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5281

REGISTRATION
STELLWAGEN BANK

Part IV

**Department of
Commerce**

**National Oceanic and Atmospheric
Administration**

15 CFR Part 940

**Stellwagen Bank National Marine
Sanctuary; Notice of Public Hearings and
Proposed Rulemaking**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 940

[Docket No. 900942-0242]

RIN 0648-AC94

Stellwagen Bank National Marine Sanctuary Regulations

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

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

SUMMARY: By this notice, NOAA, pursuant to section 205(b)(1) of Public Law No. 100-627, is proposing to designate an approximately 453 square nautical mile area of ocean waters, over and surrounding Stellwagen Bank, and the submerged lands thereunder, offshore the Commonwealth of Massachusetts as a National Marine Sanctuary. This notice publishes the proposed Designation Document for the proposed Sanctuary and summarizes the draft management plan for it. The draft management plan details the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the proposed Sanctuary. By this notice, NOAA proposes regulations to implement the proposed designation and regulate activities consistent with the provisions of the proposed Designation Document. Finally, this notice announces the public availability of the Draft Environmental Impact Statement/Management Plan (DEIS/MP) prepared for the proposed designation. The intended effect of the proposed designation, proposed regulations, and DEIS/MP is to protect the conservation, recreational, ecological, historical, research, educational, or esthetic qualities of the Stellwagen Bank area.

DATES: Comments are invited and will be considered if submitted in writing to the address below on or before April 9, 1991.

ADDRESSES: Comments may be submitted to Joseph A. Uravitch, Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource

Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Susan Durden, Regional Manager, (202/673-5122).

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, (the "Act"), 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries to protect their conservation, recreational, ecological, historical, research, educational or esthetic qualities.

Comments are solicited from all interested persons. Holders of, owners of, or future applicants for leases, permits, licenses, approvals, other authorizations, or rights, are specifically invited to comment on how they may be affected by the proposed designation of the Sanctuary and particularly §§ 940.8-940.11 of the proposed regulations. Comments are also in particular invited on the adequacy of the regulatory regime to protect Sanctuary resources and Sanctuary qualities.

After the comments received during the comment period have been considered, a final environmental impact statement and management plan will be prepared, and a notice of designation together with final regulations implementing the designation will be published in the **Federal Register**. The designation and regulations shall take effect and become final after the close of a 45-day Congressional review period unless a joint resolution disapproving the designation or any of its terms is enacted. A document will be published in the **Federal Register** announcing the effective date.

In January 1982, NOAA published a Program Development Plan (PDP) for the National Marine Sanctuary Program, describing the Program's mission and goals; site identification and selection criteria; and the nomination and designation process. Based on the PDP and Program regulations, NOAA published a proposed Site Evaluation List (SEL) of highly-qualified marine sites identified and recommended to NOAA by regional resource evaluation teams, based on Program mission and goals. Comments on the proposed SEL and additional site recommendations were solicited from the public during the autumn of 1982.

In response to a public nomination from Dr. Charles A. Mayo, of the

Provincetown Center for Coastal Studies, and Defenders of Wildlife, Inc., the North Atlantic Regional Resource Evaluation Team recommended the addition of Stellwagen Bank to the proposed SEL. Following a second public comment period on proposed changes or additions to the SEL, the final SEL, incorporating Stellwagen Bank and 28 other sites, was published in August 1983. (The SEL is periodically re-evaluated to determine the need for any changes. Public comments are also requested during such reevaluation periods.)

All SEL sites meet Program criteria for further consideration as possible sanctuaries, although placement on the SEL does not necessarily mean that a site will become a National Marine Sanctuary. In the normal process of national marine sanctuary designation, the Secretary of Commerce (through NOAA) will, from time to time, select sites from the SEL as Active Candidates. Selection of a site as an Active Candidate formally initiates the Process of a site's further consideration for Sanctuary designation. A full National Environmental Policy Act (NEPA) process is required in the consideration of any proposed Sanctuary site, including the preparation of draft and final environmental impact statements and management plans.

On November 7, 1988, Public Law No. 100-627, which amends and authorizes appropriations for title III of the Act, was signed into law. Congressional amendments made to the Act establish a finite period of time for designation of new National Marine Sanctuaries, i.e., 30 months from the time a site is selected as an Active Candidate to a **Federal Register** notice of designation (or findings regarding why such notice has not been published).

The 1988 Amendments also specifically require (at section 304(a)) that a prospectus on the Stellwagen Bank proposal be submitted to Congress not later than September 30, 1990. Because a prospectus contains the information provided in a Draft Environmental Impact Statement/Management Plan document (DEIS/MP), NOAA must also develop the DEIS/MP for the Stellwagen Bank proposal by September 30, 1990. The order to meet both this deadline and the 30-month limit on formal consideration of new National Marine Sanctuaries, NOAA elevated the Stellwagen Bank site to Active Candidate status on April 19, 1989 (54 FR 15787).

Following the **Federal Register** notice announcing Stellwagen Bank as an Active Candidate for National Marine

Sanctuary designation, NOAA conducted four public scoping meetings during the week of June 12-16, 1989 at Provincetown, MA; Portsmouth, NH; Worcester, MA; and Boston, MA. The purpose of the meetings was to gather information and comments from individuals, organizations, and government agencies on the range and significance of issues related to the Sanctuary proposal. Significant concerns were identified through this process regarding possible threats to the Stellwagen Bank environment from human activities. Natural resources at risk include the Stellwagen Bank feature itself, as well as important fisheries, marine mammals, and seabirds.

Before an area may be designated as a National Marine Sanctuary, section 303 of the Act (16 U.S.C. 1433) requires the Secretary to find:

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

(2) Existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(3) Designation of the area as a National Marine Sanctuary will facilitate coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; and

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

Section 304 (16 U.S.C. 1434) requires the Secretary to issue in the **Federal Register** a notice of the proposal, proposed regulations, and a summary of the draft management plan.

The authority of the Secretary to designate National Marine Sanctuaries has been delegated to the Under Secretary of Commerce for Oceans and Atmosphere by DOC Organization Order 10-15, section 3.01(z) (Jan. 11, 1988). The authority to administer the other provisions of the Act has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 05-50 (Sept. 21, 1983, as amended).

