alteration of permits.
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Subpart E—Violations of the Permit

- 13.51 Penalties for violation of a permit, notice; demonstration of compliance.

AUTHORITY: Lacey Act, (18 U.S.C. 42); Lacey Act Amendments of 1981, (16 U.S.C. 3374); Migratory Bird Treaty Act, (16 U.S.C. 704,712); Bald and Golden Eagle Protection Act, (16 U.S.C. 668a); Tariff Classification Act, of 1962, (19 U.S.C. 1202 "Schedule 1, Part 15D, Headnote 2(d), Tariff Schedules of the United States"); Endangered Species Act of 1973, as amended, (16 U.S.C. 1539,1540(f)); (16 U.S.C. 1538(d)); sec. E.E. 119.1, 41 FR 15683, 3 CFR, 1976 Comp., p. 117; Airborne Hunting Act, (16 U.S.C. 742j-1), Marine Mammal Protection Act (16 U.S.C. 1382); 31 U.S.C. 9701.

SOURCE: 39 FR 1161, Jan. 4, 1974, unless otherwise noted.

PART 13—GENERAL PERMIT PROCEDURES

Subpart A—Introduction

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- 13.11 Procedure for obtaining a permit.
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- 13.21 Issuance of permits.
- 13.22 Duration of permit.
- 13.23 Amendment of applications or permits.
- 13.24 Renewal of permit.
- 13.25 Permits not transferable; agents.

Subpart A—Introduction

§ 13.1 General.

Each person intending to engage in an activity for which a permit is required by this Subchapter B shall, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by this subchapter must make application for such permit in accordance with the requirements of this Part 13 and the other regulations in this subchapter which set forth the additional requirements for the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one

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part of this subchapter, the requirements of each part must be met. If the information required for each specific permitted activity is included, one application will be accepted for all permits required, and a single permit will be issued.

§ 13.2 Purpose of regulations.

The regulations contained in this part will provide uniform rules and procedures for application, issuance, renewal, conditions, revocation, and general administration of permits issuable pursuant to this Subchapter B.

§ 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including "Import and Marking" (Part 14), "Feather Imports" (Part 15), "Injurious Wildlife" (Part 16), "Endangered Wildlife and Plants" (Part 17), "Marine Mammals" (Part 18), "Migratory Birds" (Part 21), "Eagles" (Part 22) and "Endangered Species Convention" (Part 23). As used in this Part 13, the term "permit" shall refer to either a license, permit, or certificate as the context may require.

[42 FR 10465, Feb. 22, 1977, as amended at 42 FR 52377, June 24, 1977; 45 FR 56673, Aug. 25, 1980]

§ 13.4 Emergency variation from requirements.

The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations will not hinder effective administration of this Subchapter B, and will not be unlawful.

§ 13.5 Information collection requirements.

The information collection requirements contained within this Part 13 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018-0022. This information is being collected to provide information necessary to evaluate permit applications. This information will be used to review permit applications and

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make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation or denial of permits. The obligation to respond is required to obtain or retain a permit.

[47 FR 30785, July 15, 1982]

Subpart B—Application for Permits

§ 13.11 Procedure for obtaining a permit.

(a) *Forms.* Applications must be submitted in writing on a Federal Fish and Wildlife License/Permit Application (Form 3-200) or as otherwise specifically directed by the Service.

(b) *Forwarding instructions.* Applications for permits in the following categories should be forwarded to the issuing office indicated below.

(1) Migratory bird banding permits (50 CFR 21.22)—Bird Banding Laboratory, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Laurel, Maryland 20708. (Special application forms must be used for bird banding permits. They may be obtained by writing to the Bird Banding Laboratory).

(2) Exception to designated port (50 CFR Part 14), import/export license (50 CFR 14.93), migratory bird permit, other than banding (50 CFR Part 21) and Bald or Golden eagle permits (50 CFR Part 22)—Special Agent in Charge of the Law Enforcement District in which the applicant resides (see 50 CFR 10.22 for addresses and boundaries of the Law Enforcement Districts).

(3) Feather quota (50 CFR Part 15), injurious wildlife (50 CFR Part 16), endangered and threatened species (50 CFR Part 17), marine mammal (50 CFR Part 18) and permits and certificates for the Convention on International Trade in Endangered Species (CITES) (50 CFR Part 23)—U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, Virginia 22203.

(c) *Time notice.* Applications for endangered species permits and marine mammal permits should be received by the Federal Wildlife Permit Office at least 75 calendar days prior to the desired effective date of the permit. Ap-

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plications for other permits should be received by the issuing office at least 30 calendar days prior to the desired effective date. Although the Service will process all applications as quickly as possible, it cannot guarantee final action within such time frames.

(d) *Permit fees.* (1) Applications for permits, certificates, licenses and registrations, and for their renewal and amendment, must be accompanied by an application fee in the form of a check or money order made payable to "U.S. Fish and Wildlife Service." Application fees shall not be refunded if the permit is issued or if the application is denied or abandoned. The fee may be returned if an application is withdrawn prior to significant processing by the issuing office.

(2) Application fees shall be \$25 unless specified in paragraph (d)(4) of this section as "Nonstandard." Where the regulations in this subchapter require more than one type of permit for a given transaction or series of transactions, the issuing office shall, wherever feasible, issue a single permit containing all the necessary authorizations, and charge a single application fee. In such a case the fee is the highest single permit fee applicable for the transaction. (For example, an application to import an animal which is a marine mammal and an endangered species requires permits under Parts 17 and 18 of this subchapter. The processing of the application will be consolidated and one permit will be issued containing the necessary authorizations under Parts 17 and 18. The fee will be \$100, which is the application fee for a marine mammal permit).

(3) A fee shall not be charged to any Federal, State or local government agency, nor to any individual or institution under contract to such agency for the proposed activities. The fee may be waived or reduced for public institutions (see 50 CFR 10.12). Proof of such status must accompany the application.

(4) *Nonstandard fees.*

Type of permit	Fee
Import/Export License (Section 14.93).	\$250 and inspection fees.

Type of permit	Fee
Marine Mammal (Section 18.31).....	100
Migratory Bird (Part 21).....	None
Bald or Golden Eagles (Part 22).....	None

[47 FR 30785, July 15, 1982, as amended at 50 FR 52889, Dec. 28, 1985]

§ 13.12 Information requirements on permit applications.

(a) *General information required for all permit applications.* All applications for permits must contain the following information:

(1) Applicant's name, mailing address, and phone number;

(2) Where the applicant is an individual, his date of birth, height, weight, color of hair, color of eyes, and sex; and business or institutional affiliation, if any, having to do with the wildlife or plants to be covered by the permit;

(3) Where the applicant is a corporation, firm, partnership, institution, or agency, either private or public, the name and address of the president or principal officer;

(4) Location where the permitted activity is to be conducted;

(5) Part and section of this Subchapter B under which the permit is requested and such additional information and justification, including supporting documents from appropriate authorities, as required by that section (Paragraph (b) of this section contains a list of sections of this Subchapter B where the additional information needed on applications for various permits may be found.);

(6) Where the permitted activity involves an importation from any foreign country which restricts the taking, possession, transportation, exportation or sale of wildlife or plants, the appropriate documentation, as indicated in § 14.52(c) of this subchapter;

(7) Certification in the following language:

I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I of Title 50, and I further certify that the information submitted in this application for a permit is

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complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001.

(8) Desired effective date of permit except where issuance date is fixed by the part under which the permit is issued;

(9) Date;

(10) Signature of the applicant; and

(11) Such other information as the Director determines relevant to the processing of the application.

(b) *Additional information required on permit applications.* As stated in paragraph (a)(5) of this section certain additional information is required on all applications. These additional requirements may be found by referring to the section of this Subchapter B cited after the type of permit for which application is being made:

Type of permit	Section
Importation at nondesignated ports:	
Scientific.....	14.31
Deterioration prevention.....	14.32
Economic hardship.....	14.33
Marking of package or container:	
Symbol marking.....	14.83
Import/export license.....	14.93
Feather import quota: Importation or entry.....	15.21
Injurious wildlife: Importation or shipment.....	16.22
Endangered wildlife and plant permits:	
Similarity of appearance.....	17.52
Scientific, enhancement of propagation or survival, incidental taking for wildlife.....	17.22
Scientific, propagation, or survival for plants.....	17.62
Economic hardship for wildlife.....	17.23
Economic hardship for plants.....	17.63
Threatened wildlife and plant permits:	
Similarity of appearance.....	17.52
General for wildlife.....	17.32
American alligator-buyer or tanner.....	17.42(a)
General for plants.....	17.72
Marine mammals permits:	
Scientific research.....	18.31
Public display.....	18.31
Migratory bird permits:	
Banding or marking.....	21.22
Scientific collecting.....	21.23
Taxidermist.....	21.24
Waterfowl sale and disposal.....	21.25
Special aviculturist.....	21.26
Special purpose.....	21.27
Falconry.....	21.28
Raptor propagation permit.....	21.30
Depredation control.....	21.41
Eagle permits:	
Scientific or exhibition.....	22.21
Indian religious use.....	22.22
Depredation control.....	22.23
Falconry purposes.....	22.24
Take of golden eagle nests.....	22.25
Endangered Species Convention permits.....	23.15

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[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 10465, Feb. 22, 1977; 42 FR 32377, June 24, 1977; 44 FR 54006, Sept. 17, 1979; 44 FR 59083, Oct. 12, 1979; 45 FR 56673, Aug. 25, 1980; 45 FR 78154, Nov. 25, 1980; 46 FR 42680, Aug. 24, 1981; 48 FR 31607, July 8, 1983; 48 FR 57300, Dec. 29, 1983; 50 FR 39687, Sept. 30, 1985; 50 FR 45408, Oct. 31, 1985]

§ 13.13 Abandoned applications.

Upon receipt of an incomplete or improperly executed application, the applicant shall be notified of the deficiency in the application. If the applicant fails to supply the deficient information, pay the requisite fee or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned.

[47 FR 30785, July 15, 1982]

§ 13.14 Insufficient fee.

No permit shall be issued until the proper fee is received. The reviewing office shall notify the applicant upon discovery that the proper fee has not been received.

[47 FR 30785, July 15, 1982]

Subchapter C—Permit Administration

§ 13.21 Issuance of permits.

(a) No permit may be issued prior to the receipt of a written application therefor, unless a written variation from the requirements, as authorized by § 13.4, is inserted into the official file of the Bureau. An oral or written representation of an employee or agent of the United States Government, or an action of such employee or agent, shall not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 10.12.

(b) Upon receipt of a properly executed application for a permit, the Director shall issue the appropriate permit unless:

(1) The applicant has been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility.

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(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application;

(3) The applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility;

(4) The authorization requested potentially threatens a wildlife or plant population, or

(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) Each permit shall bear a serial number. Such number may be reassigned to the permittee to whom issued so long as he maintains continuity of renewal.

(d) The applicant shall be notified in writing of the denial of any application for a permit and the reasons therefor.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 47 FR 30785, July 15, 1982]

§ 13.22 Duration of permit.

Permits shall entitle the person to whom issued to engage in the activity specified in the permit, within the limitations of the applicable statute and regulations contained in this Subchapter B, for the period stated on the permit, unless sooner terminated.

§ 13.23 Amendment of applications or permits.

Where circumstances have changed so that an applicant or permittee desires to have any term or condition of his application or permit modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in § 13.21.

§ 13.24 Renewal of permit.

Where the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, he shall, unless otherwise no-

tified in writing by the Director, file a request for permit renewal, together with a certified statement that the information in his original application is still currently correct, or a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of his permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by his expired permit until his renewal application is acted upon. The Director's intent not to renew a permit or to renew it in substantially amended form shall be made known in writing to the permittee. The written notice shall contain the reasons for the Director's action and shall allow the permittee an opportunity, in writing or in person, to present reasons why the permit should be renewed or should not be substantially amended.

[39 FR 1161, Jan. 4, 1974, as amended at 47 FR 30786, July 15, 1982]

§ 13.25 Permits not transferable; agents.

(a) Permits issued under this part are not transferable or assignable. Some permits authorize certain activities in connection with a business or commercial enterprise and in the event of any lease, sale, or transfer of such business entity, the successor must obtain a permit prior to continuing the permitted activity. However, certain limited rights of succession are provided in § 13.26.

(b) Except as otherwise stated on the face of a permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for the purposes authorized by the permit, may carry out the activity authorized by the permit.

§ 13.26 Right of succession by certain persons.

(a) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

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(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; and

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to secure the right provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

§ 13.27 Change of mailing address.

During the term of his permit, a permittee may change his mailing address without procuring a new permit. However, in every case notification of the new mailing address must be forwarded to the issuing official within 30 days after such change. This section does not authorize the change of location of the permitted activity for which an amendment must be obtained in accordance with § 13.23.

§ 13.28 Change in name.

A permittee continuing to conduct a permitted activity is not required to obtain a new permit by reason of a mere change in trade name under which a business is conducted or a change of name by reason of marriage or legal decree: *Provided*, That such permittee must furnish his permit to the issuing official for endorsement within 30 days from the date the permittee begins conducting the permitted activity under the new name.

§ 13.29 Official endorsement of changes required.

Any change in a permit must be made by endorsement of the Director or issuing officer. Any modification or change in an issued permit, other than those specifically provided for in this subpart, may be granted or denied in the discretion of the Director.

§ 13.30 Certain continuancy of activity.

A permittee who furnishes his permit to the issuing official for endorsement or correction in compliance with the provisions of this subpart may continue his operations pending its return.

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§ 13.31 Discontinuance of activity.

When any permittee discontinues his activity, he shall, within 30 days thereof, mail his permit and a request for cancellation to the issuing officer, and said permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made where the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

§ 13.32 Appeal procedure.

(a) Any person in the following categories may appeal the Service's action:

(1) An applicant who has received written notice that his application has been denied;

(2) A permittee or applicant who has received written notice that a requested amendment of a term or condition of his permit has been denied;

(3) A permittee who has been notified that his permit has been recalled, amended on the Service's motion, revoked or suspended during its term;

(4) A permittee whose permit or amendment has been issued, but who has not been authorized to conduct part of the requested activity, or believes that modifications made to the requested activity are unacceptable.

(b) The appeal shall be submitted in writing to the office which took the action being appealed within 60 days of the date of notification of the action taken. It must address the reasons given for such action but may also contain new information or justification why the action in question should not be taken. Such further submissions shall not be considered a new application.

(c) A decision on the appeal shall be made within 30 days of receipt of the appeal and the issuing office shall notify the appellant in writing of its decision, and the reasons therefor.

(d) If the decision is not in favor of the appellant, the appeal file shall be forwarded by the issuing office to the Regional Director or Director as appropriate.

(e) The Regional Director or the Director may utilize such staff as necessary in assisting him to decide on the appeal. He may delegate this decision

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as authorized by Service procedure, provided that it may not be delegated to the issuing office. The appellant may offer arguments or additional evidence to the Regional Director or the Director, in writing or in person.

(f) The decision of the Regional Director or the Director shall be made within 60 days of receipt of appeals pursuant to paragraph (d) of this section and promptly communicated in writing to the appellant, along with the reasons therefor, except that the Regional Director or Director may extend the 60-day period for good cause notified in writing to the appellant.

(g) The decision of the Regional Director or the Director shall constitute the final administrative decision of the department.

[47 FR 30786, July 15, 1982]

Subpart D—Conditions

§ 13.41 Recall and amendment of permit during its term.

Except for marine mammal permits (See Part 18), all permits are issued subject to the condition that the Service reserves the right to recall and amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified. Permittees shall be notified in writing of such intent and the reasons therefor not less than 30 days prior to the proposed date of such action and shall be allowed an opportunity, in writing or in person, to present reasons why the permit should not be recalled or amended.

[47 FR 30786, July 15, 1982]

§ 13.42 Permits are specific.

The authorizations on the face of a permit which set forth specific times, dates, places, methods of taking, numbers and kinds of wildlife or plants, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

§ 13.43 Alteration of permits.

Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid. Unless specifically permitted on the face thereof, no permit shall be copied, nor shall any copy of a permit issued pursuant to this Subchapter B be displayed, offered for inspection, or otherwise used for any official purpose for which the permit was issued.

§ 13.44 Display of permit.

Any permit issued under this part shall be displayed for inspection upon request to the Director or his agent, or to any other person relying upon its existence.

§ 13.45 Filing of reports.

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of this Subchapter B or the provisions of the permit set forth other reporting requirements.

§ 13.46 Maintenance of records.

From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of plants obtained from the wild (excluding seeds) or wildlife pursuant to such permit. Such records shall be kept current and shall include names and addresses of persons with whom any plant obtained from the wild (excluding seeds) or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records, unless otherwise specified, shall be entered in books, legibly written in the English language. Such records shall be re-

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tained for 5 years from the date of issuance of the permit.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

§ 13.47 Inspection requirement.

Any person holding a permit under this Subchapter B shall allow the Director's agent to enter his premises at any reasonable hour to inspect any wildlife or plant held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of this Subchapter B.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

Subpart E—Violations of the Permit

§ 13.51 Penalties for violation of a permit, notice; demonstration of compliance.

(a) Any violation of the applicable provisions of this subchapter, or of the statute under which the permit was issued, or a condition of the permit, may subject the permittee to the following penalties:

(1) The penalty provided in the statute under which the permit was issued;

(2) Temporary suspension of the permit for a specified period; and

(3) Revocation of the permit. When revoked, permits must be surrendered to the Director on demand.

(b) Except in cases of willfulness or those in which the public health safety or interest requires, and prior to any suspension or revocation of a permit, the permittee shall be given:

(1) Notice by the Service in writing of the facts or conduct which may warrant the suspension or revocation; and

(2) Opportunity to demonstrate or achieve compliance with all permit requirements.

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**Subpart E—Depleted Species or Stocks—
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PART 18—MARINE MAMMALS

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Subpart H—Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species

- 18.92 Purpose of regulations.
- 18.93 Scope of regulations.
- 18.94 Pacific walrus (Alaska).

AUTHORITY: Marine Mammal Protection Act of 1972, as amended (Pub. L. 92-522, 88 Stat. 1027; Pub. L. 97-58, 95 Stat. 979 (16 U.S.C. 1361-1407)).

SOURCE: 39 FR 7262, Feb. 25, 1974, unless otherwise noted.

Subpart A—Introduction

§ 18.1 Purpose of regulations.

The regulations contained in this part implement the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), which among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals.

§ 18.2 Scope of regulations.

(a) This Part 18 applies solely to marine mammals and marine mammal products as defined in § 18.3. For regulations under the Act with respect to cetacea (whales and porpoises), pinnipedia, other than walrus (seals and sea lions), see 50 CFR Part 216.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of this Subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife. (See also Part 13 of this subchapter.)

§ 18.3 Definitions.

In addition to definitions contained in section 3 of the Act and in Part 10 of this subchapter, and unless the context requires otherwise, in this Part 18:

“Act” means the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361-1407; Pub. L. 92-522.

“Alaskan Native” means a person defined in the Alaska Native Claims Set-

tlement Act (43 U.S.C. section 1603(b) (85 Stat. 588)) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or town of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town. Any citizen enrolled by the Secretary pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

“Authentic native articles of handicrafts and clothing” means items made by an Indian, Aleut, or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern techniques at a tannery registered pursuant to § 18.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as cooperatives, is permitted so long as no large scale mass production results.

“Commercial fishing operation” means the lawful harvesting of fish from the marine environment for profit as part of an on-going business enterprise. Such term shall not include sport fishing activities whether or not carried out by charter boat or

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otherwise, and whether or not the fish so caught are subsequently sold.

