

Protection Act, as amended, 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*

(7) Injuring, catching, harvesting, collecting or feeding, or attempting to injure, catch, harvest, collect or feed, any fish within the Sanctuary by use of bottom longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear.

(8) Possessing within the Sanctuary (regardless of where collected, caught, harvested or removed), except for valid law enforcement purposes, any carbonate rock, coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota or fish (except for fish caught by use of conventional hook and line gear).

(9) Possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear.

(10) Possessing, except for valid law enforcement purposes, or using explosives or releasing electrical charges within the Sanctuary.

(b) If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director as more protective of Sanctuary resources and qualities shall govern.

(c) The prohibitions in paragraphs (a)(2)(i), (iii), and (iv), (4) and (10) of this section do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas.

(d) The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(e)(1) The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to activities being carried out by the Department of Defense as of the effective date of Sanctuary designation (January 18, 1994). Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impacts on Sanctuary resources or qualities. Such activities shall be carried out in a manner that minimizes any

adverse impact on Sanctuary resources and qualities. New activities with the potential for significant adverse impacts on Sanctuary resources or qualities may be exempted from the prohibitions in paragraphs (a)(2) through (10) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by a component of the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to § 922.48 and § 922.123 or a Special Use permit issued pursuant to section 310 of the Act.

(g) The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 18, 1994, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(h) Notwithstanding paragraphs (f) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under § 922.48 and § 922.123 or a Special Use permit under section 10 of the Act authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas or minerals in a no-activity zone. Any leases, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas or minerals in a no-activity zone and issued after the January 18, 1994 shall be invalid.

§ 922.123 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.122(a)(2) through

(10) if conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and § 922.48.

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Flower Garden Banks National Marine Sanctuary, 1716 Briarcrest Drive, Suite 702, Bryan, TX 77802.

(c) 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 prohibited by § 922.122(a)(2) through (10), 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; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director shall 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 the duration of 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 cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) 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.

(e) The Director may, *inter alia*, make it a condition of any permit issued that any information obtained under the permit be made available to the public.

(f) The Director may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress, or results of any activity authorized by the permit.

Appendix A to Subpart L of Part 922—Flower Garden Banks National Marine Sanctuary Boundary Coordinates

The boundary coordinates are based on geographic positions of the North American Datum of 1927 (NAD 27).