II. Summary of Draft Environmental Impact Statement/Management Plan

The DEIS/MP for the proposed Stellwagen Bank National Marine Sanctuary sets forth the Sanctuary's location and provides details on the most important resources and uses of

the Sanctuary. The DEIS/MP describes the resource protection, research, education and interpretive programs, and details the specific activities to be taken in each program. The DEIS/MP includes a detailed discussion, by program area, of agency roles and responsibilities. The goals and objectives for the proposed Sanctuary are:

Resource Protection

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

(1) Coordinate policies and procedures among the agencies sharing responsibility for protection and management of resources;

(2) Encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (e.g., monitoring and emergency-response programs);

(3) Develop an effective and coordinated program for the enforcement of Sanctuary regulations;

(4) Enforce Sanctuary regulations in addition to other regulations already in place;

(5) Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives, through an educational/interpretive program stressing resource sensitivity and wise use;

(6) Ensure that the water quality of Stellwagen Bank is maintained at a level consonant with Sanctuary Designation;

(7) Establish cooperative agreements and other mechanisms for coordination among all the agencies participating in Sanctuary management;

(8) Ensure that the appropriate management agency incorporates research results and scientific data into effective resource protection strategies; and

(9) Reduce threats to Sanctuary resources.

Research Program

Effective management of the proposed Sanctuary requires the initiation of a sanctuary research program. The purpose of Sanctuary research activities is to improve understanding of the Stellwagen Bank area environment, resources and qualities, and to resolve specific management problems. Research results will be used in interpretive programs for visitors and others interested in the Sanctuary, as well as for protection and management of resources and qualities.

Specific objectives for the research program are to:

(1) Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improved management of the Sanctuary;

(2) Incorporate research results into the interpretive/education program in a format useful for the general public;

(3) Focus and coordinate data collection efforts on the physical, chemical, geological and biological oceanography of the Sanctuary;

(4) Encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes;

(5) Initiate a monitoring program to assess environmental changes as they occur due to natural and human processes;

(6) Identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; and

(7) Encourage information exchange among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management.

Education

The goal for education programs is to improve public awareness and understanding of the significance of the Sanctuary and the need to protect its resources and qualities.

The management objectives designed to meet this goal are to:

(1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability;

(2) Broaden support for the Sanctuary management by offering programs suited to visitors with a range of diverse interests;

(3) Provide for public involvement by encouraging feedback on the effectiveness of education programs;

(4) Collaborate with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and

(5) Collaborate with other organizations to provide educational services complementary to the Sanctuary program.

Visitor Use

The Sanctuary goal for visitor management is to facilitate, to the extent compatible with the primary objective of resource protection, public

and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities.

Specific management objectives are:

(1) Provide relevant information about Sanctuary regulations, use policies and standards;

(2) Collaborate with public and private organizations in promoting compatible uses of the Sanctuary;

(3) Encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and qualities; and

(4) Monitor and assess the current levels of use to identify and control potential degradation of resources and qualities and minimize potential user conflicts.

III. Proposed Designation Document

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

Proposed Designation Document for the Stellwagen Bank National Marine Sanctuary

Under the authority of title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 *et seq.*, Stellwagen Bank and its surrounding waters offshore Massachusetts, and the submerged lands under Stellwagen Bank and its surrounding waters, as described in article II, are hereby designated as a National Marine Sanctuary for the purposes of providing long-term protection and management of the conservation, ecological, recreational, research, educational, historical, and esthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and esthetic resources and qualities of the Stellwagen Bank National Marine

Sanctuary (the "Sanctuary"). Section 1 of article IV of this Designation Document lists those activities that may have to be regulated on the effect date of designation, or at some later date in order to protect Sanctuary resources and qualities. Thus, the act of designation will empower the Secretary of Commerce to regulate the activities listed in section 1. Listing does not necessarily mean that an activity will be regulated; however, if an activity is not listed it may not be regulated, except on an emergency basis, unless section 1 of article IV is amended by the same procedures by which the original Sanctuary designation was made.

Article II: Description of the Area

The Sanctuary boundaries encompass a total of approximately 453 square nautical miles (approximately 521 square miles) of ocean waters, and the submerged lands thereunder, over and surrounding the submerged Stellwagen Bank, offshore the Commonwealth of Massachusetts. The boundary forms an approximately rectangular area around the entirety of the Bank feature, except for the southern border, which coincides with the seaward limit of Commonwealth of Massachusetts jurisdictional waters, and follows an arc formed by that limit as it occurs along the northern end of Cape Cod. The western border of the Stellwagen Bank Sanctuary is located approximately 30 nautical miles east of Boston, Massachusetts. Portions of the Sanctuary's southern borders are contiguous to two Commonwealth-designated marine protected areas, the Cape Cod Bay Ocean Sanctuary, and the Cape Cod Ocean Sanctuary. The precise boundaries are set forth in appendix I to this designation document.

Article III: Characteristics of the Area That Gives It Particular Value

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

The presence of the Bank feature contributes to a particular combination of physical and oceanographic characteristics which results in two distinct peak productivity periods annually, when overturn and mixing of coastal waters with nutrient-rich waters from deeper strata produce a complex system of overlapping midwater and benthic habitats. From the time of

Colonial settlement, this area has provided an abundant and varied array of fisheries, which continue at the time of designation to provide livelihoods for an active commercial fleet. Important fisheries include bluefin tuna, herring, cod, haddock, winter and summer flounder, silver hake, pollack, ocean pout, lobster, shrimp, surf clam, and sea scallop. The commercial value of fish caught within the Sanctuary waters exceeded \$14 million in 1989.

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

A vessel traffic separation scheme (VTSS) crosses directly over Stellwagen Bank, and accommodates approximately 2,700 commercial vessels annually in and out of Boston, Massachusetts. Existing or potential additional human activities involving the Stellwagen Bank environment include dredged materials disposal; sand and gravel extraction; offshore aquaculture development; and offshore fixed artificial platform construction.

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

qualities require coordinated and comprehensive monitoring and research.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation. The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, recreational, ecological, historical, research, educational, or esthetic resources and qualities of the area:

- a. Discharging or depositing, from within the boundaries of the Sanctuary, any material or substance;
- b. Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or substance;
- c. Exploring for, developing, or producing clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value ("industrial materials") in the Sanctuary;
- d. Drilling or digging into, dredging, or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure or material on the seabed of the Sanctuary;
- e. Moving, possessing, injuring, or attempting to move, possess, or injure, a Sanctuary historical resource;
- f. Taking any marine reptile, marine mammal, or seabird in or above the Sanctuary; except in accordance with and as permitted by regulations promulgated under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA);
- g. Exploring for, developing, or producing oil or gas in the Sanctuary; and
- h. Operation of commercial (other than fishing) vessels.