"Endangered species" means a species of marine mammal listed as "endangered" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205 (see Part 17 of this subchapter).

"Incidental catch" means the taking of a marine mammal (a) because it is directly interfering with commercial fishing operations, or (b) as a consequence of the steps used to secure the fish in connection with commercial fishing operations: *Provided, however*, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury; and *Provided, further*, That the taking of a marine mammal which otherwise meets the requirements of this definition shall not be considered as incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

"Marine mammal" means any specimen of the following species, whether alive or dead, and any part thereof, including but not limited to, any raw, dressed, or dyed fur or skin:

Scientific name	Common name	Date listed
<i>Ursus maritimus</i>	Polar bear.....	Dec. 21, 1972.
<i>Enhydra lutris</i>	Sea otter.....	Do.
<i>Odobenus rosmarus</i>	Walrus.....	Do.
<i>Dugong dugon</i>	Dugong.....	Do.
<i>Trichechus manatus</i>	West Indian manatee.....	Do.
<i>Trichechus inunguis</i>	Amazonian manatee.....	Do.
<i>Trichechus senegalensis</i>	West African manatee.....	Do.
<i>Lutra felina</i>	Marine otter.....	Mar. 29, 1978.

NOTE: Common names given may be at variance with local usage.

"Native village or town" means any community, association, tribe, band, clan, or group.

"Pregnant" means pregnant near term.

"Subsistence" means the use by Alaskan Natives of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or for those who depend upon the taker to provide them with such subsistence.

"Take" means to harass, hunt, capture, collect, or kill, or attempt to

harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal.

"Threatened species" means a species of marine mammal listed as "threatened" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205.

"Wasteful manner" means any taking or method of taking which is likely to result in the killing or injuring of marine mammals beyond those needed for subsistence purposes or for the making of authentic native articles of handicrafts and clothing or which results in the waste of a substantial portion of the marine mammal and includes without limitation the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

[39 FR 7262, Feb. 25, 1974, as amended at 43 FR 13066, Mar. 29, 1978]

Subpart B—Prohibitions

§ 18.11 Prohibited taking.

Except as otherwise provided in Subpart C, D, or H of this Part 18, or Part 403, it is unlawful for:

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States.

[39 FR 7262, Feb. 25, 1974, as amended at 51 FR 17981, May 16, 1986]

§ 18.12 Prohibited importation.

(a) Except as otherwise provided in Subparts C and D of this Part 18, it is

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unlawful for any person to import any marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is otherwise authorized pursuant to Subparts C and D of this Part 18, it is unlawful for any person to import into the United States any:

(1) Marine mammal: (i) Taken in violation of the Act, or

(ii) Taken in another country in violation of the laws of that country;

(2) Any marine mammal product if: (i) The importation into the United States of the marine mammal from which such product is made would be unlawful under paragraph (b)(1) of this section, or

(ii) The sale in commerce of such product in the country of origin of the product is illegal.

(c) Except in accordance with an exception referred to in Subpart C and §§ 18.31 and 18.32 of this part, it is unlawful to import into the United States any:

(1) Marine mammal which was pregnant at the time of taking;

(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later;

(3) Specimen of an endangered or threatened species of marine mammals;

(4) Specimen taken from a depleted species or stock of marine mammals; or

(5) Marine mammal taken in an inhumane manner.

(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

§ 18.13 Prohibited uses, possession, transportation, and sales.

Except as otherwise provided in the Act or these regulations, it is unlawful for:

(a) Any person to use any port, harbor, or other place under the jurisdiction of the United States for any purpose in any way connected with a

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prohibited taking or any unlawful importation of any marine mammal or marine mammal products;

(b) Any person to possess any marine mammal, or product therefrom, taken in violation of the Act or these regulations;

(c) Any person to transport, purchase, sell, or offer to purchase or sell any marine mammal or marine mammal product; or

(d) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this Act.

[39 FR 7262, Feb. 25, 1974, as amended at 51 FR 17981, May 16, 1986]

§ 18.14 Marine mammals taken before the Act.

(a) Section 102(e) of the Act provides in effect that the Act shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date. Such status may be established by submitting to the Director prior to, or at the time of importation, an affidavit containing the following:

(1) The Affiant's name and address;

(2) Identification of the Affiant;

(3) A description of the marine mammals or marine mammal products which the Affiant desires to import;

(4) A statement by the Affiant that to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;

(5) A statement by the Affiant in the following language:

The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of _____ under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 18 U.S.C. 1001.

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(b) Either one of two exhibits shall be attached to such affidavit, and will contain either:

(1) Records or other available evidence showing that the product consists of or is composed in whole or in part of marine mammals taken prior to December 21, 1972. Such records or other evidentiary material must include information on how, when, where, and by whom the animals were taken, what processing has taken place since taking, and the date and location of such processing; or

(2) A statement from a government agency of the country of origin exercising jurisdiction over marine mammals that any and all such mammals from which the products sought to be imported were derived were taken prior to December 21, 1972.

(c) Service agents, or Customs officers, may refuse to clear marine mammals or marine mammal products for importation into the United States, pursuant to § 14.53 of this subchapter, until the importer can demonstrate, by production of the affidavit referred in above or otherwise, that section 102(e) of the Act applies to all affected items.

(d) This section has no application to any marine mammal or marine mammal product intended to be imported pursuant to § 18.21, § 18.31 or § 18.32 of this part.

[39 FR 7262, Feb. 25, 1974, as amended at 51 FR 17981, May 16, 1986]

Subpart C—General Exceptions

§ 18.21 Actions permitted by international treaty, convention, or agreement.

The Act and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same, relating to the taking or importation of marine mammals or marine mammal products, which was existent and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in Subpart B of this part and the provisions of the Act shall not apply to activities carried out pursuant to the Interim Convention on the

Conservation of North Pacific Fur Seals signed in Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151-1187, as, in each case, from time to time amended.

§ 18.22 Taking by Federal, State or local government officials.

(a) A Federal, State or local government official or employee may take a marine mammal in the course of his duties as an official or employee and no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or from the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat. In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking.

(b) Each taking permitted under this Section should be included in a written report, to be submitted to the Director every six months, beginning December 31, 1973. Unless otherwise permitted by the Director, the report shall contain a description of:

(1) The animal involved;

(2) The circumstances requiring the taking;

(3) The method of taking;

(4) The name and official position of the State official or employee involved;

(5) The disposition of the animal, including in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(6) Such other information as the Director may require.

The reports shall be mailed to the Director, U.S. Fish and Wildlife Service,

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U.S. Department of the Interior,
Washington, D.C. 20240.

[39 FR 7262, Feb. 25, 1974, as amended at 51
FR 17981, May 16, 1986]

§ 18.23 Native exemptions.

(a) *Taking.* Except as otherwise provided in Part 403 of this title, any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, subject to the restrictions contained in this section, if such taking is:

- (1) For subsistence purposes, or
- (2) For purposes of creating and selling authentic native articles of handicraft and clothing, and
- (3) In each case, not accomplished in a wasteful manner.

(b) *Restrictions.* (1) "Except for a transfer to a duly authorized representative of the Regional Director of the U.S. Fish and Wildlife Service for scientific research purposes, no marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or

(ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or

(iii) It is an edible portion and it is sold in an Alaskan Native village or town.

(2) "Except for a transfer to a duly authorized representative of the Regional Director of the U.S. Fish and Wildlife Service for scientific research purposes, no marine mammal taken for purposes of creating and selling authentic Native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:

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(i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or

(ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or

(iii) It has been first transformed into an authentic Native article of handicraft or clothing; or

(iv) It is an edible portion and it is sold (A) in an Alaskan Native village or town or (B) to an Alaskan Native for his consumption.

(c) The restriction in paragraph (b) shall not apply to parts or products of the Pacific walrus (*Odobenus rosmarus*) to the extent that the waiver of the moratorium and the approved State/Federal regulations relating to the taking and importation of walrus permits the delivery, sale, transportation or shipment of parts or products of the Pacific walrus in interstate or foreign commerce.

(d) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply to the Director for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:

(1) The name and address of the applicant;

(2) A description of the applicant's procedures for receiving, storing, processing, and shipping materials;

(3) A proposal for a system of book-keeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos, pursuant to this section;

(4) Such other information as the Director may request;

(5) A certification in the following language:

I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Pro-

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Section Act of 1972 (16 U.S.C. 1361-1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001.

(6) The signature of the applicant.

The sufficiency of the application shall be determined by the Director, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to the conditions as the Director prescribes, which may include, but are not limited to provisions regarding records, inventory segregation, reports, and inspection. The Director may charge a reasonable fee for such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Interior.

(e) Notwithstanding the preceding provisions of this section, whenever, under the Act, the Secretary determines any species or stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the Act upon the taking of such marine mammals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals by such person shall conform to such regulations.

[39 FR 7262, Feb. 25, 1974, as amended at 40 FR 59444, Dec. 24, 1975; 45 FR 54057, Aug. 14, 1980; 51 FR 17981, May 16, 1986]

§ 18.24 Taking incidental to commercial fishing operations.

Persons may take marine mammals incidental to commercial fishing operations until October 21, 1974: *Provided*, That such taking is by means of equipment and techniques prescribed in regulations issued by the Secretary of Commerce. However, any marine mammal taken as an incidental catch may not be retained. It shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.

§ 18.25 Exempted marine mammals or marine mammal products.

(a) The provisions of the Act and these regulations shall not apply:

(1) To any marine mammal taken before December 21, 1972, or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) The prohibitions contained in § 18.12(c) (3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which notice is published in the *FEDERAL REGISTER* of the proposed rulemaking with respect to the designation of the species of stock concerned as depleted or endangered:

(c) Section 18.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

§ 18.26 Collection of certain dead marine mammal parts.

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within ¼ of a mile of the ocean. The term "ocean" includes bays and estuaries.

(b) Marine mammal parts so collected may be retained if registered within 30 days with an agent of the National Marine Fisheries Service, or an agent of the U.S. Fish and Wildlife Service.

(c) Registration shall include (1) the name of the owner, (2) a description of the article to be registered and (3) the date and location of collection.

(d) Title to any marine mammal parts collected under this section is not transferable, unless consented to in writing by the agent referred to in paragraph (b) of this section.

[39 FR 7262, Feb. 25, 1974, as amended at 51 FR 17981, May 16, 1986]

§ 18.27 Regulations governing small takes of marine mammals incidental to specified activities.

(a) *Purpose of regulations.* The regulations in this section implement Section 101(a)(5) of the Marine Mammal

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Protection Act of 1972, as amended, 16 U.S.C. 1371(a)(5), Pub. L. 97-58, which provides a mechanism for allowing, upon request, during periods of not more than five consecutive years each, the incidental, but not intentional, taking of small numbers of non-depleted marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region.

(b) *Scope of regulations.* The taking of small numbers of marine mammals under Section 101(a)(5) of the Marine Mammal Protection Act may be allowed only if the species involved are not depleted and if the Fish and Wildlife Service:

(1) Finds that the total taking during the specified time period will have a negligible impact on the species and their habitat, and on the availability of the species for subsistence uses;

(2) prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and their habitat, paying particular attention to rookeries, mating grounds, and other areas of similar significance; and

(3) prescribes regulations pertaining to the monitoring and reporting of such taking.

NOTE: The information collections contained in this § 18.27 are not subject to Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) since there will be less than ten respondents annually.

(c) *Definitions.* In addition to definitions contained in the Act and in 50 CFR 18.3 and unless the context otherwise requires, in this section.

"Citizens of the United States" and "U.S. citizens" means individual U.S. citizens or any partnership, corporation, association, or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) and controlled by individuals who are U.S. citizens. U.S. Federal, State and local government agencies shall also constitute citizens of the United States for purposes of this section.

"Incidental, but not intentional, taking" means takings which are infrequent, unavoidable, or accidental. It

does not mean that the taking must be unexpected. (Complete definition of take is contained in 50 CFR 18.3.)

"Negligible impact" means a biological impact which can be disregarded or which is so small or unimportant, as to warrant little or no attention. A finding of negligible impact cannot be made if a species or stock is depleted under 16 U.S.C. 1362(1).

"Small numbers" means a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.

"Specified activity" means any activity, other than commercial fishing, which takes place in a specified geographical region and potentially involves the taking of small numbers of non-depleted marine mammals. The specified activity and specified geographical region should be identified so that the anticipated effects on non-depleted marine mammals will be substantially similar.

"Specified geographical region" means an area within which a specified activity is conducted and which has similar biogeographic characteristics.

(d) *Submission of requests.* (1) In order for the Fish and Wildlife Service to consider allowing the taking by U.S. citizens of small numbers of non-depleted marine mammals incidental to a specified activity, a written request must be submitted to the Director, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Requests shall include the following information on the activity in general and estimated cumulative impacts of the total potential taking (by all persons conducting the activity):

(i) A description of the specific activity or class of activities that can be expected to result in incidental taking of non-depleted marine mammals;

(ii) The dates and duration of such activity and the specific geographical region where it will occur;

(iii) Based upon the best available scientific information;

(A) An estimate of the species and numbers of marine mammals likely to be taken by age, sex, and reproductive conditions, and the type of taking (e.g., disturbance by sound, injury or

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death resulting from collision, etc.) and the number of times such taking is likely to occur;

(B) A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;

(C) The anticipated impact of the activity upon the species or stocks;

(D) The anticipated impact of the activity on the availability of the species or stocks for subsistence uses;

(iv) The anticipated impact of the activity upon the habitat of the marine mammal populations and the likelihood of restoration of the affected habitat;

(v) The anticipated impact of the loss or modification of the habitat on the marine mammal population involved;

(vi) The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and, where relevant, on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;

(vii) Suggested means of accomplishing the necessary monitoring and reporting which will result in increased knowledge of the species through an analysis of the level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity; and

(viii) Suggested means of learning of, encouraging, and coordinating research opportunities, plans and activities relating to reducing such incidental taking from such specified activities, and evaluating its effects.

(2) The Director shall determine the adequacy and completeness of a request, and if found to be adequate, will invite information, suggestions, and comments on the preliminary finding of negligible impact and on the proposed specific regulations through notice in the *FEDERAL REGISTER*, newspapers of general circulation, and appropriate electronic media in the

coastal areas that may be affected by such activity. All information and suggestions will be considered by the Fish and Wildlife Service in developing final findings and effective specific regulations.

(3) The Director shall evaluate each request to determine, based on the best available scientific evidence, whether the total taking constitutes a negligible impact on the species or stocks of marine mammals, their habitat, and where relevant, on the availability of the species for subsistence uses. Any preliminary finding of negligible impact shall be proposed for public comment before final specific regulations are promulgated.

(e) *Specific regulations.* (1) Generic regulations will be established for each allowed specified activity which set forth permissible methods of taking and requirements for monitoring and reporting.

(2) Regulations will be established based on the best available scientific information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or part, after notice and opportunity for public review.

(f) *Letters of Authorization.* (1) A Letter of Authorization, which may be issued only to U.S. citizens, is required to conduct activities pursuant to any specific regulations established. Requests for Letters of Authorization shall be submitted to the Director, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. The information to be submitted in a request may be obtained by writing the Director. Once specific regulations are effective, the Service will to the maximum extent possible, process subsequent applications for Letters of Authorization within 30 days after receipt of the application by the Service.

(2) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the finding that the cumulative total of such taking will have a negligible impact on the marine mammal species or stocks and their habitat, and, where relevant, on the

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availability of the species for subsistence uses.

(3) Notice of issuance of all Letters of Authorization will be published in the *FEDERAL REGISTER* within 30 days of issuance.

(4) Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request.

(5) Letters of Authorization shall be withdrawn or suspended, either on an individual or class basis, as appropriate, if, after notice and opportunity for public comment, the Director determines: (i) The regulations prescribed are not being substantially complied with, or (ii) the taking allowed is having, or may have, more than a negligible impact on the species or stocks concerned, their habitat, or, where relevant, on their availability for subsistence uses.

(6) The requirement for notice and opportunity for public review in paragraph (f)(5) of this section shall not apply if the Director determines that an emergency exists which poses a significant risk to the well-being of the species or stocks of marine mammals concerned.

(7) A violation of any of the terms and conditions of a Letter of Authorization or of the specific regulations may subject the Holder and/or any individual who is operating under the authority of the Holder's Letter of Authorization to penalties provided in the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407).

[48 FR 31225, July 7, 1983]

Subpart D—Special Exceptions

§ 18.31 Scientific research permits and public display permits.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the taking and importation of marine mammals for scientific research purposes or for public display.

(a) *Application procedure.* Applications for permits to take and import marine mammals for scientific research purposes or for public display shall be submitted to the Director.

Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) A statement of the purpose, date, location and manner of the taking or importation;

(2) A description of the marine mammal or the marine mammal products to be taken or imported, including the species or subspecies involved; the population stock, when known, the number of specimens or products (or the weight thereof, where appropriate); and the anticipated age, size, sex, and condition (i.e., whether pregnant or nursing) of the animals involved;

(3) If the marine mammal is to be taken and transported alive, a complete description of the manner of transportation, care and maintenance, including the type, size, and construction of the container or artificial environment; arrangements for feeding and sanitation; a statement of the applicant's qualifications and previous experience in caring for and handling captive marine mammals and a like statement as to the qualifications of any common carrier or agent to be employed to transport the animal; and a written certification of a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animals and that in his opinion they are adequate to provide for the well-being of the animal;

(4) If the application is for a scientific research permit, a detailed description of the scientific research project or program in which the marine mammal or marine mammal product is to be used including a copy of the research proposal relating to such program or project and the names and addresses of the sponsor or cooperating institution and the scientists involved;

(5) If the application is for a scientific research permit, and if the marine mammal proposed to be taken or imported is listed as an endangered or threatened species or has been designated by the Secretary as depleted, a detailed justification of the need for such a marine mammal, including a discussion of possible alternatives,

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whether or not under the control of the applicant; and

(6) If the application is for a public display permit, a detailed description of the proposed use to which the marine mammal or marine mammal product is to be put, including the manner, location, and times of display, whether such display is for profit, an estimate of the numbers and types of persons who it is anticipated will benefit for such display, and whether and to what extent the display is connected with educational or scientific programs. There shall also be included a complete description of the enterprise seeking the display permit and its educational, and scientific qualifications, if any.

(b) *Review by Marine Mammal Commission.* Upon receipt of an application the Director shall forward the application to the Marine Mammal Commission together with a request for the recommendations of the Commission and the Committee of Scientific Advisors on Marine Mammals. In order to comply with the time limits provided in these regulations, the Director shall request that such recommendation be submitted within 30 days of receipt of the application by the Commission. If the Commission or the Committee, as the case may be, does not respond within 30 days from the receipt of such application by the Commission, the Director shall advise the Commission in writing that failure to respond within 45 days from original receipt of the application (or such longer time as the Director may establish) shall be considered as a recommendation from the Commission and the Committee that the permit be issued. The Director may also consult with any other person, institution or agency concerning the application.

(c) *Issuance criteria.* Permits applied for under this section shall be issued, suspended, modified and revoked pursuant to regulations contained in § 18.33. In determining whether to issue a scientific research permit, the Director shall consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; and whether the granting of the permit is required to further a bona fide and necessary or

desirable scientific purpose, taking into account the benefits anticipated to be derived from the scientific research contemplated and the effect of the proposed taking or importation on the population stock and the marine ecosystem. In determining whether to issue a public display permit, the Director shall consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking or importation on the population stocks of the marine mammal in question and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of the marine mammal or the marine mammal product, and the adequacy of his facilities.