Section 2. Consistency With International Law. The regulations governing the activities listed in section 1 of this Article shall apply to United States-flag vessels and to persons who are citizens, nationals, or resident aliens of the United States, and shall apply to foreign-flag vessels and persons not citizens, nationals, or resident aliens of the United States to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3. Emergencies. Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or minimize the imminent risk of such destruction, loss, or injury, any activity, including those not listed in section 1, is subject to immediate temporary regulation.

Article V. Defense or Law Enforcement Activities

No prohibition set forth in the Sanctuary regulations shall apply to activities that are necessary for national defense or law enforcement. Whenever an activity necessary for the national defense or law enforcement would violate a prohibition set forth in these Sanctuary regulations were it not necessary for the national defense or law enforcement, the head of the agency taking the action, or his or her designate, shall notify the Secretary of Commerce or his or her designate of the proposed activity, if there is sufficient time to permit consultation without jeopardizing national defense or law enforcement. Such notification shall be sufficiently in advance of undertaking the activity in order to enable consultations as to how the activity could be conducted to minimize any adverse impact on Sanctuary resources and qualities without compromising national defense or law enforcement. Activities that are not necessary for the national defense, such as training exercises and routine vessel operations, are subject to all prohibitions contained in the Sanctuary regulations.

Article VI. Effect on Other Regulations, Leases, Permits, Licenses, and Rights

Section 1. Fishing Regulations, Licenses, and Permits. Fishing in the Sanctuary, including fishing for shellfish and invertebrates, shall not be regulated as part of the Sanctuary management regime authorized by the Act. However, fishing in the Sanctuary may be regulated other than under the Act by Federal and State authorities of competent jurisdiction, and designation of the Sanctuary shall have no effect on any regulation, permit, or license issued thereunder, e.g., regulations implementing Fishery Management Plans promulgated under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Section 2. Other. If any valid regulation issued by any Federal, State, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, or his or her designate to be more protective of Sanctuary resources and qualities shall govern.

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent

jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designate, as a result of this designation, or as a result of any Sanctuary regulation, if such lease, permit, license, approval, or other authorization, or right of subsistence use or access was issued or in existence as of the effective date of this designation. However, the Secretary of Commerce, or his or her designate, may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued as of the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or to any right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the owner or holder of such authorization or right notifies the Secretary or his or her designate of the existence of such authorization or right, and requests certification in accordance with the Sanctuary regulations, if the exercise of such authorization or right would otherwise violate a prohibition set forth in the Sanctuary regulations, and complies with any terms and conditions on the exercise of such authorization or right imposed by the Secretary or his or her designate, as he or she deems necessary to achieve the purposes for which the Sanctuary was designated. Pending the imposition of terms and conditions by the Secretary or his or her designate, such owner or holder may exercise any such authorization or right without being in violation of any prohibitions set forth in the Sanctuary regulations.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, if the Secretary or his or her designate was notified of the application for such authorization by the applicant in accordance with the Sanctuary regulations, and the Secretary or his or her designate has certified his or her authorization of such application, and such authorization contains, and the owner or holder complies with, such terms and conditions as the Secretary or his or her designate deems appropriate to protect Sanctuary resources or qualities.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by a National Marine Sanctuary permit issued by the Secretary or his or her designate in accordance with the Sanctuary regulations. Such permits shall only be issued if the Secretary or his or her designate finds that the activity for which the permit is applied will: further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with an air or marine casualty; assist in managing the Sanctuary; have only negligible, short-term adverse effects on Sanctuary resources or qualities; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the Commonwealth of Massachusetts.

The prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by a special use permit issued by the Secretary or his or her designate, in accordance with section 310 of the Act.

If the Sanctuary regulations prohibit the exploration, development, or production of oil, gas, or industrial materials, the Secretary or his or her designate may in no event permit or otherwise approve such activities in the Sanctuary, and any leases, licenses, permits, approvals, or other authorizations issued after the effective date of Sanctuary designation authorizing the exploration, development or production of oil, gas, or industrial materials in the Sanctuary shall be invalid.

Article VII. Alteration of This Designation

The terms of designation may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with interested Federal, State, regional, and local agencies, review by the appropriate Congressional committees, and the Governor of the Commonwealth of Massachusetts, and approval by the Secretary of Commerce, or his or her designate.

Appendix I. Proposed Stellwagen Bank National Marine Sanctuary Boundary Coordinates

(Appendix I will set forth the precise boundaries based on the comments received on the DEIS/MP).

End of the Proposed Designation Document.

IV. Summary of Proposed Regulations

The proposed regulations would set forth the boundaries of the proposed Sanctuary, prohibit a relatively narrow range of activities, establish procedures for applying for National Marine Sanctuary permits to conduct otherwise prohibited activities, establish certification procedures for existing leases, licenses, permits, approvals, other authorizations, or rights authorizing the conduct of a prohibited activity, establish notification and review procedures for applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity, set forth the maximum per-day penalties for violating Sanctuary regulations, and establish procedures for administrative appeals.

Specifically, the proposed regulations would add a new part 940 to title 15, Code of Federal Regulations.

Proposed § 940.1 would set forth as the purpose of the regulations to implement the designation of the Stellwagen Bank National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area.

Proposed § 940.2 and proposed appendix I following proposed § 940.11 would set forth the boundaries of the Sanctuary.

Proposed § 940.3 would define various terms used in the regulations. Other terms appearing in the proposed regulations are defined at 15 CFR 922.2, and/or in the Marine Protection, Research and Sanctuaries Act, as amended (33 U.S.C. 1401-1445, and 16 U.S.C. 1431-1439).

Proposed § 940.4 would allow all activities except those prohibited by § 940.5 to be undertaken subject to any emergency regulation promulgated pursuant to § 940.6 and all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction.

If any valid regulation issued by any Federal, State, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation more protective of Sanctuary resources and qualities would govern.

Proposed § 940.5 would prohibit a variety of activities and thus make it unlawful to conduct them. However, any of the prohibited activities could be conducted lawfully if:

(1) Necessary for national defense or law enforcement; necessary to respond

to an emergency threatening life, property, or the environment; pursuant to a National Marine Sanctuary permit issued under proposed § 940.8;

(2) Pursuant to a certification by the Director of the Office of Ocean and Coastal Resources Management under proposed § 940.9 of a valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction as of (or if conducted pursuant to any valid right of subsistence use or access, in existence as of) the effective date of this designation subject to complying with any terms and conditions imposed by the Director as he or she deems necessary to achieve the purposes for which the Sanctuary was designated; or

(3) Pursuant to a valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction after the effective date of Sanctuary designation, provided that the Director was notified of the application in accordance with the requirements of proposed § 940.10 and the Director did not object to the issuance of such authorization, and such authorization contains, and the owner or holder complies with, such terms and conditions as the Director deems necessary to protect Sanctuary resources and qualities.

The prohibitions would apply to United States-flag vessels and to persons who are citizens, nationals or resident aliens of the United States and to foreign-flag vessels and persons not citizens, nationals, or resident aliens of the United States to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

The first activity prohibited would be discharging or depositing, from within the boundaries of the Sanctuary, any material or other matter of any kind, except or: (a) Fish, fish parts, chumming materials or bait used in or resulting from normal fishing operations in the Sanctuary; (b) biodegradable effluent incidental to vessel use generated by marine sanitation devices approved by the U.S. Coast Guard; (c) water generated by routine vessel operations (e.g., cooling water and deck washdown) excluding bilge pumping; or (d) engine exhaust. This prohibition is necessary in order to protect the Sanctuary resources and qualities from the effects of pollutants deposited or discharged into the Sanctuary.

The second activity prohibited would be discharging or depositing, from beyond the boundaries of the Sanctuary,

material or other matter, except for the exclusions discussed above for the first activity, that subsequently enter the Sanctuary and injure a Sanctuary resource, or Sanctuary quality. The intent of this prohibition is to protect the Sanctuary resources from the harmful effects of land and sea-generated non-point and point source pollution.

The third activity prohibited would be exploring for, developing, or producing industrial materials in the Sanctuary. The intent of this regulation is to protect the Sanctuary resources from the harmful effects of exploring for, developing, or producing industrial materials.

The fourth activity prohibited would be drilling or digging into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure or material on the seabed of the Sanctuary. This prohibition does not apply if any of the above results from: Anchoring vessels; normal fishing operations; or installation of navigational aids. The intent of this regulation is to protect the resources of the Sanctuary from the harmful effects of activities such as, but not limited to, excavations from archeological purposes, drilling into the seabed, strip mining, ocean mineral extraction and dumping of dredged materials.

The fifth activity prohibited would be attempting to move, possess, injure or injure a sanctuary historical resource. Historical resources in the marine environment are fragile, finite and non-renewable. This prohibition is designed to protect these resources so that they may be researched, and information about their contents and type may be made available for the benefit of the public.

The sixth and final activity prohibited is taking any marine reptile, marine mammal, or seabird in or above the Sanctuary, except in accordance with and as permitted by regulations promulgated under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). The proposed prohibition would overlap slightly with the MMPA and ESA, but would also extend protection for Sanctuary resources on an environmentally holistic basis.

Proposed § 940.6 would authorize the regulation, including prohibition, on a temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury.

Proposed § 940.7 would set forth the maximum statutory civil penalty per day for conducting a prohibited activity—

\$50,000. Each day of a continuing violation would constitute a separate violation.

Regulations setting forth the administrative procedures governing the assessment of civil penalties, enforcement hearings and appeals, permit sanctions and denials for enforcement reasons, and the issuance of written warnings are governed by part 904, title 15, Code of Federal Regulations.

Proposed § 940.8 would set forth the procedures for applying for a National Marine Sanctuary permit to conduct an otherwise prohibited activity and the criteria governing the issuance, denial, amendment, suspension, and revocation of such permits. Permits would be granted by the Director of the Office for Ocean and Coastal Resource Management if he or she finds that the activity will: further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with an air or marine casualty; assist in the management of the Sanctuary; have only negligible, short-term adverse effects on Sanctuary resources and qualities. In deciding whether to issue a permit, the Director may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the duration of the activity and its effects, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the end value of the applicant's activity, and such other matters as the Director deems appropriate.

Proposed § 940.9 would set forth procedures for requesting certification of leases, licenses, permits, approvals, other authorizations, or rights authorizing the conduct an activity otherwise prohibited under § 940.5(a) issued or in existence as of the date of Sanctuary designation. Pursuant to § 940.5(f), the prohibitions in § 940.5(a) do not apply to any activity authorized by a valid lease, permit, license, approval, or other authorization issued as of the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or to any right of subsistence use or access in existence as of the effective date of Sanctuary designation, provided that the owner or holder of such lease, permit, license, approval, other authorization, or right notifies the Director of the existence of such lease,

permit, license, approval, other authorization, or right in accordance with the requirements of section 944.8 and requests certification of such lease, permit, license, approval, other authorization, or right, and provided that the owner or holder complies with any terms or conditions on the exercise of such lease, permit, license, approval, other authorization, or right imposed by the Director as he or she deems appropriate to achieve the purposes for which the Sanctuary was designated.

Proposed § 940.9 would allow the owner or holder 90 days from the effective date of Sanctuary designation to request certification. The owner or holder would be allowed to conduct the activity without being in violation of § 940.5(a) pending final agency action on a timely certification request.

The Director would be required to certify such lease, permit, license, approval, other authorization, or right within 120 days or receipt of a request for certification, unless: if within 30 days of receipt of a request for certification, the Director has requested additional information, the owner or holder shall then have 30 days from receipt of the request to supply the requested additional information. From the date of the receipt of the additional information or data the Director would have either: 120 days to certify such lease, permit, license, approval, other authorization, or right; or 60 days to publish a notice in the **Federal Register** of the intent to hold a public hearing on the request for certification. A hearing shall then be held within 30 days of the publication of the notice to hold a public hearing and a decision on the certification will be made 60 days from the close of the public hearing.

As a condition of certification, the Director would impose such terms and conditions on the exercise of such lease, permit, license, approval, other authorization, or right as he or she deems necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under section 304(c)(2) of the Act.

Either the owner or holder or the issuing agency may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 940.11.

Proposed § 940.10 would state that consistent with § 940.5(g), the prohibitions of § 940.5(a) do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any

Federal, State, or local authority of competent jurisdiction, provided that the Director is notified of the application for such lease, license, permit, approval or other authorization within fifteen days of the date of application or of the effective date of Sanctuary designation, whichever is later, and that the Director does not object to the issuance of such lease, license, permit, or authorization, and provided that such lease, license, permit, or authorization contains, and the owner or holder complies with, such terms and conditions as the Director deems necessary to protect Sanctuary resources and qualities.

Any person applying for a permit, license, approval or other authorization from any Federal, State, or local authority to conduct an activity that would be prohibited under § 940.5(a) would be required to notify the Director, in writing, within 15 days of the date of application or of the effective date of Sanctuary designation, whichever is later, of the filing of the application.