(d) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this Subchapter B, permits issued under this section shall be subject to the following conditions:

(1) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(i) The time of the authorized taking or importation;

(ii) The period of any transit of such person or agent which is incidental to such taking or importation; and

(iii) Any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

(2) A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(e) *Tenure of permits.* The tenure of permits for scientific research or public display shall be designated on the face of the permit.

§ 18.32 Waiver of the moratorium.

See Subpart F (Waiver of the moratorium; State laws and regulations)

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and Subpart G (Notice and Hearing on Section 103 Regulations) for procedures regarding waivers of the moratorium in those circumstances where a state provides an acceptable management program for a species or population stock within its jurisdiction.

[40 FR 59442, Dec. 24, 1975]

§ 18.33 Procedures for issuance of permits and modification, suspension or revocation thereof.

(a) Whenever application for a permit is received by the director which the director deems sufficient, he shall, as soon as practicable, publish a notice thereof in the **FEDERAL REGISTER**. Such notice shall set forth a summary of the information contained in such application. Any interested party may, within 30 days after the date of publication of such notice, submit to the director his written data or views with respect to the taking or importation proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If the request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the director determines that a hearing would otherwise be advisable, the director may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the **FEDERAL REGISTER** not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section the director shall issue or deny issuance of the permit. Notice

of the decision of the director shall be published in the **FEDERAL REGISTER** within 10 days after the date of such issuance or denial. Such notice shall include the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Any permit shall be subject to modification, suspension, or revocation by the director in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken along with a summary of the reasons therefor;

(2) In accordance with 5 U.S.C. 558, the steps which the permittee may take to demonstrate or achieve compliance with all lawful requirements; and

(3) That the permittee is entitled to a hearing thereon if a written request for such a hearing is received by the Director within 10 days after receipt of the aforesaid notice or such other later date as may be specified in the notice to the permittee. The time and place of the hearing, if requested by the permittee, shall be determined by the director and a written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of hearing specified. The director may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and other parties participating may submit all relevant material, data, views, comments, arguments, and exhibits at the hearing. A summary record shall be kept of any such hearing.

(e) The Director shall make a decision regarding the proposed modification, suspension, or revocation, as soon as practicable after the close of the hearing, or if no hearing is held, as soon as practicable after the close of the 10 day period during which a hearing could have been requested. Notice of the modification, suspension, or revocation shall be published in the **FEDERAL REGISTER** within 10 days from the date of the Director's decision. In no event shall the proposed action take

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effect until notice of the Director's decision is published in the **FEDERAL REGISTER**.

Subpart E—Depleted Species of Stocks—[Reserved]

Subpart F—Transfer of Management Authority to States

NOTE: Regulations governing the transfer of management authority to states pursuant to Section 109 of the Marine Mammal Protection Act for marine mammal species under the jurisdiction of the Secretary of the Interior are found at Part 403 of this title.

[48 FR 22456, May 18, 1983]

Subpart G—Notice and Hearing on Section 103 Regulations

SOURCE: 41 FR 5396, Feb. 6, 1976, unless otherwise noted.

§ 18.70 Basis and purpose.

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2), 1371(a)(3)(A), and 1371(b)) and these regulations authorize the Director, U.S. Fish and Wildlife Service, to: (1) Impose regulations governing the taking of marine mammals incidental to commercial fishing operations; (2) waive the moratorium and adopt regulations with respect to the taking and importing of animals from each species of marine mammals under his jurisdiction; and (3) prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the act refers the Director to section 103 (16 U.S.C. 1373). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Director to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)).

§ 18.71 Definitions.

Definitions shall be the same as in Subpart A of this part except as follows:

(a) "Party" means for the purposes of this subpart:

(1) The Director or his representative; or

(2) A person who has notified the Director by specified dates of his or her intent to participate in the hearing pursuant to §§ 18.75 and 18.84(b).

(b) "Presiding officer" means, for the purposes of this subpart, an administrative law judge of the Office of Hearings and Appeals appointed in accordance with 5 U.S.C. 3105.

(c) "Witness" means, for the purposes of this subpart, any person who provides direct testimony on the proposed regulations and waiver. A person may be both a party and a witness.

§ 18.72 Scope of regulations.

The procedural regulations in this subpart govern the practice and procedure in hearings held under section 103(d) of the Act. These hearings will be governed by the provisions of sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. 556 and 557). The regulations shall be construed to secure the just, speedy, and inexpensive determination of all issues raised with respect to any waiver and/or regulation proposed pursuant to section 103(d) of the act in a manner which gives full protection to the rights of all persons affected thereby.

§ 18.73 Burden of proof.

The proponents of the proposed regulations and waiver must demonstrate that any taking or importation of any marine mammal under such proposed regulations and waiver would be consistent with the act.

§ 18.74 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the **FEDERAL REGISTER**, together with the Director's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

(1) The nature of the hearing;

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(2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;

(3) The legal authority under which the hearing is to be held;

(4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));

(5) Issues of fact which may be involved in the hearing;

(6) If an Environmental Impact Statement is required, the date of publication of the Statement and the times and place(s) where the Statement and comments thereon may be viewed and copied;

(7) Any written advice received from the Marine Mammal Commission;

(8) The times and place(s) where records and submitted direct testimony will be kept for public inspection, along with appropriate references to any other documents;

(9) The final date for filing with the Director a notice of intent to participate in the hearing pursuant to § 18.75;

(10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;

(11) The docket number assigned to the case which shall be used in all subsequent proceedings; and

(12) The place and date of the prehearing conference.

§ 18.75 Notification by interested persons.

Any person desiring to participate as a party shall notify the Director, by certified mail, on or before the date specified in the notice of hearing.

§ 18.76 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to § 18.74, the Office of Hearings and Appeals shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

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(1) Change the time and place of the hearing and adjourn the hearing;

(2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the FEDERAL REGISTER a final hearing agenda;

(3) Rule upon motions, requests and admissibility of direct testimony;

(4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;

(5) Modify or waive any rule (after notice) when determining no party will be prejudiced;

(6) Receive written comments and hear oral arguments;

(7) Render a recommended decision; and

(8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.

(c) In case of the absence of the original presiding officer or his inability to act, the powers and duties to be performed by the original presiding officer under this part in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer by the Office of Hearings and Appeals unless otherwise ordered by the Director.

(d) The presiding officer shall withdraw from the proceeding upon his own motion or upon the filing of a motion by a party under § 18.76(e) if he deems himself disqualified under recognized canons of judicial ethics.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. If there is filed by a party in good faith a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict, of interest or other basis which might result in prejudice to a party, the hearing shall recess. The Director of the Office of Hearings and Appeals shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he

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may deem appropriate in the circumstances.

§ 18.77 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing (§ 18.74), the prehearing order (§ 18.82), or within 15 days after the conclusion of the prehearing conference (§ 18.84) as the case may be. All direct testimony, referred to in the affidavit and made a part thereof, must be attached to the affidavit. Direct testimony submitted with exhibits must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the **FEDERAL REGISTER**.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state his relationship to the party; and

(2) Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing otherwise specifies.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(f) Contemporaneous with the publication of the notice of hearing, the Director's direct testimony in support of the proposed regulations and waiver, where applicable, shall be available for public inspection as specified in the notice of hearing. The Director may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 18.78 Mailing address.

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Presiding Officer, c/o Director, U.S. Fish and Wildlife Service, Washington, D.C. 20240. All affidavits and exhibits shall be clearly marked with the docket number of the proceedings.

§ 18.79 Inspection and copying of documents.

Any document in a file pertaining to any hearing authorized by this subpart or any document forming part of the record of such a hearing may be inspected and/or copied in the Office of the Director, U.S. Fish and Wildlife Service, Washington, D.C. 20240, unless the file is in the care and custody of the presiding officer, in which case he shall notify the parties as to where and when the record may be inspected.

§ 18.80 Ex parte communications.

(a) After notice of a hearing is published in the **FEDERAL REGISTER**, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Director, Deputy Director or Marine Mammal Coordinator, U.S. Fish and Wildlife Service, without reference to these rules of procedure, shall be deemed ex parte communications and are not to be considered part of the record for decision.

(b) A record of oral conversations shall be made by the above persons who are contacted. All communications shall be available for public viewing at times and place(s) specified in the notice of hearing.

(c) The presiding officer shall not communicate with any party on any fact in issue or on the merits of the matter unless notice and opportunity is given for all parties to participate.

§ 18.81 Prehearing conference.

(a) After an examination of all the direct testimony submitted pursuant to § 18.77, the presiding officer shall make a preliminary determination of issues of fact which may be addressed at the hearing.

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(b) The presiding officer's preliminary determination shall be made available at the place or places provided in the notice of the hearing (§ 18.74(b)(8)) at least five days before the prehearing conference is held.

(c) The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer's preliminary determination of issues of fact for the hearing has omitted any significant issues;

(2) What facts are not in dispute;

(3) Which witnesses may appear at the hearing; and

(4) The nature of the interest of each party and which parties' interests are adverse.

(d) Only parties may participate in the prehearing conference, and a party may appear in person or be represented by counsel.

§ 18.82 Prehearing order.

(a) After the prehearing conference, the presiding officer shall prepare a prehearing order which shall be published in the **FEDERAL REGISTER** within ten days after the conclusion of the conference. A copy of the prehearing order shall be mailed to all Parties.

(b) The prehearing order shall list: (1) All the issues which the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted which bears on the issues; and (2) a final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The prehearing order may also specify a final date for submission of direct testimony to rebut testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the prehearing order a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties' interests are adverse on the issues presented.

(d) All parties shall be bound by the prehearing order.

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§ 18.83 Determination to cancel the hearing.

(a) If the presiding officer determines that no issues of material fact are presented by the direct testimony submitted prior to the date of the hearing, he may publish in the **FEDERAL REGISTER** such determination and that on issues of material fact a hearing shall not be held. The presiding officer may provide an opportunity for argument on any issues of law presented by the direct testimony.

(b) Promptly after oral argument, if any, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and any oral argument presented. He shall transmit to the Director his recommended decision, the record and a certificate stating that the record contains all the written direct testimony. The Director shall then make a final decision in accordance with these regulations (§ 18.91).

§ 18.84 Rebuttal testimony and new issues of fact in prehearing order.

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the prehearing order.

(b) If the prehearing order presents issues not included in the notice of the hearing published pursuant to § 18.74:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Director by certified mail of an intent to participate not later than ten days after publication of the prehearing order. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless he previously notified the Director pursuant to § 18.75; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the prehearing order. Such direct testimony will comply with the requirements of § 18.77.

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§ 18.85 Waiver of right to participate.

Any person who fails to notify the Director of his intent to participate pursuant to § 18.75 or § 18.84 shall be deemed to have waived his right to participate as a party.

§ 18.86 Conduct of the hearing.

(a) The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the **FEDERAL REGISTER** and shall expeditiously notify all parties by telephone or by mail. If the change in time or place of hearing is made less than five days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record the notice of hearing as published in the **FEDERAL REGISTER**, all subsequent notices published in the **FEDERAL REGISTER**, the Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments, and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the prehearing order in such order as the presiding officer shall announce. With respect to direct testimony submitted as rebuttal testimony or in response to new issues presented by the prehearing conference, the presiding officer shall determine the relevancy of such testimony.

(c) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(d) If a party objects to the admission or rejection of any direct testimony or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling of the presiding officer on any objection shall be a part of the transcript and

shall be subject to review at the same time and in the same manner as the Director's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(e) All motions and requests shall be addressed to, and ruled on by, the presiding officer if made prior to his certification of the transcript, or by the Director if made thereafter.

§ 18.87 Direct testimony.

(a) Only direct testimony submitted as provided in these regulations and introduced at the hearing by a witness shall be considered part of the record. Such direct testimony, when written, shall not be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof.

(b) The witness introducing direct testimony shall:

(1) State his name, address and occupation;

(2) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies him as an expert;

(3) Identify the direct testimony previously submitted in accordance with these regulations; and

(4) Submit to appropriate cross- and direct-examination. Cross-examination shall be by a party whose interests are adverse on the issue presented to the witness if the witness is a party, or to the interests of the party who presented the witness.

(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.

(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States. Parties shall be given adequate notice, by the presiding officer, at the hearing, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 18.88 Cross-examination.

(a) The presiding officer may:

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(1) Require the cross-examiner to outline the intended scope of the examination; and

(2) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical or commercial publications may only be utilized for the limited purposes of impeaching witnesses under cross-examination unless previously submitted and introduced in accordance with these regulations.

§ 18.89 Oral and written arguments.

(a) The presiding officer may, in his discretion, provide for oral argument by parties at the end of the hearing. Such argument, when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any party may file with the presiding officer proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, he shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state his arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

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§ 18.90 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Director. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Director the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that to the best of his knowledge and belief the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Upon receipt of the recommended decision, the Director shall send a copy thereof to each party by certified mail and shall publish in the **FEDERAL REGISTER** a notice of the receipt of the recommended decision by the Director. The notice shall include:

(1) A summary of the recommended decision;

(2) A statement that any interested person may file written comments on the recommended decision with the Director by a specified date;

(3) The time(s) and place(s) where the record of the hearing transmitted to the Director pursuant to paragraph (b) of this section may be inspected by interested persons; and

(4) The time(s) and place(s) where the recommended decision may be inspected and/or copied by interested persons.

(d) Within thirty days after the notice of receipt of the recommended decision has been published in the **FEDERAL REGISTER**, any interested person may file with the Director any written comments on the recommended decision. All comments, including recommendations from or consultation

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with the Marine Mammal Commission, must be submitted during the thirty-day period to the Director at the above address.

§ 18.91 Director's decision.

(a) Upon receipt of the recommended decision and transcript and after the thirty-day period for receiving written comments on the recommended decision has passed, the Director shall make a final decision on the proposed regulations and waiver, where applicable. The Director's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Director may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Director's decision shall include:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor;

(3) Rulings on issues of law; and

(4) Any other relevant information which the Director deems appropriate.

(c) The Director's decision shall be published in the **FEDERAL REGISTER**. If the waiver is approved, the final adopted regulations shall be promulgated with the decision, or as soon thereafter as practicable.

Subpart H—Waiver of Moratorium on Taking and Importation of Individual Marine Mammal Species

SOURCE: 41 FR 14373, Apr. 5, 1976, unless otherwise noted.

§ 18.92 Purpose of regulations.

The regulations contained in this subpart fulfill the requirements of section 103 of the Act for regulations to govern the taking and importation of each species of marine mammal for which the moratorium imposed by section 101 has been waived.

§ 18.93 Scope of regulations.

(a) The provisions in this subpart apply only after (1) the Director has made a decision to waive a moratorium pursuant to section 101(a)(3)(A) of the Act, (2) the opportunity for a hearing

required by section 103(d) of the Act has been provided, and (3) the Director has made a determination, in the case of State laws and regulations, to approve such State laws and regulations pursuant to section 109(a)(2) of the Act and Subpart F of this part.

(b) The provisions of this subpart, unless specifically stated, apply to all taking and/or importation of each species of marine mammal for which the moratorium has been waived other than takings for scientific research or public display, which are governed by § 18.31 of this part, or takings incidental to commercial fishing operations which are governed by § 18.24.

§ 18.94 Pacific walrus (Alaska).

(a) Pursuant to sections 101(a)(3)(A) 103, and 109 of the Marine Mammal Protection Act of 1972, the moratorium on the hunting and killing of Pacific walrus (*Odobenus rosmarus*) in waters or on lands subject to the jurisdiction of the State of Alaska, the United States, or on the high seas by any person, vessel, or conveyance subject to the jurisdiction of the State of Alaska or the United States, is waived, provided that beginning August 2, 1979 this waiver shall not be effective, and no taking or importation under the waiver shall be allowed, until this section is amended to establish regulations to effectively control taking and otherwise implement the waiver.

[41 FR 14373, Apr. 5, 1976, as amended at 44 FR 45566, Aug. 2, 1979]

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PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

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AUTHORITY: 16 U.S.C. 1361 et seq., unless otherwise noted.

SOURCE: 39 FR 1852, Jan. 15, 1974, unless otherwise noted.

Subpart A—Introduction

§ 216.1 Purpose of regulations.

The regulations in this part implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361-1407, Pub. L. 92-522, which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals.

§ 216.2 Scope of regulations.

This Part 216 applies solely to marine mammals and marine mammal products as defined in § 216.3. For regulations under the Act, with respect to other marine mammals and marine mammal products, see 50 CFR Part 18.

§ 216.3 Definitions.

In addition to definitions contained in the Act, and unless the context otherwise requires, in this Part 216:

"Act" means the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361-1407, Pub. L. 92-522.

"Active sportfishing" means paying passengers have their terminal fishing gear (lures, hooks, etc.) in the water in an attempt to catch fish or, in the case of fishing involving chumming, fishing is considered to be in progress from the instant fish have been sighted taking bait (boiling) during that chumming process.

"Alaskan Native" means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)) (85 Stat. 588) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or group, of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

"Assistant Administrator" means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235.

"Authentic native articles of handicrafts and clothing" means items made by an Indian, Aleut or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to § 216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is

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permitted so long as no large scale mass production results.

"*Commercial fishing operation*" means the lawful harvesting of fish from the marine environment for profit as part of an ongoing business enterprise. Such terms may include licensed commercial passenger fishing vessel (as defined) activities, but no other sportfishing activities, whether or not the fish so caught are subsequently sold.

"*Commercial passenger fishing vessel*" means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

"*Endangered Species*" means a species or subspecies of marine mammal listed as "endangered" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205 (see Part 17 of this title).

"*Incidental catch*" means the taking of a marine mammal (1) because it is directly interfering with commercial fishing operations, or (2) as a consequence of the steps used to secure the fish in connection with commercial fishing operations: *Provided*, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury and further, that the taking of a marine mammal, which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

"*Marine environment*" means the oceans and the seas, including estuarine and brackish waters.

"*Marine mammal*" means those specimens of the following orders, which are morphologically adapted to the marine environment, whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales and porpoises), Pinnipedia, (other than walrus (seals and sea lions).

"*Native village or town*" means any community, association, tribe, band, clan or group.

"*Optimum sustainable population*" is a population size which falls within

a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

"*Pregnant*" means pregnant near term.

"*Secretary*" shall mean the Secretary of Commerce or his authorized representative.

"*Subsistence*" means the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

"*Take*" means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill, any marine mammal, including, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional acts which result in the disturbing or molesting of a marine mammal.

"*Threatened species*" means a species of marine mammal listed as "threatened" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205.

"*Wasteful manner*" means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence or for the making of authentic native articles of handicrafts and clothing or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

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(39 FR 1852, Jan. 15, 1974, as amended at 41 FR 55536, Dec. 21, 1976; 50 FR 49700, Dec. 4, 1985)

§ 216.4 Other laws and regulations.

(a) *Federal.* Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) *State laws or regulations.* See Subpart H of this part.

(1) Purport to authorize a State to issue permits in situations which would require a Federal permit under the Act unless and until appropriate Federal regulations have been issued under section 103 of the Act, and where appropriate, the Secretary has waived the moratorium on such taking or importation under section 101(a)(3) of the Act; or

(2) Purport to authorize a State to issue permits for scientific research or for public display (except that a State may, under authority of a general scientific research permit granted by the Secretary to it, assign individual scientific research permits to State employees or representatives of State universities or other State agencies, subject to the provisions of the general permit); or

(3) Purport to authorize the State to grant exemptions from the Act on the grounds of economic hardship.