The Director would be required to notify the agency to which application has been made within the time period allowed for comment on the application of whether he or she has an objection to issuance or what terms and conditions such license, permit, approval, or other authorization must contain in order to protect Sanctuary resource and qualities.

Either the applicant or the issuing agency may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designate in accordance with the procedures set forth in § 940.11.

Proposed § 940.11 would set forth the procedures for appealing to the Assistant Administrator or designate actions of the Director with respect to:

- (1) The grant, conditioning, amendment, denial, suspension or revocation of a permit under § 940.8; (2) the conditioning, amendment, suspension or revocation of a certification under § 940.9; or (3) the objection to issuance or the imposition of terms and conditions under § 940.10.

Thus, the regulatory regime that the proposed regulations would establish provides for multiple uses of the Gulf of Maine while at the same time providing for the protection of Sanctuary resources and qualities.

Prior to conditioning existing or future leases, permits, licenses, approvals, other authorizations, or rights NOAA intends to consult with relevant issuing agencies as well as owners, holders or applicants. NOAA's policy is to encourage best available management practices to minimize non-point source pollution entering the Sanctuary and to

require at a minimum secondary treatment and preferably tertiary treatment for point source pollution, such as municipal sewage discharge.

V. Miscellaneous Rulemaking Requirements

Marine Protection, Research, and Sanctuaries Act

Section 304 of the Act requires the Secretary to submit to the Committee on Merchant Marine and Fisheries of the House of Representatives, and to the Committee on Commerce, Science, and Transportation of the Senate, on the same day as this notice is published, a prospectus on the proposal, which must contain, among other things, the terms of the proposed designation, the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the area, and a draft environmental impact statement. In accordance with section 304, the required prospectus is being submitted to the specified Congressional Committees.

Executive Order 12291

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

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

Regulatory Flexibility Act

The regulations proposed in this notice would allow all activities to be conducted in the proposed Sanctuary other than a relatively narrow range of prohibited activities. The procedures proposed in these regulations for applying for National Marine Sanctuary permits to conduct otherwise prohibited activities, for requesting certifications for existing leases, licenses, permits, approvals, other authorizations or rights

authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for licenses, permits, approvals, or other authorizations to conduct a prohibited activity would all act to lessen any adverse economic effect on small entities. The proposed regulations, in total, if adopted in final form as proposed, are not expected to have a significant economic impact on a substantial number of small entities, and the General Counsel of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. 96-511). The collection of information requirement applies to persons seeking permits to conduct otherwise prohibited activities and is necessary to determine whether the proposed activities are consistent with the management goals for the Sanctuary. The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 1.83 hours annually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public on the collection of information requirement are specifically invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530 (Attn: Paperwork Reduction Act Project 0648-XXXX); and to Richard Roberts, room 724, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

A Federalism Assessment (FA) was proposed for the proposed designation, draft management plan, and proposed implementing regulations. The FA concluded that all were fully consistent with the principles, criteria, and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request to the Office

of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370(a)), a Draft Environmental Impact Statement (DEIS) has been prepared for the proposed designation and the proposed regulations. As required by section 304(a)(2), the DEIS includes the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area. Copies of the DEIS are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

Executive Order 12630

This proposed rule, if issued in final form as proposed, would not have any takings implications within the meaning of Executive Order 12630 because it would not appear to have an effect on private property sufficiently severe as to effectively deny economically viable use of any distinct legally potential property interest to its owner or to have the effect, or result in, a permanent or temporary physical occupation, invasion, or deprivation.

List of Subjects in 15 CFR Part 940

Administrative practices and procedure, Coastal zone, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 31, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

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

A new part 940 is added to subchapter B (as proposed at 55 FR 31793, August 3, 1990) to read as follows:

PART 940—STELLWAGEN BANK NATIONAL MARINE SANCTUARY

- 1. Purpose.
- 2. Boundaries.
- 3. Definitions.
- 4. Allowed activities.

- Sec.
- 940.5 Prohibited activities.
- 940.6 Emergency regulations.
- 940.7 Penalties.
- 940.8 National Marine Sanctuary permits—Application procedures and issuance criteria.
- 940.9 Certification of leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity issued or in existence on the effective date of Sanctuary designation.
- 940.10 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.
- 940.11 Appeals of administrative action.

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

Authority: Sections 302, 303, 304, 305, 307 and 310 of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*

§ 940.1 Purpose.

The purpose of the regulations in this part is to implement the designation of the Stellwagen Bank National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area.

§ 940.2 Boundaries.

The Stellwagen Bank National Marine Sanctuary consists of an area of approximately 453 square nautical miles of Federal marine waters and the submerged lands thereunder, over and around Stellwagen Bank, off the coast of Massachusetts. The boundary forms an approximately rectangular area around the submerged Bank feature, the northeast and northwest points of which are marked by the following coordinates, respectively: 42°36'00.10"N x 70°13'56.46"W and 42°30'49.14"N x 70°34'55.72"W. The Sanctuary's eastern and western boundaries extend in a south-southeast direction from these points to coincide with the northern limits of Commonwealth waters off the northernmost land mass of Cape Cod. The Sanctuary's southern boundary follows an approximately west-to-east line, until the boundary reaches an offshore point three miles from the mean high tide point at Race Point, at the northernmost point of land on Cape Cod. At that point, the Sanctuary's southern boundary curves in a line contiguous with the three-mile jurisdictional boundary of Massachusetts around the northern Cape Cod land mass. The southeast and southwest corners are marked by the

following coordinates, respectively: 42°06'29.53"N x 70°04'03.36"W, and 42°07'44.89"N x 70°28'15.44"W. The precise boundaries of the Sanctuary appears in appendix I to this part.

§ 940.3 Definitions.

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

(b) *Administrator* or *Under Secretary* means the Administrator of the National Oceanic and Atmospheric Administration/Under Secretary of Commerce for Oceans and Atmosphere.

(c) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

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

(e) *Commercial vessel* means any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges; vessels used in seismic surveys; and vessels engaged in the trade of servicing offshore installations.

(f) *Effective date of Sanctuary designation* means the date the regulations implementing the designation of the Sanctuary become effective.

(g) *Historical resource* means a resource possessing historical, cultural, archaeological, or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events.

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

(i) *Injure* means to change adversely, either in the long or the short term, a chemical, biological, or physical attribute of, or the viability of, a Sanctuary resource.

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

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

(l) *Sanctuary quality* means a particular and essential characteristic of

the Sanctuary, including but not limited to water quality and air quality.

(m) *Sanctuary resource* means any living or nonliving resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or aesthetic value, including, but not limited to, the substratum of the Stellwagen Bank and the surrounding seabed, phytoplankton, zooplankton, invertebrates, fish, marine reptiles, marine mammals, seabirds, and historical resources.

(n) *Taking any marine reptile, marine mammal, or seabird* means harassing, injuring, hunting, capturing, collecting, or killing, or attempting to harass, injure, hunt, capture, collect, or kill, any marine reptile, marine mammal, or seabird, including, but not limited to, any of the following activities: collecting dead or injured marine reptiles, marine mammals, or seabirds, or parts thereof, restraining, or detaining any marine reptile, marine mammal, or seabird, or parts thereof, no matter how temporarily, tagging a marine reptile, marine mammal, or seabird, operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of marine reptiles, marine mammals, or seabirds.

(o) *Vessel* means watercraft of any description capable of being used as a means of transportation in the waters of the Sanctuary.

(p) Other terms appearing in the regulations in this Part are defined at 15 CFR 922.2, and/or in the Marine Protection, Research and Sanctuaries Act, as amended (33 U.S.C. 1401-1445 and 16 U.S.C. 1431-1439).

§ 940.4 Allowed activities.

All activities except those prohibited by § 940.5 may be undertaken subject to any emergency regulation promulgated pursuant to § 940.6 and all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction. If any valid regulation issued by any Federal, State, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation more protective of Sanctuary resources and qualities shall govern.

§ 940.5 Prohibited activities.

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

(1) Discharging or depositing, from within the boundaries of the Sanctuary, any material or substance, except for:

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

(ii) Biodegradable effluent incidental to vessel use generated by marine sanitation devices approved by the U.S. Coast Guard;

(iii) Water generated by routine vessel operations (e.g., cooling water and deck washdown) excluding bilge pumping; or

(iv) Engine exhaust;

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

(3) Exploring for, developing, or producing industrial materials in the Sanctuary;

(4) Drilling or digging into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure or material on the seabed of the Sanctuary. This prohibition does not apply if any of the above results from: anchoring vessels; normal fishing operations; or installation of navigation aids;

(5) Moving, possessing, injuring, or attempting to move, possess, or injure, a Sanctuary historical resource. This prohibition does not apply to accidental moving, possession or injury occurring during fishing operations; and

(6) Taking any marine reptile, marine mammal, or seabird in or above the Sanctuary, except in accordance with and as permitted by regulations promulgated under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA).

(b) The prohibitions in paragraph (a) of this section apply to United States-flag vessels and to persons who are citizens, nationals or resident aliens of the United States; and to foreign-flag vessels and persons not citizens, nationals, or resident aliens of the United States to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

(c) The prohibitions in paragraph (a) of this section do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

(d) The prohibitions in paragraph (a) of this section do not apply to activities necessary for national defense or law enforcement. Whenever an activity necessary for national defense or law enforcement would violate a prohibition

set forth in the Sanctuary regulations were it not necessary for national defense or law enforcement, the head of the agency taking the action shall notify the Secretary of Commerce or designate of the proposed activity, if there is sufficient time to permit consultation without jeopardizing national defense or law enforcement. Such notification shall be sufficiently in advance of undertaking the activity in order to enable consultations as to how the activity could be conducted to minimize any adverse impact on Sanctuary resources and qualities without compromising national defense or law enforcement. Activities that are not necessary for national defense or law enforcement, such as training exercises and routine vessel operations, are subject to all prohibitions contained in the Sanctuary regulations.

(e) The prohibitions in paragraph (a) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a permit issued pursuant to § 940.8, or issued pursuant to section 310 of the Act.

(f) The prohibitions in paragraph (a) of this section do not apply to any activity authorized by a valid lease, permit, license, approval, right or other authorization in existence on the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the owner or holder of such authorization or right notifies the Director of the existence of such authorization or right in accordance with the requirements of § 940.9, and requests certification of such authorization or right, and provided that the owner or holder complies with any terms and conditions on the exercise of such authorization or right imposed by the Director as he or she deems appropriate to achieve the purposes for which the Sanctuary was designated.

(g) The prohibitions in paragraph (a) of this section do not apply to any activity authorized by any lease, permit, license, approval, right, or other authorization issued after the effective date of Sanctuary designation, if the Director was notified of the application for such authorization by the applicant in accordance with the requirements of § 940.10, and the Director did not object to the issuance of such authorization, and such authorization contains, and the owner or holder complies with, such terms and conditions as the Director

deems necessary to protect Sanctuary resources and qualities.

(h) Notwithstanding paragraphs (e), (f), and (g) of this section, in no event shall the Director issue a permit under § 940.5(a), or under section 310 of the Act, authorizing the exploration for, extraction of, or development or production of industrial materials in the Sanctuary, and any leases, licenses, permits, approvals, or other authorizations authorizing the exploration, extraction, development, or production of industrial materials in the Sanctuary issued after the effective date of Sanctuary designation shall be invalid.

§ 940.6 Emergency regulations.

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

§ 940.7 Penalties.

(a) Each violation of the Act, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than \$50,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the administrative procedures governing the assessment of civil penalties, enforcement hearings and appeals, permit sanctions and denials for enforcement reasons, and the issuance of written warnings are set forth in 15 CFR part 904.

§ 940.8 National Marine Sanctuary Permits—Application procedures and issuance criteria.

(a) A person may conduct an activity otherwise prohibited by § 940.5(a) if such activity is conducted in accordance with the scope, purpose, manner, terms, and conditions authorized by a permit issued under this section.

(b) Applications for such permits should be addressed to the Director of the Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235. An application must include a detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel, and methodology to be employed. The qualifications and experience of all personnel must be set

forth in the application. The application must set forth the potential effects of the activity, if any, on Sanctuary resources and Sanctuary qualities. Copies of all other required licenses, permits, approvals, or other authorizations must be attached.

(c) Upon receipt of an application, the Director or designate, at his or her discretion, may request such additional information from the applicant as he or she deems necessary to act on the application; may seek the views of any persons; and may hold a public hearing.

(d) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity otherwise prohibited by § 940.5(a)(1)–(a)(6), if the Director finds that the activity will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; have only negligible, short-term adverse effects on Sanctuary resources and Sanctuary qualities; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the Commonwealth of Massachusetts. In deciding whether to issue a permit, the Director may also consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and its immediate, long-term, and cumulative effects on Sanctuary resources, and Sanctuary qualities; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the purposes for which the Sanctuary was designated; and the value of the applicant's activity; and such other factors as the Director deems appropriate.