(c) Any State may obtain a review and determination of its existing laws and regulations from the Secretary by submitting a written request to that effect to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, accompanied by the following documents, unless otherwise specified by the Secretary:

(1) A complete set of laws and regulations to be reviewed, certified as complete, true and correct, by the appropriate State official;

(2) A scientific description by species and population stock of the marine mammals to be subjected to such laws and regulations;

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(3) A description of the organization staffing and funding for the administration and enforcement of the laws and regulations to be reviewed;

(4) A description where such laws and regulations provide for discretionary authority on the part of State officials to issue permits, of the procedures to be used in granting or withholding such permits and otherwise enforcing such laws; and

(5) Such other materials and information as the Secretary may request or which the State may deem necessary or advisable to demonstrate the compatibility of such laws and regulations with the policy and purposes of the Act and the rules and regulations issued thereunder.

(d) In making a determination with respect to any State laws and regulations, the Secretary shall take into account:

(1) Whether such laws and regulations are consistent with the purposes and policies of the Act and the rules and regulations issued thereunder;

(2) The extent to which such laws and regulations are consistent with, or constitute an integrated management or protection program with, the laws and regulations of other jurisdictions whose activities may affect the same species or stocks or marine mammals; and

(3) The existence of or preparations for an overall State program regarding the protection and management of marine mammals to which the laws and regulations under review relate.

(e) To assist States in preparing laws and regulations relating to marine mammals, the Secretary will also, at the written request of any State, make a preliminary review of any such proposed laws or regulations. Such review will be strictly advisory in nature and shall not be binding upon the Secretary. Upon adoption of previously reviewed laws and regulations, the same shall be subject to a complete review for a final determination pursuant to these regulations. To be considered for preliminary review, all legislative and regulatory proposals must be forwarded to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, and certified by the appropriate State

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official. In addition, they shall be accompanied to the extent available with the same materials required under paragraph (b) of this section, unless otherwise provided by the Secretary.

(f) All determinations by the Secretary (other than as a result of preliminary reviews of proposed laws and regulations) shall be final and binding on the parties.

(g) The implementation and enforcement of all State laws and regulations previously approved by the Secretary pursuant to this section shall be subject to continuous monitoring and review by the Secretary pursuant to such rules and regulations as he may adopt. Any modifications, amendments, deletions or additions to laws or regulations previously approved shall be deemed to be new laws and regulations for the purposes of these regulations and shall require review and approval by the Secretary before their adoption.

(h) Notwithstanding the foregoing, nothing herein shall prevent (1) the taking of a marine mammal by a State or local government official pursuant to § 216.22 of the regulations in this part, or (2) the adoption or enforcement of any law or regulation relating to any marine mammal taken or imported prior to the effective date of the Act.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 36662, Aug. 31, 1976]

§ 216.5 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

§ 216.6 Forfeiture and return of seized property.

(a) Whenever any cargo or marine mammal or marine mammal product has been seized pursuant to section 107 of the Act, the Secretary shall ex-

pedite any proceedings commenced under these regulations.

(b) Whenever a civil penalty has been assessed by the Secretary under these regulations, any cargo, marine mammal, or marine mammal product seized pursuant to section 107 of the Act shall be subject to forfeiture. If respondent voluntarily forfeits any such seized property or the monetary value thereof without court proceedings, the Secretary may apply the value thereof, if any, as determined by the Secretary, toward payment of the civil penalty.

(c) Whenever a civil penalty has been assessed under these regulations, and whether or not such penalty has been paid, the Secretary may request the Attorney General to institute a civil action in an appropriate United States District Court to compel forfeiture of such seized property or the monetary value thereof to the Secretary for disposition by him in such manner as he deems appropriate. If no judicial action to compel forfeiture is commenced within 30 days after final decision-making assessment of a civil penalty, pursuant to § 216.60, such seized property shall immediately be returned to the respondent.

(d) If the final decision of the Secretary under these regulations is that respondent has committed no violation of the Act or of any permit or regulations issued thereunder, any marine mammal, marine mammal product, or other cargo seized from respondent in connection with the proceedings under these regulations, or the bond or other monetary value substituted therefor, shall immediately be returned to the respondent.

(e) If the Attorney General commences criminal proceedings pursuant to section 105(b) of the Act, and such proceedings result in a finding that the person accused is not guilty of a criminal violation of the Act, the Secretary may institute proceedings for the assessment of a civil penalty under this part: *Provided*, That if no such civil penalty proceedings have been commenced by the Secretary within 30 days following the final disposition of the criminal case, any property seized pursuant to section 107 of the Act shall be returned to the respondent.

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(f) If any seized property is to be returned to the respondent, the Regional Director shall issue a letter authorizing such return. This letter shall be dispatched to the respondent by registered mail, return receipt requested, and shall identify the respondent, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter and proper identification, the seized property is authorized to be released. All charges for storage, care, or handling of the seized property accruing 5 days or more after the date of the return receipt shall be for the account of the respondent: *Provided*, That if it is the final decision of the Secretary under these regulations that the respondent has committed the alleged violation, all charges which have accrued for the storage, care, or handling of the seized property shall be for the account of the respondent.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

§ 216.7 Holding and bonding.

(a) Any marine mammal, marine mammal product, or other cargo seized pursuant to section 107 of the Act shall be delivered to the appropriate Regional Director of the National Marine Fisheries Service (see § 201.2 of this title) or his designee, who shall either hold such seized property or arrange for the proper handling and care of such seized property.

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. Subpart F of 15 CFR Part 904 contains additional procedures that govern seized property that is subject to forfeiture or has been forfeited under the Act.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981, and amended at 50 FR 12785, Apr. 1, 1985]

§ 216.8 Enforcement officers.

Enforcement Agents of the National Marine Fisheries Service shall enforce the provisions of the Act and may take any actions authorized by the Act with respect to enforcement. In addition, the Secretary may utilize, by agree-

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ment, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this Act. Pursuant to the terms of section 107(b) of the Act, the Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this Act.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

Subpart B—Prohibitions

§ 216.11 Prohibited taking.

Except as otherwise provided in Subparts C, D, and I of this Part 216 or in Part 228, it is unlawful for:

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States, or

(c) Any person subject to the jurisdiction of the United States to take any marine mammal during the moratorium.

[39 FR 1852, Jan. 15, 1974, as amended at 47 FR 21254, May 18, 1982]

§ 216.12 Prohibited importation.

(a) Except as otherwise provided in Subparts C and D of this Part 216, it is unlawful for any person to import any marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is otherwise authorized pursuant to Subparts C and D of this Part 216, it is unlawful for any person to import into the United States any:

(1) Marine mammal:

(i) Taken in violation of the Act, or

(ii) Taken in another country in violation to the laws of that country;

(2) Any marine mammal product if

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under paragraph (b)(1) of this section, or

(ii) The sale in commerce of such product in the country of origin if the product is illegal.

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(c) Except in accordance with an exception referred to in Subpart C and §§ 216.31 (regarding scientific research permits only) and 216.32 of this Part 216, it is unlawful to import into the United States any:

(1) Marine mammal which was pregnant at the time of taking.

(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later.

(3) Specimen of an endangered or threatened species of marine mammal.

(4) Specimen taken from a depleted species or stock of marine mammals, or

(5) Marine mammal taken in an inhumane manner.

(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

§ 216.13 Prohibited uses, possession, transportation, and sales.

It is unlawful for:

(a) Any person to use any port, harbor or other place under the jurisdiction of the United States for any purpose in any way connected with a prohibited taking or an unlawful importation of any marine mammal or marine mammal product; or

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the Act or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.

(c) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this Act.

§ 216.14 Marine mammals taken before the Act.

(a) Section 102(e) of the Act provides, in effect, that the Act shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product, consisting of or composed in whole or in part of, any marine mammal taken before that date. This prior status of any marine mammal or marine mammal product may be established by submitting to the Director, National Marine Fisheries Service prior to, or at the time of importation, an affidavit containing the following:

(1) The Affiant's name and address;

(2) Identification of the Affiant;

(3) A description of the marine mammals or marine mammal products which the Affiant desires to import;

(4) A statement by the Affiant that, to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;

(5) A statement by the Affiant in the following language:

The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of—under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 13 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(b) Either one of two exhibits shall be attached to such affidavit, and will contain either:

(1) Records or other available evidence showing that the product consists of or is composed in whole or in part of marine mammals taken prior to the effective date of the Act. Such records or other evidentiary material must include information on how, when, where, and by whom the animals were taken, what processing has taken place since taking, and the date and location of such processing; or

(2) A statement from a government agency of the country of origin exercising jurisdiction over marine mammals that any and all such mammals

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from which the products sought to be imported were derived were taken prior to December 21, 1972.

(c) No pre-Act marine mammal or pre-Act marine mammal product may be imported unless the requirements of this section have been fulfilled.

(d) This section has no application to any marine mammal or marine mammal product intended to be imported pursuant to §§ 216.21, 216.31 or § 216.32.

§ 216.15 Depleted species.

The following listed species have been designated by the Director as depleted pursuant to the provisions of the Act.

(a) Hawaiian monk seal (*Monachus schauinslandi*).

(b) Bowhead whale (*Balaena mysticetus*).

[41 FR 30120, July 22, 1976, as amended at 42 FR 60150, Nov. 25, 1977]

Subpart C—General Exceptions

§ 216.21 Actions permitted by international treaty, convention, or agreement.

The Act and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same relating to the taking or importation of marine mammals or marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in Subpart B of this part and the provisions of the Act shall not apply to activities carried out pursuant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151 through 1187, as in each case, from time to time amended.

§ 216.22 Taking by State or local government officials.

(a) A State or local government official or employee may take a marine mammal in the normal course of his duties as an official or employee, and

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no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat. In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary captivity until such time as it is able to be returned to its natural habitat. It shall be permissible to dispose of a carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto.

(b) Each taking permitted under this Section shall be included in a written report to be submitted to the Secretary every six months beginning December 31, 1973. Unless otherwise permitted by the Secretary, the report shall contain a description of:

(1) The animal involved;

(2) The circumstances requiring the taking;

(3) The method of taking;

(4) The name and official position of the State official or employee involved;

(5) The disposition of the animal, including in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(6) Such other information as the Secretary may require.

§ 216.23 Native exceptions.

(a) *Taking.* Notwithstanding the prohibitions of Subpart B of this Part

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216, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

(1) By Alaskan Natives who reside in Alaska for subsistence, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

(b) *Restrictions.* (1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or

(ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or

(iii) It is an edible portion and it is sold in an Alaskan Native village or town.

(2) No marine mammal taken for purposes of creating and selling authentic native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or

(ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or

(iii) It has first been transformed into an authentic native article of handicraft or clothing; or

(iv) It is an edible portion and sold (A) in an Alaskan Native village or

town, or (B) to an Alaskan Native for his consumption.

(c) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:

(i) The name and address of the applicant;

(ii) A description of the applicant's procedures for receiving, storing, processing, and shipping materials;

(iii) A proposal for a system of book-keeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos pursuant to this section;

(iv) Such other information as the Secretary may request;

(v) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(vi) The signature of the applicant.

The sufficiency of the application shall be determined by the Secretary, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to such conditions as the Secretary prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Secretary may charge a reasonable fee for processing such applications, including an appropriate apportionment of overhead and administrative ex-

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penses of the Department of Commerce.

(d) Notwithstanding the preceding provisions of this section, whenever, under the Act, the Secretary determines any species of stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the Act upon the taking of such marine animals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals shall conform to such regulations.

§ 216.24 Taking and related acts incidental to commercial fishing operations.

(a)(1) No marine mammals may be taken in the course of a commercial fishing operation unless: The taking constitutes an incidental catch as defined in § 216.3, a general permit and certificate(s) of inclusion have been obtained in accordance with these regulations and such taking is not in violation of such permit, certificate(s), and regulations.

(2) A vessel on a commercial fishing trip involving the utilization of purse seines to capture yellowfin tuna which is not operating under a category two general permit and certificates of inclusion, and which during any part of its fishing trip is in the Pacific Ocean area described in the General Permit for gear Category 2 operations, must not carry more than two speedboats.

(3) Upon written request in advance of entering the General Permit area, the limitation in (a)(2) may be waived by the Regional Director of the Southwest Region for the purpose of allowing transit through the General Permit area. The waiver will provide in writing the terms and conditions under which the vessel must operate, including a requirement to report by radio to the Regional Director the vessel's date of exit from or subsequent entry to the permit area, in order to transit the area with more than two speedboats.

(b) *General permits.* (1) General permits to allow the taking of marine mammals, except those for which taking is prohibited under the Endangered Species Act of 1973, in connection with commercial fishing operations will be issued to persons using

fishing gear in any one of the following categories:

(i) *Category 1: Towed or dragged gear.* Commercial fishing operations utilizing towed or dragged gear such as bottom otter trawls, bottom pair trawls, multi-rig trawls, and dredging gear;

(ii) *Category 2: Encircling gear, pursue seining involving the intentional taking of marine mammals.* Commercial fishing operations utilizing purse seines to capture tuna by international encircling marine mammals. Only vessels that meet the fishing gear and equipment requirements contained in § 216.24(d)(2)(iv) of these regulations may be included in this category;

(iii) *Category 3: Encircling gear, pursue seining not involving the intentional taking of marine mammals.* Commercial fishing operations utilizing pursue seining, which do not intentionally encircle marine mammals;

(iv) *Category 4: Stationary gear.* Commercial fishing operations utilizing stationary gear such as traps, pots, weirs, and pound nets;

(v) *Category 5: Other gear.* Commercial fishing operations utilizing trolling, gill nets, hook and line gear, and any gear not classified under paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), or (b)(1)(vi) of this section; and

(vi) *Category 6: Commercial passenger fishing vessel operation.* Commercial fishing operations from a commercial passenger fishing vessel for the purpose of active sportfishing as defined in § 216.3.

(2) Permits shall be issued as general permits to a class of fishermen using one of the general categories of gear set out above. Any member of such class may apply for a general permit on behalf of any members of the class. Subsequent to the granting of general permit, vessel owners, managing owners, or operators (as required) may make application to be included under the terms of a general permit by obtaining a certificate of inclusion. Applications for a general permit shall contain:

(i) Name, address, and telephone number of the applicant. If the applicant is an organization or corporate

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entity, a copy of the corporate or organizational charter which sets forth the basis for application on behalf of a group or class of commercial fishermen must be included;

(ii) A description of permit for which application is being made;

(iii) A description of the fishing operations by which marine mammals are taken; and a statement explaining why the applicant cannot avoid taking marine mammals incidentally to commercial fishing operations;

(iv) The date when the general permit is requested to become effective;

(v) A list of the fish sought by persons requesting certificates under the general permit and the general areas of operations of their vessels.

(vi) A statement identifying the marine mammals and numbers of marine mammals which are expected to be taken under the general permit;

(vii) A statement by the applicant demonstrating that the requested taking of marine mammal species or stocks during commercial fishing operations is consistent with the purposes of the Act, and the applicable regulations established under section 103 of the Act.

(viii) A description of the procedures and techniques that will be utilized in order that takings under the permit will be consistent with the purposes and policies of the Act and these regulations; and

(ix) A certification, signed by the applicant, in the following language: I certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a general permit under the Marine Mammal Protection Act of 1972 and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or the penalties provided under the Marine Mammal Protection Act of 1972.

(3) The original and two copies of the application for general permit must be submitted to the Assistant Administrator. Applications should be received not less than 180 days prior to the date upon which the permit is

to become effective. Assistance may be obtained by writing the Assistant Administrator or by calling the Office of Marine Mammals and Endangered Species, telephone number 202-634-7461.

(4) A general permit shall be valid for the time period indicated on the face of the permit. General permits may contain terms and conditions prescribed in accordance with section 104(b)(2) of the Act, 16 U.S.C. 1374(b)(2). General permits may be suspended, revoked, modified, or denied. Procedures governing permit sanctions or denials for reasons relating to enforcement are found at Subpart D of 15 CFR Part 904.

(5) The Assistant Administrator shall determine the adequacy and completeness of an application, and if found to be adequate and complete will promptly publish a notice of receipt of such application in the *FEDERAL REGISTER*. Interested parties will have thirty days from the date of publication in which to submit written comments with respect to the granting of such permit.

(6) If within thirty days after the date of publication of the *FEDERAL REGISTER* notice concerning receipt of an application for a general permit, any interested party or parties request a hearing on the application, the Assistant Administrator may within sixty days following the date of publication of the *FEDERAL REGISTER* notice afford such party or parties an opportunity for such a hearing. Any hearing held in connection with an application for a general permit shall be conducted in the same manner as hearings convened in connection with a scientific research or a public display permit application under § 216.33.

(7) There is no fee for filing an application for a general permit.

(c) *Certificates of inclusion*—(1) *Vessel certificates of inclusion*. The owner or managing owner of a vessel that participates in commercial fishing operations for which a general permit is required under this subpart shall be the holder of a valid vessel certificate of inclusion under that general permit. Such certificates shall not be transferable and shall be renewed annually. Provided advance written notice is

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given, a vessel certificate holder may surrender his certificate to the Regional Office from which the certificate was issued. However, once surrendered the certificate shall not be returned nor shall a new certificate be issued before the end of the calendar year. This provision shall not apply when a change of vessel ownership occurs.

(2) *Operator's certificate of inclusion.* The person in charge of and actually controlling fishing operations (after this referred to as the operator) on a vessel engaged in commercial fishing operations for which a Category 2 or Category 6 general permit is required under this subpart, must be the holder of a valid operator's certificate of inclusion. These certificates are not transferable and will be valid only on a vessel having a valid vessel certificate of inclusion for the same category. In order to receive a certification of inclusion, the operator must have satisfactorily completed required training. An operator's certificate of inclusion must be renewed annually.

(3) A vessel certificate issued pursuant to paragraph (c)(1) of this section shall be aboard the vessel while it is engaged in fishing operations and the operator's certificate issued pursuant to paragraph (c)(2) of this section shall be in the possession of the operator to whom it was issued. Certificates shall be shown upon request to an enforcement agent or other designated agent of the National Marine Fisheries Service. However, vessels and operators at sea on a fishing trip on the expiration date of their certificate of inclusion, to whom or to which a certificate of inclusion for the next year has been issued, may take marine mammals under the terms of the new certificate.

The vessel owners or operators are obligated to obtain physically or to place the new certificate aboard, as appropriate, when the vessel next returns to port.

(4) Application(s) for certificates of inclusion under paragraph (c)(1) of this section should be addressed as follows:

(i) Category 1, 3, 4, 5, and 6 applications:

(A) Owners or managing owners of vessels registered in Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, should make application to the Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue, Seattle, Washington 98102.

(B) Owners or managing owners of vessels registered in Arizona, California, Hawaii, Nevada, and the territories of American Samoa, Guam, and the Trust Territory of the Pacific Islands should make application to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(C) Owners or managing owners of vessels registered in Alaska should make application to the Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

(D) Owners or managing owners of vessels registered in Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin should make application to the Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

(E) Owners or managing owners of vessels registered in Alabama, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and Virgin Islands, should make application to the Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Gandy Boulevard North, Duval Building, St. Petersburg, Florida 33702.

(ii) Category 2 applications: Owners or managing owners of purse seine vessels in this category shall make application to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101.

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(5) Applications for vessel certificates of inclusion under paragraph (c)(1) of this section shall contain:

(i) The name of the vessel which is to appear on the certificate(s) of inclusion;

(ii) The category of the general permit under which the applicant wishes to be included;

(iii) The species of fish sought and general area of operations;

(iv) The identity of State and local commercial fishing licenses, if applicable, under which vessel operations are conducted, and dates of expiration;

(v) The name of the operator and date of training, if applicable; and

(vi) The name and signature of the applicant, whether owner or managing owner, address, and if applicable, the organization acting on behalf of the vessel.

(6) *Fees.* (i) Applications for certificates of inclusion under paragraph (c)(1) of this section shall contain a payment for each vessel named in the application in accordance with the following schedule:

(A) Categories 1: Towed or dragged gear; 3: Encircling gear, purse seining not involving the intentional taking of marine mammals; 4: Stationary gear; 5: Other gear; and 6: Commercial passenger fishing vessel—\$10.00.

(B) Category 2: Encircling gear, purse seining involving the intentional taking of marine mammals—\$200.00.

(ii) Except as provided herein, vessel owners or managing owners desiring a vessel certificate of inclusion under more than one category of the general permit will not be required to pay a full fee for each certificate. After the initial fee for a certificate is paid for each vessel, additional certificates will be issued for a fee of \$.50 (fifty cents) each. However, every application for a vessel certificate under Category 2 shall contain the full fee.

(iii) Notwithstanding the provisions of paragraph (c)(6)(i) of this section, an applicant whose income is below Federal poverty guidelines may, upon showing in his application that his income is below such guidelines, be issued a certificate under the following schedule of fee payment:

(A) Categories, 1: Towed or dragged gear; 3: Encircling gear, purse seining

not involving the intentional taking of marine mammals; 4: Stationary gear; 5: Other gear; and 6: Commercial passenger fishing vessels—\$1.00.

(B) Category 2: Encircling gear, purse seining involving the intentional taking of marine mammals—\$20.00.

(iv) A fee is not required for an operator's certificate of inclusion.

(v) The Assistant Administrator may change the amount of these required fees at any time he determines a different payment to be reasonable, and said change shall be accomplished by publication in the *FEDERAL REGISTER* of the new fee schedule.

(7) The Regional Office receiving applications for certificates of inclusion from vessel owners, managing owners, or operators shall determine the adequacy and completeness of such applications, and upon its determination that such applications are adequate and complete, it shall approve such applications and issue the certificate(s).

(8) Failure to comply with provisions of the general permit, certificate, or these regulations may lead to suspension, revocation, modification, or denial of a certificate of inclusion. It may also subject the certificate holder, vessel, vessel owner, operator, or master to the penalties provided under the Act. Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR Part 904.

(d) Terms and conditions of certificates under general permits shall include, but are not limited to the following:

(1) *Towed or dragged gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage, or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(1)(ii) of this section

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have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to fully report and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(1)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director to whom the certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity, but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence then it shall be reported within 48 hours after arrival in any port. Reports must include:

(A) The location, time, and date of the death or injury;

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(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(2) *Encircling gear, purse seining involving the intentional taking of marine mammals—(i) Quotas:*

(A) A certificated vessel may take marine mammals so long as the taking is an incidental occurrence in the course of normal commercial tuna purse seine fishing operations, and the fishing operations are under the immediate direction of a person who is the holder of a valid operator's certificate of inclusion; except that a vessel shall not encircle either:

(1) Pure schools of any species of dolphin except the offshore spotted dolphin (*Stenella attenuata*) stock, the striped dolphin (*Stenella coeruleoalba*) species, and the common dolphin (*Delphinus delphis*) species; or

(2) Any other species or stock or marine mammals that does not have an allowable take as listed below or whose allowable take has been exceeded. The numbers of marine mammals that may be taken during each calendar year by U.S. vessels in the course of commercial fishing operations will be limited to:

Quotas for each calendar year		Take	Encirclement	Mortality ¹
Species/stock	Management unit			
Spotted dolphin.	(northern offshore)*.	16,570,000	10,338,000	20,500
Do	(southern offshore).	4,605,000	2,873,000	5,697
Do	(coastal).....	202,000	126,000	* 250
Spinner dolphin.	(eastern).....	2,222,000	1,386,000	*2,750
Do	(northern whitebelly).	1,205,000	699,000	5,321
Do	(southern whitebelly)*.	568,000	329,000	2,506
Common dolphin.	(northern tropical)*.	723,000	450,000	1,890
Do	(central tropical).	2,619,000	845,000	8,112
Do	(southern tropical).	1,306,000	421,000	4,045
Striped dolphin.	(northern tropical).	28,000	21,000	429
Do	(central tropical).	118,000	89,000	1,822
Do	(southern tropical).	265,000	199,000	4,095

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¹ The U.S. allowable mortality in any one year may not exceed 20,500.

² Fifty percent of replacement yield for the northern offshore spotted dolphin is 42,898; however, the maximum allowable mortality in any year is 20,500.

³ Mortality level established by Pub. L. 98-364; not subject to flexible mortality schedule published in 46 FR 42068-42069 (August 19, 1981).

⁴ Includes allowance for mixed species take.

⁵ Includes Baja neritic dolphin stock.

(B) The incidental mortality of marine mammals permitted under the general permit for each category will be monitored according to the methodology published in the **FEDERAL REGISTER**. The Assistant Administrator shall determine on the basis of the evidence available to him the date upon which the allowable quotas will be reached or exceeded. Notice of the Assistant Administrator's determination shall be published in the **FEDERAL REGISTER** not less than seven days prior to the effective date.

(C) Except for the coastal spotted dolphin stock and the eastern spinner dolphin stock, if at the time the net skiff attached to the net is released from the vessel at the start of a set, and species or stocks that are prohibited from being taken are not reasonably observable, the fact that individuals of that species or stock are subsequently taken will not be cause for issuance of a notice of violation provided that all procedures required by the applicable regulations have been followed.

(D) The general permit is valid until surrendered by the permit holder or suspended or terminated by the Assistant Administrator provided the permittee and certificate holders under this part continue to use the best marine mammal safety techniques and equipment that are economically and technologically practicable. The Assistant Administrator may, upon receipt of new information which in his opinion is sufficient to require modification of the general permit or regulations, propose to modify such after consultation with the Marine Mammal Commission. These modifications must be consistent with and necessary to carry out the purposes of the Act. Any modifications proposed by the Assistant Administrator involving changes in the quotas will include the statements required by section 103(d) of the Act. Modifications will be proposed in the **FEDERAL REGISTER** and a

public comment period will be allowed. At the request of any interested person within 15 days after publication of the proposed modification in the **FEDERAL REGISTER**, the Assistant Administrator may hold a public hearing to receive and evaluate evidence in those circumstances where he has determined it to be consistent with and necessary to carry out the purposes of the Act. Such request may be for a formal hearing on the record before an Administrative Law Judge. Within 10 days after receipt of the request for a public hearing, the Assistant Administrator will provide the requesting party or parties with his decision. If a request is denied, the Assistant Administrator will state the reasons for the denial. Within 10 days after receipt of a decision denying a request for a formal hearing, the requesting person may file a written notice of appeal with the Administrator. Based upon the evidence presented in the notice, the Administrator will render a decision within 20 days from receipt of the notice.

(ii) *General conditions:* (A) Marine mammals incidentally taken must be immediately returned to the environment where captured without further injury. The operators of purse seine vessels must take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Live marine mammals must not be brailled or hoisted onto the deck during ortza retrieval.

(B) Operators may take such steps as are necessary to protect their gear or person from damage or threat of personal injury. However, all marine mammals taken in the course of commercial fishing operations shall be subject to the definition of "incidental catch" in § 216.3 of this part and may not be retained except where a specific permit has been obtained authorizing the retention.

(C) The vessel certificate holder shall notify the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540, of any change of vessel operator within at least 48 hours prior to departing on the next scheduled trip.

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(iii) *Reporting requirements:* In accordance with § 216.24(f) of these regulations, the following specific reporting procedures shall be required:

(A) The vessel certificate holder of each certificated vessel, who has been notified via certified letter from the National Marine Fisheries Service that his vessel is required to carry an observer, shall notify the field office, Southwest Region, National Marine Fisheries Service, San Diego, California, telephone 714-293-6540 at least five (5) days in advance of the vessel's departure on a fishing voyage to allow for observer placement. After a fishing voyage is initiated, the vessel is obligated to carry an observer until the vessel returns to port and one of the following conditions is met:

(1) Unloads more than 400 tons of any species of tuna; or (2) unloads any amount of any species of tuna equivalent to one half of the vessel's carrying capacity; or (3) unloads its tuna catch after 40 days or more at sea from the date of departure. Further, the Regional Director, Southwest Region, may consider special circumstances for exemptions to this definition, provided written requests clearly describing the circumstances are received prior to the termination or the initiation of a fishing voyage. A response to the written request will be made by the Regional Director within five (5) days after receipt of the request. A vessel whose vessel certificate holder has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(B) Masters of all certificated vessels carrying National Marine Fisheries Service observers shall allow observers to report, in coded form, information by radio concerning the accumulated take of marine mammals and other observer collected data at such times as specified by the Regional Director, Southwest Region. Individual vessel names and coded information reported by radio by the National Marine Fisheries Service observers shall remain confidential unless their release is authorized in writing by the operator of the vessel.

(C) The Regional Director, Southwest Region, will provide to the public,

periodic quota status reports summarizing the estimated incidental porpoise mortality by U.S. vessels of individual species and stock.

(iv) A vessel having a vessel certificate issued under paragraph (c)(1) may not engage in fishing operations for which a general permit is required unless it is equipped with a porpoise safety panel in its purse seine, and has and uses the other required gear, equipment, and procedures.

(A) *Class I and II Vessels:* For Class I purse seiners (400 short tons carrying capacity or less) and for Class II purse seiners (greater than 400 short tons carrying capacity, built before 1961), the porpoise safety panel must be a minimum of 100 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 10 strips must be determined at a ratio of 10 fathoms in length for each strip that the net is deep. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of the corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel must consist of small mesh webbing not to exceed 1¼" stretch mesh, extending from the corkline downward to a minimum depth equivalent to one strip of 100 meshes of 4¼" stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(B) *Class III Vessels:* For Class III purse seiners (greater than 400 short tons carrying capacity, built after 1960), the porpoise safety panel must be a minimum of 180 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bowbunch pulled and continues to at

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least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel must consist of small mesh webbing not to exceed 1½" stretch mesh extending downward from the corkline and, if present, the base of the porpoise apron to a minimum depth equivalent to two strips of 100 meshes of 4½" stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(C) *Porpoise safety panel markers:* Each end of the porpoise safety panel and porpoise apron shall be identified with an easily distinguishable marker.

(D) *Porpoise safety panel hand holds:* Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, hand hold openings are to be secured so that the insertion of a 1½" diameter cylindrical-shaped object meets resistance.

(E) *Porpoise safety panel corkline hangings:* Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, corkline hangings shall be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1½" diameter will not meet resistance when inserted between the cork and corkline hangings, must be tightened so that a cylindrical object with a 1½" diameter cannot be inserted.

(F) *Speedboats:* Certificated vessels engaged in fishing operations involving setting on marine mammals shall carry a minimum of two speedboats in operating condition. All speedboats carried aboard purse seine vessels and in operating condition shall be rigged with towing bridles and towlines. Speedboat hoisting bridles shall not be substituted for towing bridles.

(G) *Raft:* A raft suitable to be used as a porpoise observation-and-rescue platform shall be carried on all certificated vessels.

(H) *Facemask and snorkel, or viewbox:* At least two facemasks and snorkels, or viewboxes, must be carried on all certificated vessels.

(I) *Lights:* All certificated vessels shall be equipped by July 1, 1986, with

lights capable of producing a minimum of 140,000 lumens of output for use in darkness to ensure sufficient light to observe that procedures for porpoise release are carried out and to monitor incidental porpoise mortality.

(J) Vessel certificate holders may petition for an exemption from the regulations regarding vessel gear and equipment for the purpose of experimenting with alternate gear or procedures designed to reduce incidental serious injury and mortalities of marine mammals in the course of commercial fishing. The petition shall be made in writing to the Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, and shall include detailed specifications of the proposed gear and procedure modifications. Modifications may be granted upon review and approval, on a trip by trip basis, only if a National Marine Fisheries Service designated representative is available and accompanies the vessel on the approved trip.

(v) *Vessel inspection:* (A) *Annual:* At least once during each calendar year, purse seine nets and other gear and equipment required by these regulations shall be made available for inspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region.

(B) *Reinspection:* Purse seine nets and other gear and equipment required by these regulations shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region. The vessel certificate holder shall notify the Fleet Assistance Section, Southwest Region, National Marine Fisheries Service, 1140 N. Harbor Drive, Room 7, San Diego, California 92101, telephone 714-293-6540 of any net modification at least five (5) days prior to departure of the vessel on its next scheduled trip in order to determine whether a reinspection or trial set would be required.

(C) Upon failure to pass an inspection or reinspection, a vessel having a vessel certificate of inclusion issued under paragraph (c)(1) may not engage in fishing operations for which a general permit is required until the

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deficiencies in gear or equipment are corrected as required by an authorized National Marine Fisheries Service inspector.

(vi) *Operator training requirements.* All operators shall maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session conducted under the auspices of the National Marine Fisheries Service in order to obtain their certificate of inclusion. At the training session an attendee shall be instructed concerning the provisions of the Marine Mammal Protection Act of 1972, the regulations promulgated pursuant to the Act, and the fishing gear and techniques which are required or will contribute to reducing serious injury and mortality of porpoise incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year certificate of inclusion will not be required to attend additional formal training sessions unless there are substantial changes in the Act, the regulations, or the required fishing gear and techniques. Additional training may be required for any operator who is found by the Regional Director, Southwest Region, to lack proficiency in the procedures required.

(vii) *Marine mammal release requirements:* All operators shall use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(A) *Backdown procedure:* Backdown shall be performed following a purse seine set in which marine mammals are captured in the course of catching and landing tuna, and shall be continued until it is no longer possible to remove live marine mammals from the net by this procedure. Thereafter, other release procedures required shall be continued until all live animals have been released from the net.

(B) *Prohibited use of sharp or pointed instrument:* The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(C) *Use of Lights:* If the backdown maneuver or other release procedures continue one-half hour after sunset, the required lights must be used to allow full observation of the set and of procedures for porpoise release and to monitor incidental mortality.

(D) *Porpoise Safety Panel:* During backdown, the porpoise safety panel must be positioned so that it protects the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tie-down point. Any super apron must be positioned at the apex of the backdown channel.

(3) *Encircling gear, purse seining not involving the intentional taking of marine mammals.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(3)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder

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to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(3)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(4) *Stationary gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury

without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(4)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (ii) were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occur-

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rence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(5) *Other gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(5)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(5)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent, or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(vii) The number of Dall's porpoise (*Phocoenoides dalli*) killed or injured by Japanese vessels operating in the U.S. EEZ is limited to an aggregate of 789 in the Bering Sea and 5250 in the North Pacific Ocean over the period 1987 to 1989, of which no more than 448 may be taken from the Bering Sea and no more than 2494 may be taken from the North Pacific Ocean in any single calendar year. The incidental take levels authorized by this subpart are reduced proportionately in the event that the Soviet Union reduces salmon quotas for 1988 or 1989 by more than 10 percent from the 1987 quota. Any permit issued under this part must indicate the measures by which the permit holder must comply with the conditions attached to the permit, and the reporting requirements of paragraph (d)(5)(v) of this section. Any permit issued under this part may allow retention of marine mammals for scientific purposes and will not require a separate permit under paragraph (d)(5)(iv).

(6) *Commercial passenger fishing vessels (CPFV).* (i) A certificate holder aboard the vessel may take marine mammals so long as the taking is limited to harassment and is an incidental occurrence in the course of the active sportfishing subject to the following restrictions (paragraphs (d)(6) (ii) through (vi)).

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(ii) Takings are prohibited within 500 yards of a pinniped rookery or haul-out site.

(iii) A certificate holder aboard the CPFV must use only those non-lethal, non-injurious methods not including capture as approved in advance by the Assistant Administrator for Fisheries through publication in the *FEDERAL REGISTER* and stipulated in the General Permit for taking marine mammals.

(iv) Takings are allowed only while engaged in active sportfishing to prevent imminent marine mammal approaches to the vessel or to protect a passenger's catch or gear from depredation or damage, without inflicting death or injury to any marine mammal.

(v) All operators must ensure the safe use of the approved methods for preventing marine mammal sportfishing interaction and must satisfactorily complete such training as may be required by the Assistant Administrator for Fisheries.

(vi) All certificate holders must maintain records of incidental take of marine mammals in such form as prescribed by the Assistant Administrator for Fisheries. All incidents involving harassment of marine mammals must be immediately recorded and reported in writing to the Regional Director to whom the certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity, but no later than five days after such occurrence. At a minimum, reports must include:

(A) The time, date, and location of the taking;

(B) The type of harassment device used, and the number used at each occurrence;

(C) The number and species of affected marine mammals; and

(D) A description of any behavioral changes noted that may be due to using the harassment device.

(e) *Importation*: (1) It shall be illegal to import into the United States any fish, whether fresh, frozen or otherwise prepared, if such fish were caught in a manner prohibited by these regulations or in a manner that would not be allowed in circumstances where a person subject to the jurisdiction of

the United States would be required to have a certificate of inclusion in a general permit hereunder, whether or not any marine mammals were in fact taken incidental to the catching of the fish, unless the Assistant Administrator makes a finding and publishes such finding in the *FEDERAL REGISTER*, that such fishing, although not in conformity with the specific requirements of these regulations, is accomplished in a manner which does not result in an incidental mortality and serious injury rate in excess of that which results from fishing operations under these regulations.

(2) The following fish and categories of fish, which the Assistant Administrator has determined are involved with commercial fishing operations which cause the death or injury of marine mammals, are subject to the prohibitions and documentation requirements of this section:

(i) *Salmon and halibut*. The following U.S. Tariff Schedule Item Numbers identify these categories of salmon and halibut products which are imported into the United States and are to be covered by the documentation and certification regulations of § 216.24(e)(3):

110.20-25 Halibut, fresh or chilled.
110.20-30 Halibut, frozen.
110.20-45 Salmon, fresh or chilled.
110.10-50 Salmon, frozen.
110.70-40 Halibut, other—except portion controlled steaks.
111.48-00 Salmon, salted.
111.88-00 Salmon, smoked or kippered.
112.18-00 Salmon, preserved, not in oil.

(ii) *Yellowfin tuna*. The following U.S. Tariff Schedule Item Numbers identify the categories of tuna and tuna products under which yellowfin tuna is imported into the United States, and are subject to the importation restrictions of paragraph (e)(4) of this section after December 31, 1977:

110.10-20 Tuna; yellowfin, whole fish.
110.10-25 Tuna; yellowfin, eviscerated, head on.
110.10-30 Tuna; yellowfin, eviscerated, head off.
110.10-37 Tuna; yellowfin, other.

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- 112.30-40 Tuna; canned, other than white meat, no oil--except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.
- 112.34-00 Tuna; canned, other, no oil--except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.
- 112.90-00 Tuna; canned, other, no oil--except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.