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

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section or deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee has acted in violation of the terms of the permit or of these regulations or for other good cause. Any such action shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for

enforcement reasons are set forth in subpart D of 15 CFR part 904.

(g) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

§ 940.9 Certification of leases, licenses, permits approvals, other authorizations, or rights to conduct a prohibited activity issued or in existence on the effective date of Sanctuary designation.

(a) The prohibitions in § 940.5(a) do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation by any Federal, State, or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the owner or holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right and simultaneously requests certification of such authorization or right, provided that the owner or holder complies with any terms and conditions on the exercise of such authorization or right imposed, as a condition of certification, by the Director as appropriate to achieve the purposes for which the Sanctuary was designated.

(b) The owner or holder of a valid lease, permit, license, approval or other authorization in existence as of the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, or of any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity otherwise prohibited by § 940.5(a) may conduct the activity without being in violation of § 940.5, pending final agency action on a timely certification request.

(c) Requests for certification should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resources Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235. A copy of the lease, permit, license, approval or other authorization must accompany the request.

(d) After receipt of a request for certification, the Director may either issue a decision within 120 days of receipt of the request or, within 30 days

of receipt of the request for certification may request additional information from the applicant as he or she deems necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The applicant then has 30 days to supply the requested information. Failure to supply the requested information within 30 days shall cause the applicant to be immediately subject to the prohibitions in § 940.5(a). The Director, at his or her discretion, may seek the views of any persons on the certification request. The Director, at his or her discretion, will then issue a decision within 120 days of receipt of the requested information or may, within 60 days of receipt of the requested information, issue a notice in the **Federal Register** of the intent to hold a public hearing. The public hearing will then be held within 30 days of the publication of the notice in the **Federal Register**. The Director will then have 60 days to make a decision from the close of such public hearing. As a condition of certification, the Director may impose such terms and conditions on the exercise of authorization or right as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(e) Any certification called for in this section shall be presumed without the imposition of conditions or terms unless the Director acts on the certification request within 120 days of receipt thereof or, if the Director has requested additional information, within 120 days of receipt thereof, or 60 days from the close of any public hearing held.

(f) The Director may amend, suspend, or revoke any certification made under this section whenever the continued conduct of the activity would violate any terms or conditions of the certification. Any such action shall be communicated in writing to both the holder of the certified lease, permit, license, approval, other authorization or right, and the issuing agency, and shall set forth the reason(s) for the action taken.

(g) Either the holder, owner or the issuing agency may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 940.11.

(h) Any amendment, renewal or extension not in existence as of the date of Sanctuary designation of a lease, permit, license, approval, other authorization or right shall be subject to the provisions of § 940.10.

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

(a) The prohibitions set forth in § 940.5(a) do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that the Director is notified of the application for authorization within fifteen (15) days of the date of application or of the effective date of Sanctuary designation, whichever is later, and that the Director or designate does not object to the issuance of such authorization, and that such authorization contains, and the owner or holder complies with, such terms and conditions as the Director deems necessary to protect Sanctuary resources and Sanctuary qualities.

(b) Any person applying for a lease, permit, license, approval or other authorization from any Federal, State, or local authority to conduct an activity that would be prohibited under § 940.5(a) must notify the Director in writing, within fifteen (15) days of the date of application or of the effective date of Sanctuary designation, whichever is later, of the filing of the application. Any applicant may request the Director to issue a finding as to whether an activity for which an application to any Federal, State, or local authority of competent jurisdiction for a lease, permit, license, approval, or other authorization is proposed to be made or has been made would be prohibited by § 940.5(a) unless the Director is notified and does not object to issuance.

(c) Notification of the filing of an application must be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. A copy of the application must accompany the notification.

(d) Upon receipt of a notification, the Director may request such additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, approval or other authorization, or what terms and conditions such authorization must contain in order to protect Sanctuary resources and Sanctuary qualities. The Director, at his or her discretion, may

seek the views of any persons and hold a public hearing on the application.

(e) The Director shall notify the agency to which application has been made within the time period allowed for comment on the application of whether he or she has an objection to issuance or what terms and conditions he or she determines such lease, license, permit, approval, or other authorization must contain in order to protect Sanctuary resources and Sanctuary qualities.

(f) If the Director fails to notify the agency to which application has been made within the time period allowed by that agency for comment on the application of his or her objection to issuance, or of the terms and conditions he or she has determined such lease, license, permit, approval, other authorization or right must contain, then his or her concurrence to issuance without terms or conditions to protect Sanctuary resources and Sanctuary qualities shall be presumed.

(g) The applicant may appeal any objection by, or terms or conditions imposed by, the Director, to the Assistant Administrator or designate in accordance with the procedure set forth in § 940.11.

§ 940.11 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for a § 940.8 permit, a § 940.8 permittee, a § 940.9 certification requester, or a § 940.10 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designate:

(1) The granting, continuing, amendment, denial, suspension, or revocation of a National Marine Sanctuary permit by the Director under § 940.8;

(2) The conditioning, amendment, or revocation of a certification under § 940.9; or

(3) The objection to issuance or the imposition of terms and conditions under § 940.10.

(b) An appeal under paragraph (a) of this section must be in writing; state the action(s) appealed and the reason(s) therefore; and be received within 30 days of the action(s) by the Director. Appeals must be addressed to the Assistant Administrator, Office of Ocean and Coastal Resource Management, Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235.

(c) While the appeal is pending, appellants requesting certification pursuant to and otherwise in adherence with § 940.9 may continue to conduct their activities without being in violation of the prohibitions in § 940.5(a). All other appellants may not conduct their activities without being subject to the prohibitions in § 940.5(a).

(d) Within 30 days of receipt of an appeal, the Assistant Administrator or his or her designate may request the appellant or any person to submit such information as the Assistant Administrator or his or her designate deems necessary in order for him or her to decide the appeal. The appellant shall then have 30 days from receipt of the request for additional information from the Assistant Administrator or his or her designate to supply the additional information. The Assistant Administrator or his or her designate, at his or her discretion, may hold an informal hearing on the appeal. If the Assistant Administrator or his or her designate determines that an informal hearing should be held, he or she may designate an officer before whom the hearing shall be held. Notice of the time, place, and subject matter of the hearing shall be published in the **Federal Register** within 120 days after receipt of

the appeal. Such hearing shall be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons he or she deems equitable. The appellant and the Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or his or her designate.