(3) *Salmon and halibut.* All fish and categories of fish listed in paragraph (e)(2)(i) of this section shall be denied entry into the United States unless accompanied by a separate Fisheries Certificate of Origin (Standard Form 369-1) from each country whose flag vessels caught fish involved in the importation. The Fisheries Certificate of Origin should include the following information:

- (i) The country of origin; and
- (ii) The identity and quantity of fish; and, either
- (iii) After the Assistant Administrator has published the finding referred to in paragraph (e)(1) of this section, a statement from a responsible official of the country of origin that the fishing technology permitted by the country of origin with respect to the species of fish presented for importation into the United States does not result in a rate of serious injury or death to marine mammals in excess of that which results from U.S. commercial fishing operations as prescribed by these regulations. Country of origin for the purposes of this section shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments; or
- (iv) A statement by a responsible official of the country of origin or the master of the vessel which caught the fish that such fish were not caught in a manner prohibited for U.S. fishermen by these regulations. The statement shall identify the species, quantity, and exporter of the fish to which the statement refers; or
- (v) Any nation may certify to the Assistant Administrator either (A) that all of its vessels fishing under its flag

are fishing in conformance with these regulations; or (B) a list of the vessels, by name and official number, fishing under such nation's flag which are fishing in conformance with these regulations; or (C) that all of the vessels fishing under such nation's flag, with the exception of any vessels specifically listed by name and official number, are fishing in conformance with these regulations. If methods (B) or (C) are used, the shipping documentation must also show the name and official number of the vessel which caught the fish presented for importation. The Assistant Administrator may then make a finding, and publish such finding in the FEDERAL REGISTER, that fish imports listed in paragraphs (e)(2)(i) from a nation or from an identified segment of a nation's fishing fleet, are exempted from the documentation provisions of this section.

(4)(i) *Yellowfin tuna.* All shipments of fish and products listed in paragraph (e)(2)(ii) of this section, from any nation, shall not be entered into the United States for consumption or withdrawn from warehouse for consumption unless a finding has been made pursuant to paragraph (e)(5)(i) of this section, and unless accompanied by the following documentation: (A) A separate Yellowfin Tuna Certificate of Origin (Standard Form 370-1) and (B) a bill of lading from each country whose flag vessels caught yellowfin tuna involved in the importation.

(ii) The Yellowfin Tuna Certificate of Origin must include the following information:

- (A) Country of origin of the fishing vessel(s) involved;
- (B) Exporter (name and address);
- (C) Consignee (name and address);
- (D) Identity and quantity of the yellowfin tuna to be imported, listed by U.S. Tariff Schedule Number;
- (E) Name of vessel(s) which caught the yellowfin tuna;
- (F) Fishing method used (i.e., purse seine, longline, pole and line, etc.);
- (G) Other documentation as may be required by the Assistant Administrator, subsequent to granting a finding in paragraph (e)(5) of this section;
- (H) Must be signed by either a responsible government official of the

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country whose flag vessel caught the fish or the vessel master, below the following certification statements:

I certify that the yellowfin tuna described in (D) above was caught by flag vessels of a country either, (1) not required to obtain a finding from the United States Department of Commerce (National Marine Fisheries Service) under 50 CFR 216.24(e)(5), and the fish was not caught in a manner prohibited for United States fishermen by the United States Marine Mammal Regulations 50 CFR 216.24(d)(2), or (2) which has been found by the United States Department of Commerce (National Marine Fisheries Service) to be in conformance with the United States Marine Mammal Regulations 50 CFR 216.24(e)(5).

I certify that the above information is complete, true and correct to the best of my knowledge and belief. I understand that my making a false statement may subject me to the criminal penalties under the Marine Mammal Protection Act of 1972.

(I) Must also be signed by the exporter, under the following declaration:

The undersigned hereby declares that, based on the above statements, the yellowfin tuna herein offered for importation into the United States, was caught by flag vessels of (country) in conformance with the United States Marine Mammal Regulations 50 CFR 216.24.

(5)(i) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(ii) of this section from countries of origin (as documented under (e)(4) above) whose vessels operate in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean, as determined by the Assistant Administrator; shall not be entered into the United States for consumption or subsequently withdrawn from warehouse for consumption unless the Assistant Administrator makes a finding in consultation with the U.S. Department of State, and publishes such finding in the FEDERAL REGISTER that fishing operations in the country of origin are conducted in conformance with U.S. regulations and standards as stated in paragraph (d)(2) of this section. The Assistant Administrator may make a finding that, although not in conformity with these regulations, such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which result from U.S. fishing oper-

ations under these regulations. Upon such a finding unloading may be allowed. Country of origin for the purposes of this section (§ 216.24(e)) shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments.

(ii) Countries of origin desiring to obtain a finding which will allow the importation of products listed in paragraph (e)(2)(ii) of this section must submit, by appropriate government official, to the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235, the following information:

(A) A statement of the quantity and type (identified by U.S. Tariff Schedule Item Numbers listed in paragraph (e)(2)(i) of this section) of fish or fish products expected to be imported into the U.S.;

(B) A detailed description of the fishing technology and procedures utilized in tuna purse seine fishing to protect marine mammals so that a determination of conformance with § 216.24(d)(2) of these regulations can be made, or the effectiveness of any other equivalent technology or procedures can be assessed;

(C) A statement of the number of marine mammals killed or seriously injured (by species) incidental to the yellowfin tuna purse seine operations on porpoise for the previous year, and the manner in which the information was obtained (logbooks, observers, interviews, or other procedures);

(D) A statement of the number of marine mammals which will be allowed to be killed or seriously injured annually incidental to yellowfin tuna purse seine operations;

(E) A statement of the procedures to be required, including quotas and other controls which will meet the U.S. requirements to limit the level of mortality with specific reference to any species or stock designated as depleted; and

(F) A list of vessels which may be involved in the taking of marine mam-

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mals incidental to yellowfin tuna purse seining.

(iii) The Assistant Administrator will review each nation's findings annually upon receipt of information required under paragraph (e)(5)(ii) which pertains to a preceeding calendar year, and a request of a continuation of a finding by the country of origin. This information should be submitted by September 1 preceding the calendar year for which the exportation is requested. The Assistant Administrator may require verification of statements made in connection with requests to allow importations. The Assistant Administrator will reconsider a finding upon a request from, and the submission of additional information from, the country of origin.

(6) *Fish refused entry.* If fish is denied entry under the provisions of § 216.24(e)(3) or (e)(4), the District Director of Customs shall refuse to release the fish for entry into the United States and shall issue a notice of such refusal to the importer or consignee.

(7) *Release under bond. Provided however,* That fish not accompanied or covered by the required documentation or certification when offered for entry may be entered into the United States if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required documentation or certification. The bond shall be in the amount required under 19 CFR 25.4(a). Within 90 days after such Customs entry, or such additional period as the District Director of Customs may allow for good cause shown, the importer or consignee shall deliver a copy of the required documentation or certification to the District Director of Customs, and an original of the required documentation or a copy of the certification to the Regional Director of the National Marine Fisheries Service, unless the District Director of Customs has received notification from the National Marine Fisheries Service that the fish is covered by a certification. If such documentation, certification, or notification is not delivered to the District Director of Customs for the port of entry of such fish within 90 days of the date of Customs entry

or such additional period as may have been allowed by the District Director of Customs for good cause shown, the importer or consignee shall redeliver or cause to be redelivered to the District Director of Customs those fish which were released in accordance with this paragraph. In the event that any such fish is not redelivered within 30 days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence under a bond given on Form 7551. Fish released for entry into the United States through use of the bonding procedure provided in this paragraph shall be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act if:

(i) The required documentation or certification is not delivered to the Regional Director of the National Marine Fisheries Service within 90 days of the date of Customs entry, or such additional period as may have been allowed by the District Director of Customs for good cause shown, or

(ii) The required certification is not on file in the office of the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, DC 20235, within this 90 day period or such additional period as may have been allowed by the District Director of Customs for good cause shown. Fish refused entry into the United States shall also be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act.

(8) *Disposition of fish refused entry into the United States; redelivered fish.* Fish which is denied entry under § 216.24(e)(3) or (e)(4) or which is redelivered in accordance with § 216.24(e)(7) and which is not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations. *Provided*

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however, That any disposition shall not result in an introduction into the United States of fish caught in violation of the Marine Mammal Protection Act of 1972.

(f) *Observers.* (1) The vessel certificate holder of any certificated vessel shall, upon the proper notification by the National Marine Fisheries Service, allow an observer duly authorized by the Secretary to accompany the vessel on any or all regular fishing trips for the purpose of conducting research and observing operations, including collecting information which may be used in civil or criminal penalty proceedings, forfeiture actions, or permit or certificate sanctions.

(2) Research and observation duties shall be carried out in such a manner as to minimize interference with commercial fishing operations. The navigator shall provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. No owner, master, operator, or crew member of a certificated vessel shall impair or in any way interfere with the research or observations being carried out.

(3) Marine mammals killed during fishing operations which are accessible to crewmen and requested from the certificate holder or master by the observer shall be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals designated as biological specimens by the observer shall be retained in cold storage aboard the vessel until retrieved by authorized personnel of the National Marine Fisheries Service when the vessel returns to port for unloading.

(4) The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such observers on board such vessels. A vessel certificate holder who has been notified that the vessel is required to carry an observer, via certified letter from the National Marine Fisheries Service, shall notify the office from which the letter was received at least five days in advance of the fishing voyage to facilitate observer placement. A vessel certificate holder who has failed to comply with

the provisions of this section may not engage in fishing operations for which a general permit is required.

(5) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, influence or attempt to influence an observer placed aboard a vessel.

(g) *Penalties and rewards:* Any person or vessel subject to the jurisdiction of the United States shall be subject to the penalties provided for under the Act for the conduct of fishing operations in violation of these regulations. The Secretary shall recommend to the Secretary of the Treasury that an amount equal to one-half of the fine incurred but not to exceed \$2,500 be paid to any person who furnishes information which leads to a conviction for a violation of these regulations. Any officer, employee, or designated agent of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(Approved by the Office of Management and Budget under control numbers 0648-0083 for paragraphs (b) and (c), 0648-0085 for paragraph (d), and 0648-0040 for paragraph (e) of this section)

[45 FR 72187, Oct. 31, 1980, as amended at 46 FR 27056, May 15, 1981; 48 FR 57302, Dec. 29, 1983; 49 FR 1042, Jan. 6, 1984; 49 FR 46909, Nov. 29, 1984; 50 FR 49701, Dec. 4, 1985; 51 FR 201, 202, Jan. 3, 1986]

EFFECTIVE DATE NOTE: At 51 FR 32788, Sept. 16, 1986, an emergency interim rule amended § 216.24, by adding paragraphs (a)(4) and (e)(9), effective from September 11, 1986, until July 1, 1987. For the convenience of the user, the emergency interim rule is set forth below.

§ 216.24 Taking and related acts incidental to commercial fishing operations.

(a) . . .

(4) Yellowfin and bigeye tuna restrictions, and reporting requirements on the landings of all tunas, caught by U.S. purse seine vessels during trips that include the eastern tropical Pacific Ocean.

(i) *Prohibition on catching, possessing, or landing yellowfin and bigeye tuna.* Starting on the date on which the allowable quota on incidental mortality permitted under the general permit will be reached as announced under the provisions of § 216.24(d)(2)(i)(B) ("closure date"), fishing on porpoise is pro-

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hibited. Once the closure date is reached it is unlawful for any person using a class III (over 400 short tons carrying capacity) United States purse seine fishing vessel to catch, possess, or land yellowfin or bigeye tuna from a fishing trip that includes the Pacific Ocean area described in the General Permit for gear category 2 (the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude, and the coastline of North, Central, and South America, the "ETP").

(ii) *Prohibition on landing any tuna without providing notice.* It is unlawful after the closure date for any person to land tuna from a U.S. tuna purse seine fishing vessel whose trip included any portion of the ETP unless NMFS is notified at least five days in advance of the unloading and provided an opportunity to observe and inspect the unloading.

(iii) *Prohibition on the receipt, purchase, and possession of yellowfin and bigeye tuna.* It is unlawful for any person subject to the jurisdiction of the United States to receive, purchase, or possess yellowfin or bigeye tuna caught, possessed, or landed in violation of § 216.24(a)(4)(i) and (ii).

(iv) *Exceptions to the prohibitions of paragraphs (a)(4)(i) and (ii) of this section.* The prohibitions on catching, possessing, or landing of yellowfin or bigeye tuna in paragraph (a)(4)(i) of this section and the prohibitions of paragraph (a)(4)(ii) of this section do not apply:

(A) To fish from a vessel trip started after December 31, 1986.

(B) To fish from a fishing vessel of 400 short tons carrying capacity or less.

(C) To fish from non-porpoise sets from a fishing vessel which voluntarily takes a NMFS observer.

(D) To fish caught prior to the closure if a NMFS observer is on board for the entire trip.

(E) To fish from fish wells sealed by NMFS before a vessel's entry into the ETP and unsealed by NMFS before the unloading of the fish wells.

(F) To fish from those fish wells of a vessel at sea without an NMFS observer which are inspected or sealed by NMFS before the prohibitions of paragraph (a)(4)(i) of this section go into effect and are inspected or unsealed by NMFS before unloading.

(G) To fish from a vessel which transited through the ETP to fish outside of the ETP if NMFS inspects the vessel after the transit and determines that it is not carrying fish, provided that paragraph (a)(4)(iv)(E) of this section is complied with if the vessel returns to the ETP. For purposes of this determination, inspections in Hawaii are considered inspections outside of the ETP.

(v) *Definitions for purposes of § 216.24(a)(4):*

(A) "Trip" means a voyage starting when a vessel leaves port with all fish wells empty of fish and ending when a vessel unloads all of its fish.

(B) "Land" or "landing" means to begin offloading any fish, to arrive in port with the intention of offloading fish, or to cause any fish to be offloaded.

(C) "NMFS" means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

(vi) *Observer placement.*

(A) A vessel must notify NMFS to request observer placement at least 21 days in advance of an expected trip so that NMFS can begin arrangements to provide an observer. Another notification to NMFS must be provided at least five days before departure on a trip to allow final placement arrangements to be set. Both the placement and the return of the observer must be at locations selected by NMFS.

(B) Observer data may be used in criminal or civil penalty proceedings, or forfeiture actions, as well as for scientific research purposes under the Marine Mammal Protection Act.

(C) It is unlawful for any person to forcibly assault, or to impede, impair, intimidate, interfere with, influence or attempt to influence an observer placed aboard a vessel.

(vii) *Arranging for vessel unloadings and fish well inspections, sealing, and unsealing.* NMFS must be notified at least five days in advance of the requested time for vessel unloadings, inspections, sealing or unsealing wells. For fish well sealing and unsealing, a vessel must be made available at locations specified by NMFS. The costs of sealing and unsealing fish wells will be borne by the vessel unless otherwise specified by NMFS in advance.

(viii) *NMFS contact point.* For purposes of the notifications required by this section, NMFS must be contacted weekdays between 8:00 a.m. and 4:30 p.m. San Diego time at the Tuna/Porpoise Management Branch, 1520 State Street, San Diego, CA 92101, (619) 293-6540. Saturdays, Sundays, and Federal holidays do not count as days for purposes of the notification requirements.

(e) * * *

(9)(i) *Restrictions on yellowfin and bigeye tuna imports.* No yellowfin or bigeye tuna harvested by a purse seine vessel fishing on porpoise in the eastern tropical Pacific Ocean (the "ETP") during the period that such fishing is prohibited for vessels of the United States under § 216.24(a)(4)(i) in 1986, may be imported into the United States.

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Any tuna harvested in the ETP before the closure date must be placed in a bonded warehouse, aboard a common carrier, or aboard a vessel in port awaiting to unload before the closure date in order to be imported into the United States after the closure date.

(ii) *Definitions for purposes of § 216.24(e)(9).* (A) "Closure date" means the date on which the allowable quota on incidental mortality permitted under the general permit will be reached as announced under the provisions of § 216.24(d)(2)(i)(B).

(B) "Closure period" means a period beginning on the closure date and ending on December 31, 1988, during which United States purse seine vessels are prohibited from catching tuna by setting on porpoise.

(C) "ETP" means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude, and the coastline of North, Central, and South America.

(D) "NMFS" means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

(iii) *Authorization required for yellowfin and bigeye tuna imports.* Any yellowfin or bigeye tuna harvested by a vessel of a country for which the Assistant Administrator has made a finding under paragraph (e)(5)(i) of this section, that is offered for importation between the closure date and June 30, 1987, must be accompanied by a letter of authorization from NMFS.

(iv) *Procedure to obtain letter of authorization.* Any person desiring to obtain a letter of authorization from NMFS to allow the importation of yellowfin or bigeye tuna must submit to the Regional Director, NMFS, 300 S. Ferry Street, Terminal Island, California 90731, a declaration signed by a responsible government official of the country whose flag vessel caught the tuna, that the tuna being offered for importation was not taken by fishing on porpoise during the closure period. The

declaration of the responsible government official must include the information listed in either paragraph (e)(9)(iv) (A), (B), (C), (D), or (E) of this section, as appropriate.

(A) If the tuna to be imported was taken on a fishing trip any part of which was in the ETP during the closure period, the declaration must include the following information:

(1) The name of the vessel(s) which harvested the tuna,

(2) The date of the trip(s) on which the tuna was harvested,

(3) A statement that the vessel carried an observer approved by the government on every portion of the trip that occurred after the closure date, and

(4) A statement that the observer certified that no tuna was harvested by fishing on porpoise after the closure date.

(B) If the tuna to be imported was taken on a fishing trip in the ETP that ended before the closure date, the declaration must include the following information:

(1) The names of the vessel(s) which harvested the tuna,

(2) The dates of the trip(s) on which the tuna was harvested, and one of the following sets of information:

(i) The date the tuna arrived in port, the date when the tuna was placed in a bonded warehouse, the date the tuna was removed from the bonded warehouse, and the name and address of the bonded warehouse.

Documentation establishing that the tuna was in port on the closure date and documentation from the bonded warehouse that shows the dates that the tuna was placed into the warehouse and taken out of the warehouse must accompany the declaration.

(ii) The date the tuna arrived in port, the date when the tuna was placed on a common carrier for shipping, and the name and address of the common carrier for shipping, and the name and address of the common carrier. Documentation establishing that the tuna was in port on the closure date and documentation from the common carrier

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that shows the date(s) that the tuna was placed aboard the carrier must accompany the declaration.

(iii) The date the tuna arrived in port, awaiting unloading, the date the vessel is scheduled for unloading, the intended disposition of the tuna (i.e., common carrier, bonded warehouse, offloading in Puerto Rico, Venezuela, etc.) and documentation from a port official verifying the arrival date of the vessel.

(C) If the tuna to be imported was taken by fishing on porpoise on a fishing trip that began after the closure period ends, the declaration must include the following information:

(1) The names of the vessel(s) which harvested the tuna,

(2) the dates of the trip(s) on which the tuna was harvested, and

(3) The location of the harvest.

(D) If the tuna to be imported was taken on a fishing trip on which the vessel was not in the ETP for any portion of the trip, the declaration must include the following information:

(1) The names of the vessel(s) which harvested the tuna,

(2) The dates of the trip(s) on which the tuna was harvested, and

(3) The areas in which the vessel(s) was during the trip(s) (e.g., the western Pacific Ocean).

(E) If the tuna to be imported was taken in part or entirely by tuna purse seine vessels of 400 short tons carrying capacity or less, (and any remaining tuna was not caught by tuna purse seine vessels of larger than 400 short tons) the declaration must include the following information:

(1) The name(s) of the vessel(s) which caught the tuna;

(2) The carrying capacity in short tons of the(se) vessel(s); and

(3) the quantity of tuna being imported that was caught by the(se) vessel(s).

(v) *Disposition of tuna not accompanied by required documentation.* (A) Tuna that requires a letter of authorization under paragraph (e)(9)(iii) above that is offered for importation without the required letter of authorization must be either—

(1) Exported under Customs supervision within 60 days,

(2) Placed into a bonded warehouse, or

(3) Disposed of under Customs laws and regulations, as long as that disposition does not result in its introduction into the United States.

(B) The importer will remain liable for any expenses incurred in the storage and/or disposal of tuna refused admission under these regulations. If, within 60 days of fish being placed into a bonded warehouse, the District Director of Customs receives appropriate documentation for that fish, the fish will be allowed to be entered into the United States, otherwise it will be disposed of as set forth in paragraph (e)(9)(v) (A) of (C) of this section.

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Subpart D—Special Exceptions

§ 216.25 Exempted marine mammals and marine mammal products.

(a) The provisions of the Act and these regulations shall not apply:

(1) To any marine mammal taken before December 21, 1972, or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) The prohibitions contained in § 216.12(c) (3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which a notice is published in the FEDERAL REGISTER with respect to the designation of the species or stock concerned as depleted or endangered.

(c) Section 216.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

§ 216.26 Collection of certain marine mammal parts.

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within $\frac{1}{4}$ of a mile of the ocean. The term "ocean" includes bays and estuaries.

(b) Marine mammal parts so collected may be retained if registered within 30 days with an agent of the National Marine Fisheries Service, or an agent of the Bureau of Sport Fisheries and Wildlife.

(c) Registration shall include (1) the name of the owner, (2) a description of the article to be registered and (3) the date and location of collection.

(d) Title to any marine mammal parts collected under this section is not transferable unless consented to, in writing, by the Secretary.

§ 216.31 Scientific research permits and public display permits.

(a) The Director may issue permits authorizing the taking and importing of marine mammals for scientific research and public display except that no display permits will be issued for marine mammals from a species listed as depleted under § 216.15 of this part. Any person desiring to obtain such a permit may make application therefore to the Secretary. The sufficiency of the application shall be determined by the Secretary and, in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The following information will be used as the basis for determining whether an application is complete and whether scientific research or a public display permit should be issued by the Secretary of Commerce. The Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals will review all completed applications submitted to them by the Secretary pursuant to paragraph (b) of this section (39 FR 1851, January 15, 1974.) An original and four copies of the completed application shall be submitted to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20235. Assistance may be obtained by writing the Director or calling the Law Enforcement and Marine Mammal Protection Division in Washington, DC (area code 202), phone number 343-7780. In preparing an application for a scientific research or public display permit, provide the following information:

(1) Title: As applicable, either—

(i) Application for Public Display Permit Under the Marine Mammal Protection Act of 1972, or

(ii) Application for Scientific Research Permit Under the Marine Mammal Protection Act of 1972.

(2) List the date of the application.

(3) If the Applicant is a partnership or a corporate entity set forth the details. If the marine mammal to be

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taken or imported, or the marine mammal product to be imported, is to be utilized or displayed by a party other than the Applicant, set forth the name of the party and such other information as would be required if such party were an Applicant.

(4) Provide a statement on the purpose of the proposed taking or importing, including a brief description of:

(i) The need for the marine mammal(s) and/or marine mammal product(s); and

(ii) How they will be used.

(5) If the application is for a scientific research permit, provide the following additional information:

(i) A detailed description of the scientific research project or program in which the marine mammal or product thereof is to be used, including the period of time over which the research will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

(iv) A statement as to whether the proposed research has broader significance than the individual researcher's goals (i.e., does the proposed research respond directly or indirectly to recommendations of any national or international scientific body charged with research or management of marine mammals and, if so, how?); and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains, for the continual benefit to science, in a museum or other institutional collection.

(6) Describe any marine mammals to be taken or imported, whether for public display or scientific research or any marine mammal products to be imported, including the following:

(i) A list of each species to be taken or imported and the number of each, including the common and scientific name;

(ii) A physical description of each animal to be taken or imported, including the age, size, and sex;

(iii) A list of the probable dates of capture and importation for each

animal and the location of capture and importation, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each marine mammal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture the animals;

(vii) If the capture is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture. Accompany such statement with a copy of the proposed contract or a letter from the contractor indicating agreement to capture the animals, should a permit be granted;

(viii) In the case of imported animals, indicate, if known, the management and protection programs of the country from which the animal originates; and

(ix) For any marine mammal products to be imported, provide the information sought in this paragraph for all marine mammals from which component parts of such products are derived.

(7) Describe the manner of transportation of any marine mammal taken or imported, including:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the research or display facility;

(iv) Length of time in transit for any future move or transfer of the animal(s) that is planned;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, container, cage, cradle, or other devices used, both to hold the animal at the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a vet-

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erinarian or other similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any mammals sought, including a complete description of the facilities where any such mammals will be maintained or displayed, including:

(i) The dimensions of the pools or other holding facilities and the number of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff; and

(vi) A written certification from a licensed veterinarian knowledgeable in the field of marine mammals that he has personally reviewed the arrangements for transporting and maintaining the animal(s) and that in his opinion they are adequate to provide for the wellbeing of the animal.

(9) If the application is for public display, provide a detailed description of the proposed display, including:

(i) A description of the manner, location, and number of times per day and per week the animal(s) will be displayed;

(ii) An indication as to whether the display is for profit;

(iii) An estimate of the numbers and types of people who it is estimated will benefit by such display;

(iv) A list of any educational or scientific programs connected to the contemplated display; and

(v) A description of the Applicant's enterprise and its connections with any governmental, educational, medical, or other scientific entities.

(10) If the marine mammal to be taken or imported is listed as an endangered species pursuant to the Endangered Species Act of 1969 or any Act superseding it, or has been designated by the Secretary as depleted, or if the marine mammal product to be imported is composed in whole or in part from such mammal, provide a detailed justification of the need for such mammal(s), or product(s) including a discussion of possible alterna-

tives, whether or not under the control of the Applicant. Please note that pursuant to the Act and interim regulations that no public display permits may be issued for such endangered or depleted species.

(11) For the year preceding the date of this application, provide a detailed description of all marine mammal mortalities, including:

(i) A list of all marine mammals captured, transported, maintained, displayed, or utilized for scientific research and/or for all marine mammals caused to be captured, transported, maintained, displayed, or utilized for scientific research, by the Applicant.

(ii) The numbers of mortalities among such mammals, by species, by date and location of such mortalities;

(iii) The cause(s) of any such mortalities; and

(iv) The steps which have been taken by the Applicant to avoid or decrease any such mortalities.

(12) A certification in the following language:

I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Marine Mammal Protection Act of 1972.

(13) The applicant must sign the application.

(b) Upon receipt of an application for a scientific research permit or a public display permit, the Secretary shall forward the application to the Marine Mammal Commission together with a request for the recommendations of the Commission and the Committee of Scientific Advisors on Marine Mammals on the permit application. In order to comply with the time limits provided in these regulations, the Secretary shall request that such recommendation be submitted within 30 days of receipt of the application by the Commission. If the Commission or the Committee, as the case may be, does not respond within 30 days from the receipt of such applica-

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tion by the Commission, the Secretary shall advise the Commission in writing that failure to respond within 45 days from original receipt of the application (or such longer time as the Secretary may establish) shall be considered as a recommendation from the Commission and the Committee that the permit be issued. The Secretary may also consult with any other person, institution or agency concerning the application.

(c) Except as provided in Subpart D of 15 CFR Part 904, permits applied for under this section shall be issued, suspended, modified and revoked pursuant to regulations contained in § 216.33. In determining whether to issue a scientific research permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; and whether the granting of the permit is required to further a bona fide and necessary or desirable scientific purpose, taking into account the benefits anticipated to be derived from the scientific research contemplated and the effect of the proposed taking or importation on the population stock and the marine ecosystem. In determining whether to issue a public display permit, the Secretary shall, among other criteria, consider whether the proposed taking or importation will be consistent with the policies and purposes of the Act; whether the marine mammal in question is from a species listed as depleted under § 216.15 of this part; whether a substantial public benefit will be gained from the display contemplated, taking into account the manner of the display and the anticipated audience on the one hand, and the effect of the proposed taking or importation on the population stocks of the marine mammal in question and the marine ecosystem on the other; and the applicant's qualifications for the proper care and maintenance of the marine mammal or the marine mammal product, and the adequacy of his facilities.

(d) Permits applied for under this section shall contain terms and conditions as the Secretary may deem appropriate, including

(1) The number and kind of marine mammals which are authorized to be taken or imported;

(2) The location and manner in which such marine mammals may be taken or from which they may be imported;

(3) The period during which the permit is valid;

(4) The methods of transportation, care and maintenance to be used with live marine mammals;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the marine mammal, its progeny or the marine mammal product; and

(8) A reasonable fee covering the costs of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[39 FR 1852, Jan. 15, 1974, as amended at 39 FR 14348, Apr. 23, 1974; 41 FR 30120, July 22, 1976; 48 FR 57302, Dec. 29, 1983; 49 FR 1042, Jan. 6, 1984]

§ 216.32 [Reserved]

§ 216.33 Procedures for issuance of permits and modification, suspension or revocation thereof.

(a) Whenever application for a permit is received by the Secretary which the Secretary deems sufficient, he shall, as soon as practicable, publish a notice thereof in the **FEDERAL REGISTER**. Such notice shall set forth a summary of the information contained in such application. Any interested party may, within 30 days after the date of publication of such notice, submit to the Secretary his written data or views with respect to the taking or importation proposed in such application and may request a hearing in connection with the action to be taken thereon.

(b) If a request for a hearing is made within the 30-day period referred to in paragraph (a) of this section, or if the

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Secretary determines that a hearing would otherwise be advisable, the Secretary may, within 60 days after the date of publication of the notice referred to in paragraph (a) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the **FEDERAL REGISTER** not less than 15 days in advance of such hearing. Any interested person may appear in person or through representatives at the hearing and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(c) As soon as practicable but not later than 30 days after the close of the hearing (or if no hearing is held, as soon as practicable after the end of the 30 days succeeding publication of the notice referred to in paragraph (a) of this section) the Secretary shall issue or deny issuance of the permit. Notice of the decision of the Secretary shall be published in the **FEDERAL REGISTER** within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(d) Any permit shall be subject to modification, suspension, or revocation by the Secretary in whole or in part in accordance with these regulations and the terms of such permits. The permittee shall be given written notice by registered mail, return receipt requested, of any proposed modification, suspension, or revocation. Such notice shall specify:

(1) The action proposed to be taken along with a summary of the reasons therefore; and

(2) The steps which the Permittee may take to demonstrate or achieve compliance with all lawful requirements;

(3) Shall advise the permittee that he is entitled to a hearing thereon, if a written request for such a hearing is received by the Secretary within 10 days after receipt of the aforesaid notice or such other date as may be specified in the notice by the permittee. The time and place for the hear-

ing, if requested by the permittee, shall be determined by the Secretary and written notice thereof given to the permittee by registered mail, return receipt requested, not less than 15 days prior to the date of hearing specified. The Secretary may, in his discretion, allow participation at the hearing by interested members of the public. The permittee and others participating may submit all relevant material, data, views, comments, arguments, and exhibits at the hearing. A summary record shall be kept of any such hearing.

(e) The Secretary shall make a decision regarding the proposed modification, suspension, or revocation, as soon as practicable after the close of the hearing, or if no hearing is held, as soon as practicable after the close of the 10-day period during which a hearing could have been requested. Notice of the modification, suspension, or revocation shall be published in the **FEDERAL REGISTER** within 10 days from the date of the Secretary's decision. In no event shall the proposed action take effect until notice of the Secretary's decision is published in the **FEDERAL REGISTER**.

(Approved by the Office of Management and Budget under control numbers 0648-0084 and 0648-0085)

[39 FR 1852, Jan. 15, 1974, as amended at 46 FR 57302, Dec. 29, 1983]

§ 216.34 Possession of permits.

(a) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or an agent of such person) during:

(1) The time of the authorized taking or importation;

(2) The period of any transit of such person or agent which is incident to such taking or importation; and

(3) Any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

(b) A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

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Subpart E—Designated Ports

§ 216.40 Importation at designated ports.

(a) Any marine mammal or marine mammal product which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce and is intended for importation into the United States shall be subject to the provisions of 50 CFR Part 14.

(b) For the information of importers, designated ports of entry for the United States are:

New York, N.Y.
Miami, Fla.
Chicago, Ill.
San Francisco, Calif.
Los Angeles, Calif.
New Orleans, La.
Seattle, Wash.
Honolulu, HI.

(c) Additionally, marine mammals or marine mammal products which are entered into Alaska, Hawaii, Puerto Rico, Guam, American Samoa or the Virgin Islands and which are not to be forwarded or transhipped within the United States may be imported through the following ports:

Alaska—Juneau, Anchorage, Fairbanks
Hawaii—Honolulu
Puerto Rico—San Juan
Guam—Honolulu, HI.
American Samoa—Honolulu, HI.
Virgin Islands—San Juan, P.R.

(d) Importers are advised to see 50 CFR Part 14 for importation requirements and information.

Subpart F—[Reserved]

Subpart G—Notice and Hearing on Section 103 Regulations

SOURCE: 40 FR 10183, Mar. 5, 1975, unless otherwise noted.

§ 216.70 Basis and purpose.

(a) Sections 101(a)(2), 101(a)(3)(A), and 101(b) 16 U.S.C. 1371(a)(2), 1371(a)(3)(A), 1371(b) (1972)) of the Act and these regulations authorize the Director, National Marine Fisheries Service, to (1) impose regulations governing the taking of marine mammals incidental to commercial fishing

operations; (2) waive the moratorium and to adopt regulations with respect to the taking and importing of animals from each species of marine mammals under his jurisdiction; (3) prescribe regulations governing the taking of depleted marine mammals by any Indian, Aleut or Eskimo, respectively. In prescribing regulations to carry out the provisions of said sections, the Act refers the Director to section 103 (16 U.S.C. section 1373 (1972)). In accordance with section 103(d), regulations must be made on the record after opportunity for an agency hearing on such regulations and, in the case of a waiver, on the determination by the Director to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A) 1972)).

(b) The purpose of this subpart is to establish rules of practice and procedure for all hearings conducted pursuant to section 103(d).

§ 216.71 Definitions.

Definitions shall be the same as in Subpart A of this part except as follows:

(a) "Party" means, for the purposes of this subpart:

(1) The Director or his representative;

(2) A person who has notified the Director by specified dates of his or her intent to participate in the hearing pursuant to §§ 216.74 and 216.83(b).

(b) "Witness" means, for the purposes of this subpart, any person who submits written direct testimony on the proposed regulations.

A person may be both a party and a witness.

§ 216.72 Scope of regulations.

The procedural regulations in this subpart govern the practice and procedure in hearings held under section 103(d) of the Act. These hearings will be governed by the provisions of 5 U.S.C. section 556 and section 557 of the Administrative Procedure Act. The regulations shall be construed to secure the just, speedy, and inexpensive determination of all issues raised with respect to any waiver or regulation proposed pursuant to section

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103(d) of the Act with full protection for the rights of all persons affected thereby.

§ 216.73 Notice of hearing.

(a) A notice of hearing on any proposed regulations shall be published in the **FEDERAL REGISTER**, together with the Director's proposed determination to waive the moratorium pursuant to section 101(a)(3)(A) (16 U.S.C. 1371(a)(3)(A)), where applicable.

(b) The notice shall state:

- (1) The nature of the hearing;
- (2) The place and date of the hearing. The date shall not be less than 60 days after publication of notice of the hearing;
- (3) The legal authority under which the hearing is to be held;
- (4) The proposed regulations and waiver, where applicable, and a summary of the statements required by section 103(d) of the Act (16 U.S.C. 1373(d));
- (5) Issues of fact which may be involved in the hearing;
- (6) If a draft Environmental Impact Statement is required, the date of publication of the draft and the place(s) where the draft and comments thereon may be viewed and copied;
- (7) Any written advice received from the Marine Mammal Commission;
- (8) The place(s) where records and submitted direct testimony will be kept for public inspection;
- (9) The final date for filing with the Director a notice of intent to participate in the hearing pursuant to § 216.74;
- (10) The final date for submission of direct testimony on the proposed regulations and waiver, if applicable, and the number of copies required;
- (11) The docket number assigned to the case which shall be used in all subsequent proceedings; and
- (12) The place and date of the prehearing conference.

§ 216.74 Notification by interested persons.

Any person desiring to participate as a party shall notify the Director, by certified mail, on or before the date specified in the notice.

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§ 216.75 Presiding officer.

(a) Upon publication of the notice of hearing pursuant to § 216.73, the Director shall appoint a presiding officer pursuant to 5 U.S.C. 3105. No individual who has any conflict of interest, financial or otherwise, shall serve as presiding officer in such proceeding.

(b) The presiding officer, in any proceeding under this subpart, shall have power to:

- (1) Change the time and place of the hearing and adjourn the hearing;
 - (2) Evaluate direct testimony submitted pursuant to these regulations, make a preliminary determination of the issues, conduct a prehearing conference to determine the issues for the hearing agenda, and cause to be published in the **FEDERAL REGISTER** a final hearing agenda;
 - (3) Rule upon motions, requests and admissibility of direct testimony;
 - (4) Administer oaths and affirmations, question witnesses and direct witnesses to testify;
 - (5) Modify or waive any rule (after notice) when determining no party will be prejudiced;
 - (6) Receive written comments and hear oral arguments;
 - (7) Render a recommended decision; and
 - (8) Do all acts and take all measures, including regulation of media coverage, for the maintenance of order at and the efficient conduct of the proceeding.
- (c) In case of the absence of the original presiding officer or his inability to act, the powers and duties to be performed by the original presiding officer under this part in connection with a proceeding may, without abatement of the proceeding, be assigned to any other presiding officer unless otherwise ordered by the Director.
- (d) The presiding officer may upon his own motion withdraw as presiding officer in a proceeding if he deems himself to be disqualified.

(e) A presiding officer may be requested to withdraw at any time prior to the recommended decision. Upon the filing by an interested person in good faith of a timely and sufficient affidavit alleging the presiding officer's personal bias, malice, conflict of

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interest or other basis which might result in prejudice to a party, the hearing shall recess. The Director shall immediately determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 216.76 Direct testimony submitted as written documents.

(a) Unless otherwise specified, all direct testimony, including accompanying exhibits, must be submitted to the presiding officer in writing no later than the dates specified in the notice of the hearing (§ 216.73), the final hearing agenda (§ 216.81), or within 15 days after the conclusion of the prehearing conference (§ 216.83) as the case may be. All direct testimony shall be in affidavit form and exhibits constituting part of such testimony, referred to in the affidavit and made a part thereof, must be attached to the affidavit. Direct testimony submitted with exhibits must state the issue to which the exhibit relates; if no such statement is made, the presiding officer shall determine the relevance of the exhibit to the issues published in the **FEDERAL REGISTER**.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state his relationship to the party; and

(2) Facts that are relevant and material.

(c) The direct testimony may propose issues of fact not defined in the notice of the hearing and the reason(s) why such issues should be considered at the hearing.

(d) Ten copies of all direct testimony must be submitted unless the notice of the hearing otherwise specifies.

(e) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

(f) Contemporaneous with the publication of the notice of hearing, the Director's direct testimony in support of

the proposed regulations and waiver, where applicable, shall be available for public inspection as specified in the notice of hearing. The Director may submit additional direct testimony during the time periods allowed for submission of such testimony by witnesses.

§ 216.77 Mailing address.

Unless otherwise specified in the notice of hearing, all direct testimony shall be addressed to the Presiding Officer, c/o Director, National Marine Fisheries Service, Washington, DC 20235. All affidavits and exhibits shall be clearly marked with the docket number of the proceedings.

§ 216.78 Inspection and copying of documents.