(e) The Assistant Administrator or his or her designate shall decide the appeal based on the record before the Director and any further information submitted pursuant to a request to the Assistant Administrator or his or her designate, and the recommendation of the hearing officer if a hearing has been held. If a hearing has been held before a hearing officer, the Assistant Administrator or his or her designate may adopt the hearing officer's recommended decision, in whole or in part, or reject or modify it. In any event, if a hearing is held, the Assistant Administrator or his or her designate shall notify the appellant and other interested persons of his or her decision and the reason(s) therefore in

writing within 60 days of receipt of the recommended decision of the hearing officer. If an informal hearing is not held, the Assistant Administrator or his or her designate shall notify the appellant and other interested persons of the final decision and the reason(s) therefore in writing, normally within 60 days of the date of the receipt of adequate information to make the decision. The Assistant Administrator or his or her designate's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in this section may be extended by the Assistant Administrator or his or her designate for good cause for a period not to exceed 30 days, either upon his or her own initiative, or upon written request from the appellant stating the reason(s) therefore.

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

Note: Appendix I will set forth the precise boundaries based on the comments received on the DEIS/MP.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Hearings on the Draft Environmental Impact Statement/Management Plan for the Proposed Stellwagen Bank National Marine Sanctuary

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

ACTION: Notice.

SUMMARY: NOAA, pursuant to section 205(b) of Public Law 100-672, and as required by section 304(a)(3) of Public Law 92-532, as amended, is proposing to designate an approximately 453 square nautical mile area of ocean waters over and surrounding Stellwagen Bank, and the submerged lands thereunder, off the coast of the Commonwealth of Massachusetts, as a National Marine Sanctuary. This notice announces NOAA's intent to hold public hearings on a Draft Environmental Impact Statement/Management Plan (DEIS/MP) for the proposed Stellwagen Bank National Marine Sanctuary. The purpose of the hearings is to receive the views of interested parties on the proposed designation and the DEIS/MP. The views expressed at these hearings, as well as written comments received on the DEIS/MP, will be considered in the preparation of the Final Environmental Impact Statement/Management Plan (FEIS/MP).

DATES: The hearings will be held on March 11, 1991, from 7 to 10 p.m. at the National Marine Fisheries Service Conference Room, 1 Blackburn Drive, Gloucester, MA; on March 12, 1991, from 7 to 10 p.m. at Council Chambers, City Hall, 1 Junkins Avenue, Portsmouth NH; on March 13, 1991, from 7 to 10 p.m. at Old Town Hall, Route 3A, Duxbury, MA; on March 14, 1991, from 7 to 10 p.m. at City Hall Auditorium, Commercial Street, Provincetown, MA; and on March 18, 1991, from 1 to 4 p.m. at Auditorium, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC. All interested persons are invited to attend.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Durden, Regional Manager, or Mrs. Sherrard Foster, Program Specialist, Sanctuaries and Reserves Division,

Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., suite 714, Washington, DC 20235, (202/673-5126). Copies of the DEIS/MP are available upon request to the Sanctuaries and Reserves Division (SRD).

SUPPLEMENTARY INFORMATION: In the Federal Register on April 19, 1989, NOAA announced Stellwagen Bank, MA, as an active candidate for National Marine Sanctuary designation and the intent to prepare a DEIS/MP and to hold public scoping meetings on the proposal to designate Stellwagen Bank as a National Marine Sanctuary (54 FR 15787). This announcement also described the study area, the natural resources, human uses, and the designation process for the proposed Sanctuary.

NOAA has prepared the DEIS/MP in accordance with National Marine Sanctuary Program regulations (15 CFR part 922); and has published elsewhere in this issue of the Federal Register a Notice of Proposed Rule, Notice of Proposed Designation and Summary of Draft Management Plan. EPA has published elsewhere in this issue of the Federal Register a notice of public availability of the DEIS/MP. Based on the analysis of information collected from the public scoping meetings, consultations with Federal, State, and local agencies and research scientists, among others, and literature review, NOAA intends to designate an approximately 453 square nautical mile (sq. nmi) area of ocean waters over and surrounding Stellwagen Bank, and the submerged lands thereunder, off the coast of the Commonwealth of Massachusetts, as a National Marine Sanctuary. The preferred boundary alternative forms an approximately rectangular area around the entirety of the submerged Stellwagen Bank feature, except for the southern border, which coincides with the seaward limit of Commonwealth jurisdiction waters, as that limit occurs along the northern end of Cape Cod, MA. The preferred boundary's northern border is situated approximately six nautical miles southeast of Cape Ann (Gloucester), MA.

Three boundary alternatives (including the preferred alternative) are presented in the DEIS/MP. The first boundary alternative is the smallest (approximately 259 sq. nmi) and

encompasses the Stellwagen Bank feature and a portion of Stellwagen Basin, west of the Bank. The second alternative is the preferred alternative, described above. The third alternative (approximately 702 sq. nmi) includes the preferred alternative, with extensions to the north, east, and west. The environmental consequences of each of these three boundary alternatives are described in the DEIS/MP.

The designation of the Stellwagen Bank area as a National Marine Sanctuary would provide an integrated program of resource protection, research and education to assist in the long-term protection and management of its resources and qualities. Resource protection will involve coordination and cooperation with other agencies in formulating comprehensive resource protection policies and procedures, including the enforcement of regulations.

Six regulations are proposed, governing: discharges and deposits (both from within and outside of Sanctuary boundaries); industrial material exploration, development and production activities; alteration of or construction on the seabed (including, but not limited to drilling or digging into, or dredging the seabed); historical resources; and marine reptiles, marine mammals, and seabirds. Two additional activities are potentially subject to regulation: hydrocarbon activities, and commercial vessel traffic (other than fishing). Alternatives to the proposed regulations include status quo and non-regulatory options.

Research planned for the Sanctuary will include conducting baseline studies, as well as monitoring, analysis and prediction projects to provide information needed to further understanding of marine ecosystems, and to aid in resolving management issues. Education programs planned for the Sanctuary will be directed at improving public awareness of the Sanctuary's resources and the need to manage them as wisely as possible to ensure their continuing viability. The Sanctuaries and Reserves Division (SRD) is responsible for the overall management of the proposed Sanctuary. The SRD, represented by an on-site Sanctuary Manager, will coordinate its on-site activities with State, regional, and other Federal agencies, as well as with existing inter-agency programs involving the Gulf of Maine. A Sanctuary Advisory Committee (SAC) will be established to assist interested

groups and agencies in participating in Sanctuary management, and to advise the on-site Sanctuary Manager. The SRD will determine the structure, composition and functions of the SAC. The general administrative framework and specific roles of each agency in Sanctuary management are described in the DEIS/MP.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 31, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

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