Any document in a file pertaining to any hearing authorized by this subpart or any document forming part of the record of such a hearing may be inspected and/or copied in the Office of the Director, National Marine Fisheries Service, Washington, DC 20235—unless the file is in the care and custody of the presiding officer, in which case he shall notify the parties as to where and when the record may be inspected.

§ 216.79 Ex parte communications.

(a) After notice of a hearing is published in the **FEDERAL REGISTER**, all communications, whether oral or written, involving any substantive or procedural issue and directed either to the presiding officer or to the Director, Deputy Director or Marine Mammal Coordinator, National Marine Fisheries Service, without reference to these rules of procedure, shall be deemed ex parte communications and are not to be considered part of the record for decision.

(b) A record of oral conversations shall be made by the above persons who are contacted. All communications shall be available for public viewing at the place(s) specified in the notice of hearing.

(c) The presiding officer shall not consult any person or party on any fact in issue or on the merits of the

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matter unless notice and opportunity is given for all parties to participate.

§ 216.80 Prehearing conference.

(a) After an examination of all the direct testimony submitted pursuant to § 216.76, the presiding officer shall make a preliminary determination of issues of fact which may be addressed at the hearing.

(b) The presiding officer's preliminary determination shall be made available at the place or places provided in the notice of the hearing (§ 216.73(b)(8)) at least five days before the prehearing conference is held.

(c) The purpose of the prehearing conference shall be to enable the presiding officer to determine, on the basis of the direct testimony submitted and prehearing discussions:

(1) Whether the presiding officer's preliminary determination of issues of fact for the hearing has omitted any significant issues;

(2) What facts are not in dispute;

(3) Which witnesses may appear at the hearing; and

(4) The nature of the interest of each party and which parties' interests are adverse.

(d) Only parties may participate in the prehearing conference and a party may appear in person or be represented by counsel.

(e) Parties who do not appear at the prehearing conference shall be bound by the conference's determinations.

§ 216.81 Final agenda of the hearing.

(a) After the prehearing conference, the presiding officer shall prepare a final agenda which shall be published in the *FEDERAL REGISTER* within ten days after the conclusion of the conference. A copy of the final agenda shall be mailed to all parties.

(b) The final agenda shall list: (1) All the issues which the hearing shall address, the order in which those issues shall be presented, and the direct testimony submitted which bears on the issues; and (2) a final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The final agenda may also specify a final date for submission of

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direct testimony to rebut testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the final agenda a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties' interests are adverse on the issues presented.

§ 216.82 Determination to cancel the hearing.

(a) If the presiding officer concludes that no issues of fact are presented by the direct testimony submitted, the presiding officer shall publish such conclusion and notice in the *FEDERAL REGISTER* that a hearing shall not be held and shall also publish a date for filing written comments on the proposed regulations. Written comments may include proposed findings and conclusions, arguments or briefs.

(b) A person need not be a party to submit any written comments.

(c) Promptly after expiration of the period for receiving written comments, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and written comments submitted. He shall transfer to the Director his recommended decision, the record and a certificate stating that the record contains all the written direct testimony and comments submitted. The Director shall then make a final decision in accordance with these regulations (§ 216.90).

§ 216.83 Rebuttal testimony and new issues of fact in final agenda.

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the final agenda.

(b) If the final agenda presents issues not included in the notice of the hearing published pursuant to § 216.73:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Director by

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certified mail of an intent to participate not later than ten days after publication of the final agenda. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless he previously notified the Director pursuant to § 216.74; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the final agenda. Such direct testimony will comply with the requirements of § 216.76.

§ 216.84 Waiver of right to participate.

Persons who fail to notify the Director pursuant to § 216.74 and § 216.83 shall be deemed to have waived their right to participate as parties in any part of the hearing.

§ 216.85 Conduct of the hearing.

(a) The hearing shall be held at the time and place fixed in the notice of hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the **FEDERAL REGISTER** and shall expeditiously notify all parties by telephone or by mail: *Provided*, That if the change in time or place of hearing is made less than five days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record: the notice of hearing as published in the **FEDERAL REGISTER**; all subsequent notices published in the **FEDERAL REGISTER**; the draft Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments; and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the final agenda in such order as the presiding officer shall announce. With respect to direct testimony submitted as rebuttal testimony or in response to new issues presented by the prehearing conference, the presiding officer shall determine the relevancy of such testimony.

(c) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(d) If a party objects to the admission or rejection of any direct testimony or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. The ruling of the presiding officer on any objection shall be a part of the transcript and shall be subject to review at the same time and in the same manner as the Director's final decision. Only objections made before the presiding officer may subsequently be relied upon in the proceedings.

(e) All motions and requests shall be addressed to, and ruled on by, the presiding officer, if made prior to his certification of the transcript or by the Director if made thereafter.

§ 216.86 Direct testimony.

(a) Only direct testimony submitted by affidavit as provided in these regulations and introduced at the hearing by a witness shall be considered part of the record. Such direct testimony shall not be read into evidence but shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof;

(b) The witness introducing direct testimony shall:

(1) State his name, address and occupation;

(2) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies him as an expert;

(3) Identify the direct testimony previously submitted in accordance with these regulations; and

(4) Submit to appropriate cross and direct examination. Cross-examination shall be by a party whose interests are adverse on the issue presented, to the witness, if the witness is a party, or to the interests of the party who presented the witness.

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(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.

(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States: *Provided*, That parties shall be given adequate notice, by the presiding officer, at the hearing, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 216.87 Cross-examination.

(a) The presiding officer may:

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Prohibit parties from cross-examining witnesses unless the presiding officer has determined that the cross-examiner has an adverse interest on the facts at issue to the party-witness or the party presenting the witness. For the purposes of this subsection, the Director's or his representative's interest shall be considered adverse to all parties;

(3) Limit the number of times any party or parties having a common interest may cross-examine an "adverse" witness on the same matter; and

(4) Exclude cross-examination questions that are immaterial, irrelevant or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his name, address and occupation. If counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical or commercial publications may only be utilized for the limited purposes of impeaching witnesses under cross-examination unless previously submitted and intro-

duced in accordance with these regulations.

§ 216.88 Oral and written arguments.

(a) The presiding officer may, in his discretion, provide for oral argument at the end of the hearing. Such argument when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any interested person may file with the presiding officer any written comments on the proposed regulations and waiver, including proposed findings and conclusions and written arguments or briefs, which are based upon the record and citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, he shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state his arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

§ 216.89 Recommended decision, certification of the transcript and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Director. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Director the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge

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and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Director shall give notice thereof in the **FEDERAL REGISTER**, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the office of the Director, National Marine Fisheries Service, Washington, DC 20235.

(d) Within twenty days after the notice of receipt of the recommended decision has been published in the **FEDERAL REGISTER**, any interested person may file with the Director any written comments on the recommended decision. All comments, including recommendations from or consultation with the Marine Mammal Commission, must be submitted during the twenty-day period to the Director at the above address.

§ 216.90 Director's decision.

(a) Upon receipt of the recommended decision and transcript and after the twenty-day period for receiving written comments on the recommended decision has passed, the Director shall make a final decision on the proposed regulations and waiver, where applicable. The Director's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions and decision of the presiding officer. The Director may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Director's decision shall include:

- (1) A statement containing a description of the history of the proceeding;
- (2) Findings on the issues of fact with the reasons therefor; and
- (3) Rulings on issues of law.

(c) The Director's decision shall be published in the **FEDERAL REGISTER**. If the waiver is approved, the final adopted regulations shall be promulgated with the decision.

Subpart H—Transfer of Management Authority to States

NOTE: Regulations governing the transfer of management authority to States pursuant to section 109 of the Marine Mammal Protection Act for marine mammal species under the jurisdiction of the Secretary of Commerce are found at Part 403 of this title, see 48 FR 22456, May 18, 1983.

Subpart I—Waiver of the Moratorium on Taking of Marine Mammals

AUTHORITY: Secs. 103 and 109 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1373 and 1379).

SOURCE: 44 FR 2553, Jan. 11, 1979, unless otherwise noted.

EFFECTIVE DATE NOTE: At 44 FR 2553, Jan. 11, 1979, Subpart I was added to Part 216, effective when the Administrator determines (in accordance with section 109(a)(2) of the Marine Mammal Protection Act of 1972, and 50 CFR Part 216, Subpart H) that Alaskan laws and regulations are consistent with the Act.

§ 216.110 Purpose of regulations.

Pursuant to section 103 of the Act, the regulations contained in this subpart insure that the taking of each species or population stock of marine mammal for which the moratorium imposed by section 101 of the Act has been waived will not be to the disadvantage of any species or population stock.

§ 216.111 Scope.

(a) The provisions of this subpart apply with respect to each species or population stock only after (1) the Administrator has made a decision to effect a waiver and allow taking such species or population stocks pursuant to section 101(a)(3)(A) of the Act; and (2) a State has adopted and submitted to the Administrator laws and regulations relating to the protection and taking of such species and population stocks and the Administrator has approved such State laws and regulations pursuant to section 109(a)(2) of the Act and Subpart H of this part.

(b) The provisions of this subpart, unless specifically stated otherwise, apply to all taking of marine mammals

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by U.S. citizens and residents in Alaska and the waters off Alaska.

(c) The provisions of this subpart do not apply to nonlethal scientific research or public display, which shall be permitted in accordance with § 216.31, and incidental taking by foreign persons or foreign vessels, which shall be permitted in accordance with § 216.24.

§ 216.112 Definitions.

For purposes of this part:

(a) "Alaska" means all lands and waters within the seaward boundary of the State of Alaska;

(b) "Foreign person" means any person who is not a U.S. citizen or resident; "foreign vessel" means any vessel other than a vessel documented or certificated under U.S. laws.

(c) "Lethal scientific research" means scientific research in which the subject mammal is killed or seriously injured.

(d) "Pup" refers to a marine mammal which is born in the year in which it is taken in a commercial harvest.

(e) The term "Waters off Alaska" means waters outside Alaska and west of longitude 130° W., north of latitude 50° N., east of the U.S.-Russia Convention Line of 1867, and south of latitude 75° N.

§ 216.113 Taking of seals, sea lions and Beluga Whales (Alaska).

(a) Pursuant to section 101(a)(3)(A), 103 and 109 of the Act, and subject to the terms and conditions of this section, the moratorium and other requirements of section 101(a) of the Act are waived to allow the kinds of taking described in § 216.111(b) up to the following amounts on an annual, calendar year basis effective with the publication of the notice of approval of the laws and regulations of the State of Alaska pursuant to § 216.104(d).

Species	Annual taking limit on mortality and serious injury
Northern (Steller), Sea Lion (<i>Eumetopias jubatus</i>).....	16,648
Harbor Seal (<i>Phoca vitulina</i>).....	110,511

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Species	Annual taking limit on mortality and serious injury
Largha Seal (<i>Phoca largha</i>).....	5,700
Ribbon Seal (<i>Histiophoca vasciata</i>).....	500
Ringed Seal (<i>Pusa hispida</i>).....	20,000
Pacific Bearded Seal (<i>Erignathus barbatus</i>).....	¹ 9,000
Beluga Whale (<i>Delphinapterus leucas</i>).....	10
Cook Inlet stock, Bering-Chukchi Sea stock.....	350

¹ Two (2) pups may be taken in lieu of one adult, but only in commercial harvests and in accordance with age restrictions established by the State of Alaska. In accordance with 50 CFR 216.112(d), the State can allow only animals born in the year in which they are taken to qualify as pups.

² To be measured by the landing and taking ashore of 3,000 animals.

(b) The State of Alaska must insure that for each species and population stock, no more than the number of animals set forth in paragraph (a) of this section are taken annually.

(c) All takings of marine mammals allowed by § 216.111(b) and § 216.113(a) and all related activities shall be conducted in accordance with the applicable laws and regulations of the State of Alaska and the United States.

(d) The takings of marine mammals allowed by §§ 216.111(b) and 216.113(a) shall be duly licensed or otherwise authorized in writing as follows:

(1) *Alaska citizens and residents (including resident aliens)*. All subsistence, direct, incidental, and lethal scientific research taking in Alaska and the waters of Alaska shall be permitted in accordance with laws and regulations established by the State of Alaska;

(2) *Non-Alaskan-U.S. citizens, residents, and resident aliens*. (i) All direct and incidental taking, and lethal scientific research in Alaska shall be permitted in accordance with laws and regulations established by the State of Alaska; (ii) If such takings occur in the waters off Alaska, they shall be permitted in accordance with the laws and regulations of the United States.

(3) With respect to all permit applications for taking in the waters off Alaska under paragraph (d)(2)(ii) of this section, the Assistant Administrator for Fisheries, NOAA, shall consult with appropriate officials of the State of Alaska prior to issuing any permits.

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(4) The State of Alaska shall consult with the Assistant Administrator for Fisheries, NOAA, prior to issuing any lethal scientific research permits under paragraphs (d)(1) and (d)(2) of this section.

(e) Whenever the taking of any species or population stock during any calendar year reaches, or is likely to reach 90 percent of the annual taking limit under paragraph (a) of this section, the Administrator shall be notified pursuant to § 216.107. After notification, the State of Alaska must take appropriate steps to insure that the annual waiver limit is not exceeded, including, if necessary, an immediate termination of any taking under its control. If the State of Alaska does not take such appropriate steps, the Administrator as he deems appropriate, by notice to the State of Alaska and publication in the FEDERAL REGISTER, shall suspend and terminate any takings authorized by the State of Alaska for the calendar year in question.

(f) Whenever any species or population stock diminishes or is likely to diminish below its optimum sustainable population, or if the State of Alaska does not preserve the purposes and policies of the Act, or maintain optimum sustainable population and a healthy ecosystem, the Administrator shall by notice to the State of Alaska and publication in the FEDERAL REGISTER reimpose the moratorium on the taking of such affected species or population stock provided by section 101(a) of the Act.

(g) No marine mammal or product thereof taken under this section may be removed from Alaska or the waters off Alaska unless it is marked, tagged, or otherwise identified as required by State law or regulation and such mark, tag, or other identification remains on the part or product or container until the final stages of processing.

(h) For those persons or vessels subject to Alaskan jurisdiction, any violation of the laws and regulation of the State of Alaska applicable to the taking of marine mammals, committed in the waters off Alaska, shall be a violation of 50 CFR Part 216, Subpart I. For those persons or vessels not subject to the jurisdiction of the State,

any violation of these regulations in Alaska and the waters off Alaska may be punished in accordance with the procedures and penalties of sections 105, 106, and 107 of the Act and the regulations in this part.

(i) In accordance with paragraph (d)(2)(ii) of this section, the Administrator, after consultation with the State of Alaska, may issue permits to non-Alaskan, U.S. citizens authorizing the taking of any marine mammal listed in this section in the waters off Alaska. Applications for permits shall include:

- (1) Name and address of applicant;
- (2) Month and year of taking;
- (3) Identity of the marine mammal and the quantity to be taken;
- (4) Proposed location of taking;
- (5) Method of taking;
- (6) Proposed disposition of parts and products and method of shipment;
- (7) The following certification:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefits of a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001 or to penalties under the Marine Mammal Protection Act of 1972.

and

- (8) Signature of the applicant;

(j) Permits applied for under paragraph (i) of this section shall be terminated by reimposition of the moratorium or any closure of a season by the State of Alaska.

(k) Permits issued under paragraph (i) of this section shall contain such terms and conditions as the Administrator may deem appropriate to ensure that any taking and subsequent disposition shall be in accordance with the Act, with these regulations, and with the applicable provisions of Alaska's approved laws and regulations and shall include:

- (1) The number of animals which are authorized to be taken;
- (2) The location from which they may be taken;
- (3) The method of taking;

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(4) The period during which the permit is valid, which period shall be subject to reimposition of the moratorium, or any closure of a season by the State of Alaska;

(5) Any requirements for reports or rights of inspection with respect to any activities carried out pursuant to the permit;

(6) The conditions of sale or other disposition of any parts or products including any marking requirements; and

(7) A reasonable fee covering the cost of issuance of such permit, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. In no event will the cost be less than the fee for the comparable non-resident license or permit issued by the State of Alaska.

January 31, 1988
Revision 3

SECTION 4. MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT
AND THE MARINE MAMMAL PROTECTION ACT UPDATE

January 31, 1988

The update section of the Marine Protection, Research, and Sanctuaries Act (MPRSA) and the Marine Mammal Protection Act (MMPA) Reference Book generally includes proposed changes to the statutes or regulatory programs. In addition, policy statements, interagency agreements, and other supplementary material are provided when pertinent.

Proposed EPA Regulatory Changes

Table 4-1 summarizes proposed changes to the MPRSA regulatory program as of January 31, 1988. Federal Register citations are provided in the table for more detailed information. There are no proposed changes involving the MMPA regulatory program that are of interest to the Department of Energy at this time.

TABLE 4-1. SUMMARY OF PROPOSED CHANGES TO EPA'S MPRSA REGULATORY PROGRAM

SUBJECT Affected CFR Citation(s)	STATUS ^a (FR Citation) DATE	DESCRIPTIVE SUMMARY
Ocean Dumping Regulations 40 CFR 220 40 CFR 221 40 CFR 222 40 CFR 223 40 CFR 224 40 CFR 225 40 CFR 226 40 CFR 227 40 CFR 228 40 CFR 229	Planned NPRM 52 FR 14880 4/27/87 Regulatory agenda 52 FR 40870 10/26/87	Regulatory revisions are planned to clarify existing regulations and incorporate previous program experience.
Ocean Incineration Regulations 40 CFR 220 40 CFR 227 40 CFR 228 40 CFR 234	NPRM 50 FR 8222 2/28/85 Regulatory agenda 52 FR 40875 10/26/87	EPA will provide specific permitting regulations for ocean incineration of liquid hazardous and nonhazardous wastes as an independent part of the Ocean Dumping Regulations. Existing ocean dumping regulations provide no specific criteria or standards for the review of ocean incineration permit applications.
Ocean Dumping Permit Program	Notice of receipt of application 50 FR 51360 12/16/85 Denial notice 51 FR 20344 6/4/86	EPA had tentatively issued a research permit under MPRSA for Vulcanus II to burn 708,958 gallons of fuel oils containing 10-30% PCBs at the North Atlantic incineration site, but has decided to postpone test burns until regulations are in place.

(a) NPRM = Notice of Proposed Rulemaking

TABLE 4-1. SUMMARY OF PROPOSED CHANGES TO EPA'S MPRSA REGULATORY PROGRAM

SUBJECT Affected CFR Citation(s)	STATUS ^a (FR Citation) DATE	DESCRIPTIVE SUMMARY
Ocean Incineration Site Designations 40 CFR 234	Planned designation 52 FR 14880 4/27/87 Regulatory agenda 52 FR 40876 10/26/87	EPA plans to designate additional sites in the North Atlantic and Pacific for ocean incineration of liquid hazardous wastes.
National Marine Sanctuary Program 15 CFR 922	NPRM 51 FR 21369 6/12/86	NOAA proposes to amend the designation process provided in the existing National Marine Sanctuary Program regulations. The Site Evaluation List will be amended to include areas with nationally significant historical qualities.
Ocean Incineration Site Evaluation, Solicitation, and Designation 40 CFR 228 40 CFR 234	NPRM 52 FR 40876 10/26/87	EPA proposes a rule to provide specific criteria for evaluating candidate sites; selecting specific sites; and establishing the procedures for designating and listing sites for use after issuance of, and under the terms of, an ocean incineration permit.

(a) NPRM = Notice of Proposed Rulemaking

**DATE
FILMED**

10 / 20 / 93

END